



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Washington Fish and Wildlife Office  
510 Desmond Dr. SE, Suite 102  
Lacey, Washington 98503

In Reply Refer To:  
13410-2010-I-0447

JUL 19 2010

Mr. Andrew Montano  
Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

WHISTLING RIDGE ENERGY LLC  
JEFF REAMS  
USFWS ESA LETTER  
EXHIBIT NO. 5.04

Subject: Whistling Ridge Energy Project (Your Reference: KEC-4)

Dear Mr. Montano:

This letter responds to your request for consultation under section 7(a)(2) of the Endangered Species Act of 1973, (ESA) as amended (16 U.S.C. 1531 *et seq.*) on the proposed Whistling Ridge Energy Project LLC (Project). Your biological assessment (BA), dated June 8, 2010, was received by the U.S. Fish and Wildlife Service's (Service) Washington Fish and Wildlife Office on June 9, 2010. You requested concurrence with your determination that the Project "may affect, but is not likely to adversely affect" the threatened northern spotted owl (*Strix occidentalis caurina*) (spotted owl). No designated spotted owl critical habitat occurs on or near the Project; therefore, no critical habitat will be affected.

This letter is based on information provided in the BA, the 2009 Final Report "*Results of Northern Owl, Western Gray Squirrel and Northern Goshawk Surveys Conducted for the Whistling Ridge Wind Energy Project*", the Draft Environmental Impact Statement, a field trip to the Project attended by staff of the Service and the Washington Department of Fish and Wildlife on May 14, 2009, and a meeting between Service and Washington Department of Fish and Wildlife staff on August 28, 2009.

#### Project Location

The proposed Project is located on private land, approximately 7 miles northwest of the city of White Salmon in Skamania County, Washington. The Project encompasses approximately 1,152 acres of land in sections 5, 6, 7, 8, and 18 of Township 3 North, Range 10 East, and in section 13 of Township 3 North, Range 9 East, Willamette Meridian.

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### Summary of the Proposed Action

The Bonneville Power Administration (BPA) is proposing to interconnect up to 70 megawatts (MW) of new wind energy from the proposed Project to the North Bonneville-Midway 230-kilovolt transmission line. The interconnect would occur at a new sub-station to be built about 5 miles west of BPA's Underwood Substation in Skamania County. The interconnect was requested by the Project proponent, SDS Lumber Company, in Bingen, Washington. The SDS Lumber Company has created a new limited liability company called Whistling Ridge Energy LLC (WRE) that would finance, develop, and operate the Project. The Project is expected to operate for at least 30 years. The proposed Project would consist of no more than 50, 1.2 MW- to 2.5- MW wind turbines up to 426 feet tall, as well as infrastructure such as newly constructed and improved roads, transformers, underground energy-collector lines, a substation, and an operations and maintenance facility. The Project area consists of 1,152 acres of mostly commercial forests in various age categories, of which 384 acres would be disturbed by the Project, and all but 61 acres would remain in commercial forest. Most of the property where the turbine strings are planned has been recently clear-cut harvested and will be further disturbed with the development of the turbine pads.

### Status of Spotted Owls in the Project Area

Two spotted owl territories are located on Washington State Department of Natural Resources (DNR) and National Forest lands located north of and adjacent to the Project. The site center for the Mill Creek owl (MSNO#0991) is located in Township 4 North, Range 10 East, Section 28 and the site center for the Moss Creek owl (MSNO#1003) is located in Township 4 North, Range 9 East, Section 35. Both of these owl territories are within Washington State's White Salmon Spotted Owl Special Emphasis Area, which provides added protection for spotted owls located on private lands through the Washington State Forest Practices Rules. Both of the 70 acre core areas are located on DNR lands and are provided additional protection from their Habitat Conservation Plan for the State Trust Lands.

