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January 15, 2010  
Jim Field, Environmental Project Manager  
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VIA EMAIL: [lmaier@smud.org](mailto:lmaier@smud.org), [jfield@smud.org](mailto:jfield@smud.org)

Comments of Friends of the Swainson's Hawk regarding the Recirculated DEIR for the SMUD Solano Wind Project Phase 3.

Dear Mr. Maier,

Friends of the Swainson's Hawk (FOSH) is a non-profit charitable organization concerned with the conservation of wildlife, and particularly raptors, in California. We have reviewed your RDEIR for the Solano Wind Farm Phase 3 and prepared the comments below, with the assistance of our biological consultant, Melinda Dorin Bradbury, and our Legal Counsel, James P. Pachl. Please review our comments and notify us of the FEIR and future public hearings on the project.

We have major concerns about well-documented substantial avian and bat mortality inflicted by dense concentrations of wind turbines at Montezuma Hills, and elsewhere.

FOSH wants to support SMUD in providing the most beneficial clean, green energy portfolio. Friends of the Swainson's Hawk ("FOSH") supports alternative energy development and recognizes the adverse impacts of natural gas power plants on the environment and their impacts on climate change. FOSH recognizes that wind development avoids the impacts created by fossil fuel and natural gas power plants.

HOWEVER, wind power developers and operators, regulatory agencies, and society need to acknowledge that the characteristics which make a location favorable for wind power generation, such as steady winds, ridgetops, and passes, are the same characteristics which make these same locations instinctively attractive to avian species and bats for migratory routes and localized movement. High avian and bat mortality associated with wind turbine projects has repeatedly demonstrated that many avian species, especially raptors, and bats, do not have the instinctive ability to comprehend and avoid the dangers of lethal collision with operating wind turbines.

As a public power agency with an excellent environmental record, we hope SMUD could take the lead in developing methods and technologies which would greatly reduce avian and bat mortality currently caused by wind turbine projects.

- FOSH urges SMUD to place more focus on developing urban solar power. Sacramento is known for its many sunny days. Solar power facilities placed on urban rooftops has the lowest footprint (no Greenfield development) and is sited in locations adjacent to users, which greatly reduces the cost of transmission facilities. This also reduces the energy lost from electricity traveling long distances over transmission lines from where it is generated to where it is used.
- Previous studies commissioned by the California Energy Commission shows that the Montezuma Hills has high raptor use. The use of the area is actually higher than at the Altamont Pass Wind Area for certain species including red-tailed hawks and American kestrels. This creates the potential for major mortality of raptors due to wind energy turbines at Montezuma Hills.

We know that SMUD customers value the green energy program and want to participate. We do not want to see develop a situation where SMUD's green energy program becomes tarnished because of poor practices in reducing impacts and mitigating impacts on wildlife.

Our specific comments on the environmental review of the RDEIR and proposed mitigation measures are as follows:

#### SPECIFIC COMMENTS

- Page 2-11 – section titled “Avoidance of Sensitive Biological Resources,” says that “WTGs are sited outside of drainage areas, raptor nesting areas, and other sensitive natural features.” The assertion that WTG's are sited outside of “other sensitive natural features is not supported by substantial evidence and should be stricken. As stated above, WTG's are sited in areas that have same characteristics which make these same locations instinctively attractive to avian species and bats for migratory routes and localized movement. High avian and bat mortality associated with wind turbine projects has repeatedly demonstrated that many avian species, especially raptors, and bats, do not have the instinctive ability to comprehend and avoid the dangers of lethal collision with operating wind turbines. This section states that SMUD has committed in the past to participating in the Technical Advisory Committee. Mitigation Measures for this project should include binding language that (1) SMUD will continue to participate in the TAC and (2) that SMUD shall implement those take avoidance and mitigation measures recommended by the Technical Advisory Committee
- Section 2.5 & 2.6 – All roads and ground disturbing activities whether temporary or permanent have the potential of impacting California tiger salamander and should be surveyed following agency protocol prior to ground disturbance.
- Section 4.5.1.2 – Taking of threatened, endangered, or candidate species without an Incidental Take Permit issued under Section 2081, and taking contrary to the provisions of an

Incidental Take Permit, is illegal. This project may cause the taking of threatened or endangered species. For that reason, it would be unlawful for this project to proceed without a Section 2081 Permit, which can be issued only if measures are adopted which minimize and fully mitigate the impacts of possible taking. It is unlawful to kill any bird of prey, (Fish and Game Code Sec. 3503.5) or migratory bird except as provided by State or Federal law or regulation.

