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7 **BEFORE THE STATE OF WASHINGTON**
8 **ENERGY FACILITY SITE EVALUATION COUNCIL**

9 In the Matter of Application No. 2006-02
10 of
11 DESERT CLAIM WIND POWER LLC
12 for
13 DESERT CLAIM ENERGY PROJECT

APPLICATION NO. 2006-02

COUNSEL FOR THE
ENVIRONMENT COMMENTS ON
PROPOSED DRAFT SITE
CERTIFICATION AGREEMENT

14 Counsel for the Environment (CFE) respectfully submits the following comments
15 regarding the Proposed Draft Site Certification submitted to EFSEC on August 3, 2009 by
16 Applicant.

17 CFE believes that consideration of a draft Site Certification Agreement (SCA) before
18 issuance of the Final Supplemental Environmental Impact Statement (FSEIS) is premature.
19 Nonetheless, CFE offers the following comments on the Applicant's proposed SCA, and
20 reserves the right to submit additional comments after the FSEIS has issued.

21 1. Article I, Section B, page 2: The first paragraph to this section should state that
22 the certification is issued subject to the terms and conditions set forth in the Applicant's
23 stipulations with various parties, including the CFE and Washington Department of Fish and
24 Wildlife (WDFW). All stipulations should be incorporated into the SCA by reference and
25 included as attachments.
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1 2. Article III, Section A 2, page 8: This paragraph should state that the SCA binds
2 the Applicant to the commitments made in its stipulations with the CFE, WDFW, and any
3 other stipulating parties. Each stipulation should be identified in the SCA and incorporated by
4 reference.

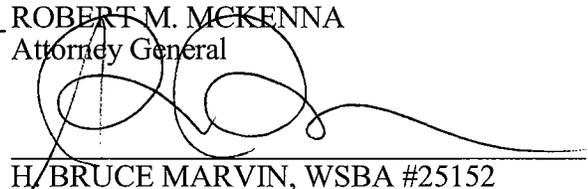
5 3. Article III, Section L 2, page 11: The stipulations between the parties should be
6 on the same level of precedence as the body of the SCA. Paragraph 2 should state: "The body
7 of this Site Certification Agreement and the stipulations between the parties attached hereto
8 [*identify specific attachments*]. If there is conflict between these documents, the more stringent
9 provision shall prevail."

10 4. Article V, Section A 5, page 24: The title of this paragraph states that the
11 environmental monitor will submit weekly reports to EFSEC during construction. The body of
12 the paragraph provides that the reports will be made on a monthly basis. This discrepancy
13 needs to be resolved.

14 5. Article VII, Section D 5, page 31: This paragraph should cite to the *Stipulation*
15 *Between Counsel for Environment and Desert Claim Wind Power LLC* at Article II, Section D
16 3(a), and the attachment to this stipulation that identifies the approximate locations of the
17 fenced calving areas.

18 Respectfully submitted on the 17th day of August, 2009.

19 ROBERT M. MCKENNA
20 Attorney General

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