

Attachment IV

Agreement Between Desert Claim Wind Power LLC

And

Washington Department of Fish and Wildlife

**AGREEMENT BETWEEN DESERT CLAIM WIND POWER LLC AND
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE CONCERNING
THE DESERT CLAIM WIND POWER PROJECT**

Preamble

In November 2006, Desert Claim Wind Power LLC ("Desert Claim") filed an Application for Site Certification with the Washington Energy Facility Site Evaluation Council ("EFSEC") requesting certification for the Desert Claim Wind Power Project (the "Project"). In February 2009, Desert Claim filed a Revised Application for Site Certification ("Revised Application") with EFSEC. The Project, as set forth in the Revised Application, consists of 95 wind turbines, with a total capacity of 190 megawatts, and is located on approximately 5,200 acres northwest of Ellensburg in unincorporated Kittitas County (the "Project Area").

In March 2007, EFSEC adopted the Final Environmental Impact Statement ("FEIS") for the Desert Claim Wind Power Project that Kittitas County published in August 2004. In April 2009, EFSEC published a Draft Supplemental Environmental Impact Statement ("SEIS") for the Project.

By letter dated May 4, 2009, the Washington Department of Fish and Wildlife ("WDFW") submitted comments regarding the Draft SEIS. WDFW's comments suggested that additional information be included in the SEIS and recommended that the Project include various mitigation measures to address its potential environmental impacts.

WDFW staff and Desert Claim representatives have met on several occasions to discuss WDFW's recommendations, and have agreed upon the following mitigation measures that fully resolve WDFW's concerns regarding the Project.

Desert Claim's Commitments

Desert Claim agrees to the following mitigation measures:

1. Habitat Mitigation Plan. Prior to starting construction, Desert Claim will develop a Habitat Mitigation Plan in consultation with WDFW, based upon the 2009 WDFW Wind Power Guidelines, and submit the Habitat Mitigation Plan to EFSEC for approval. Desert Claim and WDFW will work together to develop the Habitat Mitigation Plan as follows:
 - A. Desert Claim and WDFW will agree upon a map of the habitat types found within the Project Area (the "Habitat Map"). The Habitat Map will be based upon the NRCS maps of soils and ecological sites, and field investigations of the Project Area.
 - B. The Habitat Mitigation Plan will specify Desert Claim's Mitigation Obligation. Desert Claim's Mitigation Obligation will be calculated using the mitigation ratios specified in the 2009 WDFW Wind Power Guidelines. For purposes of calculating the Mitigation Obligation, expected habitat impacts will be determined based upon the pre-construction Project layout drawings overlaid on the habitat types shown on the Habitat Map. Pre-construction Project layout drawings will show expected permanent and temporary land disturbances.
 - C. Desert Claim may satisfy its Mitigation Obligation either by purchasing a mutually acceptable mitigation parcel and deeding it to WDFW or a mutually

acceptable third party, contributing money to a mutually acceptable third-party that owns or will purchase a mitigation parcel, or by paying WDFW a fee of one thousand seven hundred fifty dollars (\$1,750.00) per acre in lieu of mitigation. If Desert Claim has not satisfied its Mitigation Obligation prior to commencing construction, Desert Claim will provide a letter of credit to EFSEC in an amount sufficient to provide financial security for its obligation. Desert Claim will be required to satisfy its Mitigation Obligation prior to commencing commercial operation of the Project.

- D. The Habitat Mitigation Plan will include a process to determine the actual impacts to habitat following the completion of construction. In the event that actual impacts to habitat exceed the expected impacts determined prior to construction, the Habitat Mitigation Plan will include a mechanism for Desert Claim to provide supplemental compensatory mitigation ("Supplemental Mitigation").

Supplemental Mitigation, if any, may take the form of an additional mitigation parcel, the contribution of additional funds to a third-party, or the payment of an additional fee of one thousand seven hundred fifty dollars (\$1,750.00) per acre to WDFW in lieu of mitigation.

2. Project Design.

- A. Desert Claim will minimize road construction in the Project Area to the extent practical. Desert Claim will consult with WDFW on ways to minimize road construction and other habitat impacts prior to preparing final construction plans.

- B. Desert Claim will avoid the installation of above-ground collector lines where practical, instead installing collector lines in and/or alongside roadways, in areas currently disturbed, in other areas that will be permanently disturbed by Project construction, or by directionally drilling under surface waters when practical. When it is not practical to avoid the installation of above-ground collector lines, Desert Claim will consult with WDFW to determine the most practical alternative with the least adverse environmental impacts. Any above-ground collector lines and electrical infrastructure will be designed to comply with the current Avian Power Line Interaction Committee Guidelines.
- C. Ground-level security lighting will be motion-sensitive and pointed downward.
- D. All permanent meteorological towers will be free-standing monopoles without guy wires. Desert Claim will use bird markers on all temporary meteorological towers with guy lines.