WTG projects cause the death of birds from collision of birds with the rotors. Please disclose those Federal and State regulations and statutes which SMUD believes would exempt it from prosecution or civil or administrative liability for the unlawful killing of birds due to collision of the rotors of WTG's with birds.

- Section 4.5.2 – The RDEIR says that very few waterfowl were recorded during avian surveys, but there is no mention of when the surveys were conducted (time of day, frequency, time of year, summary of methodology) which fails to provide the level of information required by CEQA. The RDEIR's conclusion that birds from the Suisun March generally do not fly through the project area is not supported by substantial evidence. Recirculation of the RDEIR, with inclusion of the results of avian surveys throughout the entire year, is required by CEQA
- The section titled "Invertebrates" (page 4.5-28) also includes discussions of avians (birds) and avian survey results. Birds are not invertebrates. Only 8 days of surveys were conducted between December 2006 and March 2007. This is prior to nesting season and prior to when many species return to the area. Surveys should be conducted for a complete year prior to impacts being fully assessed and analyzed and appropriate mitigation determined. Eight days of surveys for avian species between December and March fails to provide the level of information and analysis required by CEQA, provides no information about the presence of birds for most of the year, notably those species which are absent during that time, and exposes the RDEIR to possible legal challenge for violation of CEQA. Recirculation of the RDEIR, with inclusion information from avian surveys throughout the entire year, is required by CEQA.
- Impact Bio-1 draws conclusions not supported by fact or CEQA analysis. At first it states that the area provides foraging valuable habitat for certain species of birds, but and then concludes, without citing any supporting information, that because DFG does not consider agricultural lands or non-native grasslands as a sensitive natural community there would be no impacts foraging habitat for bird species using these areas. DFG regularly requires habitat compensation for loss of agriculture and non-native grasslands which provide foraging habitat for birds, including in the Solano County Water Agency MSHCP (which is cited by SMUD). Because these areas provide habitat to wildlife, including sensitive species, CEQA requires that the impacts on these species from disturbance or exclusion from habitat be mitigated to less than significant, or to the extent feasible mitigation (habitat compensation). CEQA requires mitigation of all impacts to wildlife, including bird species, to the extent feasible even if DFG did not require it. The discussion in this Section also asserts that because SMUD is developing the area as a wind project it is better than residential development and provides some value. The RDEIR also violates CEQA by failing to describe the baseline (pre-project) and the temporary and permanent impacts and provides no mitigation for the changes from baseline arising from the project.

The same discussion also asserts that there are no known wildlife nursery sites or non-avian migration corridors on the site. Avian species are wildlife. conclusion since avian surveys were stopped in March and were not conducted during the nesting season. It is also not stated whether surveys for other wildlife species were conducted. It is clear that the project relied heavily on CNDDDB records, which are notoriously incomplete. There is no mention of baseline surveys in the RDEIR, so it can be assumed that none were conducted.

In summary, the analysis of biological conditions discussed in Impact Bio-1 fails to meet CEQA's requirement for detailed analysis using best available factual and scientific information.

- Impact Bio-5 – The discussion of white-tailed kites states that collision would be unlikely because white-tailed kites do not soar higher than 30 meters, but at least two white-tailed kites have been killed by wind turbines in Montezuma Hills wind area. The contributors to this comment letter have observed white-tailed kites flying considerably higher than 30 meters. The RDEIR cites only one 1975 article in support of its assertion that white-tailed kites do not soar higher than 30 meters, which is clearly inadequate to support the conclusions that impacts to white-tailed kites are less than significant. Again, the analysis of the RDEIR violates CEQA by failing to include the best available factual and scientific data.
- Page 4.5-40 – The discussion of avian fatalities in the Collinsville Montezuma Wind Resource Area should include a discussion on the survey results for the SMUD Phase 1 and 2 projects. A thorough discussion is included for other wind projects in the area, but SMUD does not include the results for their own projects.
- Page 4.5-45 – SMUD cites the Erickson article stating that mortality to birds is higher from other causes (such as collisions with buildings) but that is even more reason to address and reduce the impacts from wind turbines. Cumulatively wind projects add to mortality of birds and bats and can contribute to declines. The numbers of dead birds found at WTG sites shows that the impacts on birds using the area of WTG's is significant.
- Impact Bio-6 – Deferring potential habitat and protocol level California red-legged frog surveys to the pre-construction time frame does not give SMUD time to conduct adequate surveys and complete a consultation without the pressure of construction crews needing to start. Surveys should be done in advance of the pre-construction phase to reduce the pressure on biologists and agencies so that they can do the appropriate work, complete mitigation measures if warranted, and to ensure that surveys are done at the correct time of year.
- Impact Bio-8 – SMUD states that it will conduct a site assessment for California tiger salamander (“CTS”) which is improper deferral of information needed to ascertain the impacts of the project to the California tiger salamander. The site assessment should be conducted and discussed as part of the RDEIR to avoid vulnerability to legal challenge for improper deferral of mitigation. Conducting the site assessment at a later date does not fully disclose all the potential impacts and improperly defers formulation of mitigation measures. The document states that surveys are to be conducted over two years, if the site assessment shows that CTS potentially occur at the site, but by then, according to the timeline stated in the RDEIR the project will be