The estimated median annual home range size for the spotted owl in this physiographic province is approximately 6,657 acres, which for regulatory purposes is assumed to lie within a 1.8-mile radius circle. Best available science indicates that when the amount of suitable spotted owl habitat within a circle falls below 40 percent, there is a likelihood of "take" under section 9 of the ESA. Each of these territories contains more than 40 percent suitable spotted owl habitat (J. Spadaro pers. com. 2009). A small portion of the Moss Creek circle overlaps the northern end of the Project and contains dispersal habitat and some foraging habitat. However, removal of this small amount of habitat (2 acres) would not reduce the habitat acreage below 40 percent in either territory.

Protocol spotted owl surveys were conducted within these estimated home ranges during the 2003, 2004, 2008, and 2009 breeding seasons. Numerous barred owls (*Strix varia*) were detected, but no spotted owls were detected; however, because of the presence of barred owls with these territories, it is possible that spotted owls were present but did not vocalize. The 2009 surveys followed the Service's revised 2010 protocol to better elicit spotted owl responses in the presence of barred owls (USFWS 2010) (the consultant contacted the U.S. Fish and Wildlife

Service on May 29, 2009, how to call for spotted owls in light of the numerous barred owl detections north of the Project and was provided the changes to the 1992 surveying protocol prior to the release of the 2010 revised protocol on February 18, 2010). However, in 2010 surveys were continued in the Project area. On May 6, 2010, a single male spotted owl was detected while conducting a night visit in the far north edge of the Mill Creek provincial range on DNR property. On May 7th, the biologist conducted a follow-up visit during the daytime. The bird exhibited non-nesting behaviors. On May 29, the biologist conducted a second visit and located what appeared to be the same male owl that was detected on May 7th. The bird on both survey visits took and consumed mice, indicating that it is a single male not supporting young. Spotted owl survey protocol requires 3 sightings of a spotted owl single within the same area within the breeding season to be regarded as a territorial single. This does not change the analyses of effects of the Project to spotted owls, as addressed below, regardless of whether or not a territorial status is established.

#### Effects from Construction

Approximately 2 acres of spotted owl dispersal habitat (with some patches of foraging habitat) would be removed from the Moss Creek spotted owl site by the construction of the Project from the northern end of the turbine string. This habitat is located at the southern extremity of the circle and is on the edge of the Project that has already been clear-cut by SDS Lumber Company, and would not remove suitable spotted owl habitat below 40 percent in the territory (J. Spadaro pers. com. 2009). The discovery of the new owl in 2010 in the extreme north of the Moss Creek owl circle is located more than 2 miles northwest of the northern most turbine. Because of this, and since the remainder of the Project does not contain suitable spotted owl habitat, we believe that potential effects to spotted owls as a result of habitat loss or degradation is expected to be insignificant.

#### Effects from Maintenance

The effects of the operation and maintenance of the Project are anticipated to be minor. Maintenance of the Project would occur primarily around the turbine pads, inside the nacelle (the nacelle is the part of the turbine that houses the generator, transmission gears, and the shaft that turns the generator that, on its opposite end, bolts to the hub that the blades attach to) and the blades. In addition, because the landscape will be maintained as young second-growth forest we do not expect disturbance to nesting owls from maintenance because owls are not likely to nest in these younger forest stands (non-habitat).

#### Risk of Spotted Owl Collision with Wind Turbines

Bird mortality from collisions with wind turbines is well documented and varies greatly by bird species and flight behavior (Smallwood et al. 2009). Spotted owls are forest-dwelling birds that are strongly associated with older conifer forests. Spotted owls primarily use closed-canopy forested habitats throughout their entire lives for nesting, roosting, foraging, and dispersal (Forsman et al. 1984). Because spotted owls are non-migratory, forest-dwelling owls, they are at much lower risk of exposure to wind turbines than many other bird species, which typically use non-forested upland habitats for foraging and migration.