3. Construction-Related Plans. Prior to starting construction, Desert Claim will develop the following construction-related plans in consultation with WDFW and then submit them to EFSEC for approval:

- A. Construction Site Management Plan
- B. Habitat Restoration and Revegetation Plan (for temporarily disturbed areas). Among other things, this plan will address the timing and intensity of grazing during revegetation.
- C. Construction Soil Management Plan
- D. Noxious Weed Control Plan

Desert Claim may combine two or more of these plans into a single plan if convenient.

4. Other Construction-Related Plans. Prior to starting construction, Desert Claim will develop the following construction-related plans and submit them to EFSEC for approval. Desert Claim will provide a copy of these plans to WDFW at the same time it submits them to EFSEC, so that WDFW may provide comments to Desert Claim and EFSEC.
- A. Temporary Erosion and Sediment Control Plan
 - B. Construction Stormwater Pollution Prevention Plan
 - C. Construction Spill Prevention, Control and Countermeasures Plan
 - D. Fire Control and Protection Plan
 - E. Construction Plans and Specifications for ground-disturbing work, including plans for roads, equipment staging areas, tower pads, transmission lines, electrical collector system, quarry sites and substation laydown areas.

Desert Claim may combine the elements of two or more of these plans into a single plan if convenient.

5. Project Construction.
- A. An Independent Environmental Monitor, operating under EFSEC's direction, will monitor Project construction.
 - B. Desert Claim will ensure that the construction team includes a qualified staff person(s) with experience in construction in sensitive arid environments, similar to that found in the Project Area. A preconstruction meeting will be held between the Independent Environmental Monitor and the construction team to review and clarify construction related plans, special concerns, and construction techniques prior to beginning work.

- C. Construction teams will stake work and clearing limits prior to construction or ground clearing.
- D. Desert Claim will avoid temporary or permanent disturbance of wetlands. Although no disturbance to wetlands is anticipated, if an unanticipated disturbance occurs, Desert Claim will prepare a Wetlands Restoration Plan in consultation with WDFW and submit it to EFSEC for approval.
- E. Prior to any work affecting the bed or flow of state waters (including seasonally dry stream channels), Desert Claim will consult with and obtain approval from WDFW.
- F. Construction activities will not be restricted to particular seasons. However, Desert Claim will attempt to sequence construction activities in order to minimize temporary earth disturbances during the wet season where practical. In particular, Desert Claim will avoid earth-disturbing activities that result in distinct areas of temporary habitat disturbance (e.g. cross-country trenching to install electric collector system lines) in shrub-steppe areas when soils are saturated (which commonly occurs from mid-November through April) to the greatest extent possible. If such activities are to take place during periods of soil saturation, Desert Claim will consult with WDFW to develop a specific plan incorporating strategies and best management practices to minimize the environmental impacts of these activities and additional restoration measures to ensure successful restoration of the disturbed habitat.

6. Operations-Related Plans. Prior to commercial operation, Desert Claim will develop the following operations-related plans in consultation with WDFW and submit them to EFSEC for approval:
 - A. Operations Stormwater Pollution Prevention Plan
 - B. Operations Spill Prevention, Control and Countermeasures Plan
 - C. Operations Fire Control and Prevention Plan

7. Raptor, Bald Eagle, and Avian Mitigation Measures

- A. Desert Claim will post, maintain, and enforce a 25 miles per hour speed limit on Project roads.
- B. Desert Claim will promptly remove livestock and big game carcasses and livestock afterbirths from the Project Area.
- C. Desert Claim will not allow calving to be conducted on the land within the Project Area that will be owned by Desert Claim or an affiliate. Cattle ranchers who have leased property for the Project may continue to conduct calving operations within the Project Area.
- D. Desert Claim will avoid the use of rodenticides to control rodent burrowing around towers as much as possible. In the event that Desert Claim believes the use of rodenticides is necessary, Desert Claim will consult with WDFW to develop a plan for appropriate application and use.

8. Avian Monitoring

- A. Desert Claim will conduct a raptor nest survey during June 2009 and the breeding season just prior to the start of construction, if another breeding season occurs before the commencement of construction. The results of the survey will be used to determine timing restrictions and/or buffer distances to active raptor nests.
- B. Prior to commencing commercial operation, Desert Claim will develop an Avian Monitoring Plan in consultation with WDFW and submit the plan to EFSEC for approval. The Avian Monitoring Plan will be based upon the 2009 WDFW Wind Power Guidelines, although Desert Claim and WDFW may agree to depart from the Guidelines if circumstances warrant. The Avian Monitoring Plan will include

one breeding season of raptor nest surveys, and a tracking and reporting system that reports avian fatalities to EFSEC and the Technical Advisory Committee. The Avian Monitoring Plan will also include either two years of fatality monitoring, or one year of fatality monitoring and a second year of focused monitoring or study that the TAC determines may be more beneficial than a second year of fatality monitoring.