constructed, or in construction and close to operation. Surveys should be conducted prior to construction and prior to the FEIR so impacts and mitigation can be fully disclosed.

- Mitigation Bio-4b & 4c – The mitigation measure says active nests will be avoided and then measure 4c discusses what happens when burrowing owl nests are not avoided. It should also be clarified that if habitat compensation is provided onsite there is a conservation easement recorded to ensure habitat is protected in perpetuity. It is implied, but the measures need to be clarified that during the breeding season burrowing owls will be avoided, and outside the breeding season there are certain steps that will be taken. It seems unlikely that habitat compensation will occur off-site because it is 6.5 acres of contiguous habitat, which seems feasible onsite. The RDEIR should specify 6.5 acres of contiguous habitat in a circle around the burrow.
- Mitigation Bio-5a – Bullet 5 – Not only should disproportionate mortality be analyzed, it should be addressed and reduced using measures such as seasonal shutdown, or stopping the free spin of the blades when power is not being generated. Bullet 6 – SMUD Phase 1 and 1a data should also be included in the analysis. There is a notable absence of discussion of specific measures that may be considered to reduce bird and bat mortality and lack of measures to implement measures to avoid mortality to birds and bats. CEQA requires that all possible measures to reduce mortality to birds and bats should be developed and considered using the best available scientific and factual information, and that feasible measures be adopted which would reduce mortality to birds and bats to less than significant. Such potential measures should be fully discussed in the RDEIR, including reasons why any of them may be rejected, and feasible mitigation measures adopted. CEQA's requirement that mitigation measures be developed which avoid or reduce impacts to the maximum extent feasible has not been met.
- Mitigation Bio-5b – Conservation easements should be provided in perpetuity and not just for the life of the SMUD project. The latter option should be deleted from the proposed mitigation measure. A habitat and management plan should be provided when the land is conserved and the easement recorded, and prior to the time that the disturbance occurs. If a management plan is not developed for three years after power comes on line it will be years (construction time period, + three years + time lag for enhancing/restoring habitat) after the impact occurs before the mitigation will benefit the species impacted. Please explain why SMUD feels that a management plan cannot be adopted when the easement land is acquired.
- Mitigation Bio-5c – Instead of a one-time payment to the UC Davis Raptor Center SMUD should provide funds at the end of each year based on the number of injured birds taken to the Center from the project in the previous year. SMUD should provide the money for the actual cost of the rehabilitation over the life of the wind project. A payment of \$50,000 is grossly inadequate. Please explain why SMUD feels that a one-time payment of \$50,000 is adequate.
- Mitigation Bio-6a – A site assessment for suitable California red-legged frog habitat should be completed prior to a preconstruction survey. Waiting to determine suitable habitat and then conducting protocol level surveys until preconstruction creates a difficult timeline for the

biologist to follow, and constitutes improper deferral of mitigation, which violates CEQA. Knowing ahead of time if there is suitable habitat, and then conducting suitable surveys allows for permits to be issued and any additional mitigation measures put in place prior to construction.

- Mitigation Bio- 8a &b – It is unclear whether SMUD plans on avoiding all California tiger salamander breeding and aestivating habitat or whether habitat will be surveyed. The same comment is true for the California tiger salamander that is addressed in the comment above for California red-legged frog. Surveys should be done in advance of preconstruction surveys. In the paragraph it states mitigation will be provided in a 2:1 and then the bulleted items give a range. It should be clarified what SMUD proposes to mitigate at. The mitigation should also include a conservation easement in perpetuity whether on- or off-site.

Sincerely,

A handwritten signature in black ink that reads "Jude Lamare". The signature is written in a cursive, slightly slanted style.

Jude Lamare, President, Friends of the Swainson's Hawk