Spotted owls less commonly use recent clear-cuts or burned areas for foraging, but spotted owls do occasionally cross such areas while dispersing between patches of older forest (Forsman et al. 1984; 2002). Although spotted owls do occasionally disperse across open areas, they usually avoid crossing such areas by travelling through corridors of forested habitat (Forsman et al. 1984). The typical flight behavior of the spotted owls is described in the *Birds of North America*:

“Quick wingbeats interspersed with gliding flight. Not a fast flier. Long flights unusual except during dispersal...Flight labored when attempting to fly to a higher perch or up to nest sites. When gaining altitude in the forest canopy, makes a series of short climbing flights rather than continuous flight. Flights above the forest canopy probably rare except during dispersal. (Gutierrez et al 1995, p. 9).”

During natal dispersal, spotted owls will occasionally cross open areas and, as noted above, may occasionally fly above the level of the forest canopy. Considering spotted owl flight behavior, above-canopy flights are most likely to occur in steep-walled valley settings, where the spotted owl may choose to fly across a valley above the level of the forest canopy on the valley floor. The Whistling Ridge site is located on a forested ridge top that will be maintained as a cleared area for the wind turbines. Spotted owls dispersing across the ridge are more likely to disperse through forested areas along the perimeter of the site, rather than crossing the open areas near the turbines. If a spotted owl were to fly through the turbine array, it would most likely cross at an altitude that is at or below the level of the adjacent forest canopy, and well below the height of the lower of the wind turbine blades (164 – 425 ft. above ground level).

To assess the risk of owl collision with the turbine blades or towers, we convened a review panel of three spotted owl biologists from this office and one spotted owl biologist from the Washington Department of Fish and Wildlife. Based on our knowledge of spotted owl flight behaviors and habitat preferences, the group concluded that the risk of spotted owl collisions with turbines at this site is low.

Considering the strong association of spotted owls with the forest canopy, and spotted owl flight behaviors, we conclude that it is unlikely that spotted owls would cross the Whistling Ridge site at an altitude that would put the owls at risk of collision with turbine blades. Therefore, the risk of a spotted owl collision at this site is considered to be discountable.

#### Concurrence

Considering the current status of spotted owls in the Project area, and the anticipated Project effects, we concur that the Project is not likely to adversely affect the spotted owl.

This concludes informal consultation pursuant to the regulations implementing the ESA (50 CFR 402.13). This action should be re-analyzed if new information reveals effects of the action that may affect listed species or designated critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed species or designated critical habitat that was not considered in this consultation; and/or, if a new species or critical habitat is designated that may be affected by this Project.

Other Comments

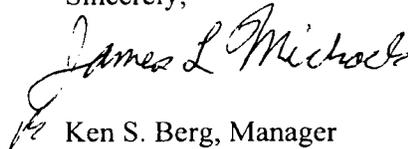
While reading through the DEIS for this Project, we found some issues that require your attention. On Page 4-4, first paragraph, last sentence "As described in Section 3.4 Biological Resources, no listed species or critical habitat are anticipated to be affected by the Project. This statement equates to a finding of no effect. To the contrary, the biological assessment prepared by BPA made a finding of "may affect, not likely to adversely affect"; hence, the need for this informal consultation.

On page 4-5, 4.5 Migratory Bird Treaty Act, both the interpretation of this Act and the effects of the Project to avian species are in error. Both avian studies and the analyses in Section 3.4 Biological Resources state that many avian species occur within the Project and that some of those individuals will be killed (collisions with blades or tower) and contrary to the statements provided in the Biological effects Section. Within this context, how is it concluded at 4.5, that impacts to migratory birds could only occur through temporary disturbance during construction?

On page 4-5, 4.7 Bald Eagle Protection Act, the last statement "Because the Project would not involve intentional acts or acts in wanton disregard of bald or golden eagles, this Project is not considered to be subject to compliance with the Act.", is an inaccurate statement. Federal Law Enforcement and the U.S Department of Justice decide whether or not an eagle killed by a project is subject to compliance under this Act.

The Service appreciates your efforts to protect listed species and the habitats on which they depend while meeting your mission to provide the public with reliable electricity. If you have any questions regarding this consultation or your responsibilities under the Act, please contact Jim Michaels of this office at (360) 753-7767.

Sincerely,



Ken S. Berg, Manager  
Washington Fish and Wildlife Office

### LITERATURE CITED

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