9. Bat Surveys. Prior to beginning commercial operation, Desert Claim will conduct a bat survey during the bat migration period in late summer through early fall. The survey will focus on data collection during the period of heaviest migration. The survey will utilize current technology and methodology to document bat use of the site. Detectors will be placed at an appropriate elevation to monitor migrating bats within the rotor sweep zone. Desert Claim will consult with WDFW in developing the protocol for the survey.
10. Technical Advisory Committee. Desert Claim agrees to form a Technical Advisory Committee ("TAC").
 - A. The purpose of the TAC will be to ensure that monitoring data collected pursuant to the Avian Monitoring Plan or other related monitoring data is considered in a forum in which independent and informed parties can collaborate with Desert Claim. The TAC will make recommendations to EFSEC if it deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Revised Application, the Final EIS or the Final SEIS, or significantly exceed the impacts that were projected in those documents. In order to make advisory recommendations to EFSEC, the TAC will review and consider the results of Project monitoring studies, as well as new scientific findings made at

wind generation facilities with respect to the impacts on habitat and wildlife, as they may relate to the Project. The TAC will assess whether the post-construction restoration and mitigation and monitoring programs for wildlife that have been identified and implemented merit further studies or additional mitigation, taking into consideration factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings.

- B. The TAC may include, but need not be limited to, representatives from WDFW, U.S. Fish and Wildlife Service, EFSEC, Kittitas County, Washington Department of Natural Resources, Audubon Washington or its member chapters, and Desert Claim. EFSEC, at its discretion, may add additional representatives to the TAC from local interest groups as well as state, local, federal and tribal governments. All TAC members shall be approved by EFSEC.
- C. Desert Claim will submit to EFSEC proposed Rules of Procedure describing how the TAC shall operate, including but not limited to a schedule for meetings, a meeting procedure, a process for recording meeting discussions, a process for making and presenting timely TAC recommendations to the Council, and other procedures that will assist the TAC to function properly and efficiently. Desert Claim will provide a copy of the proposed Rules of Procedure at the first TAC meeting for review and comment. The TAC may suggest modifications of the plan; any such modifications must be approved by EFSEC.
- D. The TAC will be convened for the life of the Project, except that EFSEC may terminate the TAC if: the TAC has ceased to meet due to member attrition; the TAC determines that all of the pre-permitting, operational and post-operational

monitoring has been completed and further monitoring is not necessary; or the TAC members recommend that it be terminated. If the TAC is terminated or dissolved, EFSEC may reconvene and reconstitute the TAC at its discretion. EFSEC may decide to reconvene the TAC for reasons including, but not limited to, unanticipated circumstances or impacts or the environmental review of any program.

- E. The ultimate authority to require implementation of additional mitigation measures, including any recommended by the TAC, will reside with EFSEC.
11. Big Game. Desert Claim agrees to cooperate with WDFW in its efforts to manage deer and elk in the Project vicinity and its efforts to prevent depredation of private property by big game. Desert Claim will not prohibit hunting on the Project lands, except when hunting would place personnel, property or equipment in jeopardy. However, the private and public owners of property in the Project Area may decide whether or not to allow hunting on their property.
12. Initial Decommissioning and Site Restoration Plan. Prior to commencing construction, Desert Claim will develop an Initial Decommissioning and Site Restoration Plan in consultation with WDFW and submit it to EFSEC for approval. Desert Claim will restore the site to approximate or improved pre-Project condition. The Plan will require removal of the wind turbine nacelles, blades, towers, foundations, cables and other facilities to a depth of four feet below grade, regrading of areas around the Project facilities and final restoration of disturbed land. Among other things, the Plan will address the timing and intensity of grazing to ensure successful revegetation.

WDFW's Withdrawal of Objections

WDFW has reviewed the impact of the Project and provided input regarding habitat and wildlife issues related to the Project. In particular, Desert Claim has undertaken site impact assessments to identify the wildlife and habitat impacts expected from construction and operation of the Project. WDFW has reviewed those assessments and recommended various mitigation measures. WDFW acknowledges that the mitigation measures set forth in the Revised Application, together with those set forth and agreed to above, are consistent with the 2009 WDFW Wind Power Guidelines.

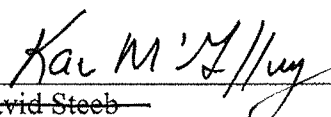
Considering the potential impacts outlined in the FEIS and the Draft SEIS, as well as Desert Claim's commitment to implement the mitigation measures outlined in this Agreement, WDFW agrees that the Project will not result in significant adverse impacts to fish and wildlife or habitat. WDFW further agrees that Desert Claim's commitment to implement the measures outlined in this Agreement fully addresses WDFW's concerns about the Project. WDFW hereby withdraws any recommendations included in its previous comments regarding the Project and the Draft SEIS that are inconsistent with this Agreement. The Parties understand and acknowledge that WDFW may identify concerns and make specific recommendations consistent with this Agreement in the context of developing and reviewing the various plans referenced in this Agreement.

In the event that a material unforeseen change in circumstances occurs or substantial impacts to the environment occur that were not foreseen at the time the Parties entered into this Agreement, the Parties reserve the right to revisit issues addressed in this Agreement.

DATED: July 21, 2009


DESERT CLAIM WIND POWER LLC

WASHINGTON DEPARTMENT
OF FISH AND WILDLIFE



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