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22 October 2008

Celia Greenman
Northeast Energy Coordinator
Colorado Division of Wildlife
6060 Broadway
Denver, Colorado 80216

Dear Celia:

The Interwest Energy Alliance represents the largest companies in the wind energy industry that are actively involved in developing projects in Colorado and other western states. The wind industry strongly supports the policy goals of Governor Ritter's New Energy Economy, because wind provides an inexhaustible, environmentally friendly and economically beneficial supply of electricity generated right here in Colorado. These comments generally reflect the views of Interwest's wind industry members. Wind energy can make the largest, quickest contribution of any of our present energy alternatives to avoiding massive extinction of Colorado's treasured wildlife from climate change. We support Governor Ritter's voluntary climate goals for reducing Colorado's CO2 emissions by 20% by 2020 and 50% by 2050, over 2005 levels.

Interwest's wind industry members have joined with leaders of the wildlife and native species communities in creating the Colorado Renewables and Conservation Collaborative. As you know, this informal cooperative effort has already succeeded in acquainting the conservation community with the wind industry's perspectives on project development. Likewise, the wind industry has gained a greater understanding of the conservation community's perspectives on the wildlife and native species impacts of wind development. You have been a key player in this Collaborative's development, and we sincerely appreciate your pro-active participation in this critical endeavor.

To meet steadily increasing demands for clean, renewable energy resources in Colorado and throughout the West, the wind industry will need to build new projects in Colorado and throughout other wind-rich states. Large wind projects can be built in a fraction of the time that it typically takes to build conventional power plants such as coal, natural gas and nuclear. This fast construction time, combined with the nation's rapidly increasing demand for clean electricity, means that the wind industry needs regulatory and policy certainty in order to meet this demand in the most timely and cost-effective manner.

The wind industry believes that properly written wildlife guidelines can help provide the certainty needed for faster project development, and we applaud your initiative in seeking to draft guidelines that will create certainty for greater wind market growth.

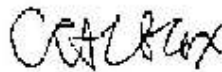
Unfortunately, the wind industry has very strong concerns over the draft wind development guidelines and the lack of cooperation and collaboration with industry during their development. In addition, we feel that industry was not given adequate time to review and comment on the proposed guidelines and therefore cannot support them in their current form. We cannot stress strongly enough that an ongoing, collaborative, approach with industry is needed to ensure the successful implementation of these guidelines.

Our concerns on the new draft guidelines are attached to this letter. One of the concerns we express deals with the short timeline we were given to review your draft guidelines: just two weeks. We feel a longer comment period might have provided more opportunity to coordinate with other parties, such as our colleagues in the conservation, wildlife and public lands communities. However, we appreciate your review of these comments as attached today.

As we move forward in the discussion of these draft wind development guidelines, we wish to avoid any hint of the divisive debates that accompanied consideration of the new oil and gas rules this summer. We sincerely hope that we can work closely and collaboratively with you to fashion guidelines that will reinforce Colorado's status as a national leader of the New Energy Economy — and as a national leader in protection of wildlife and native species.

Thank you for your consideration of our comments. We look forward to a productive, ongoing dialogue with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Cox".

Craig Cox
Executive Director

**Comments of the Wind Energy Industry
on the Draft CDOW Wind Development Guidelines
as Submitted by the Interwest Energy Alliance
22 October 2008**

The guidelines are too detailed and too long

- There is a lot of great material presented in the draft that does not give guidance about wind development and wildlife. While this is valuable background material, in our view, draft guidelines should directly and succinctly address “What should be done” and “how to do it” rather than trying to provide an encyclopedia about everything that is known about these issues. A background white paper or publication could be developed to contain this extraneous material.

The comment period is inappropriately short

- We first heard about the drafting process last spring, only by happenstance. After these guidelines spent nearly six months (that we are aware of) in internal drafting, we were only provided a written draft for comment on October 10th, with a two-week comment deadline of October 24th. We feel this is far too short to provide detailed, reasoned comments on the guidelines and request that stakeholder parties be provided additional time for comments.

The guidelines were drafted with no input from the very industry that will have to work with them, and there are a number of impractical requirements, such as:

- Setbacks of 300 feet from escarpments (p.4) and all water bodies (p. 9): The universal application of a 300 foot set back from all escarpments and water bodies, regardless of relevant biological observations, would be detrimental to the development process. As well as being arbitrary, these setbacks have not been proven to reduce the risk of impact to birds or bats. Additionally, as was referenced on page 10 of these guidelines, surveys conducted at the Peetz Table wind farm (please provide reference for study) demonstrated that raptors were active at the base of the escarpments, not at the top, illustrating that individual site characteristics should be considered when applying setbacks. We encourage the CDOW to be flexible in its setbacks and avoid any hard and fast restrictions.
- 2-years pre- and post-construction surveys as a standard (pp. 6 and 7): Requiring two year of pre-and post construction surveys regardless of the biological imperative to do so adds significant expense to wind projects.
 - The guidelines note the need for two years of pre-construction and post-construction surveys due to establishing inter-year variability. There are other methods to evaluate seasonal variability other than completing two years of pre-construction surveys.
 - This is often infeasible due to the amount of time required to evaluate the wind resource, easement expiration, consideration of regulatory review timeframes
- Setbacks from leks (0.6 to 1.2 miles) (p. 8) and permanent raptor nest setbacks (¼ to ½ mile) (p.9): As we did in regard to escarpment setbacks, we also caution CDOW to be flexible with wildlife setbacks. A single ¼ mile setback could exclude up to 125 acres of

productive land from development, requiring the relocation of turbines from higher production areas to lower production areas, in turn increasing the cost of power. Furthermore, setbacks necessitate the leasing of additional lands, increasing the impact to habitat by requiring the construction of additional roads and collection systems. In the long run, to fully understand the impact of wind turbines on prairie grouse, raptors and other wildlife, we will need good studies that are able to evaluate whether nests or leks closer than the proposed buffers are significantly impacted. Additionally, there may be mitigation opportunities that greatly exceed the effects of placing turbines closer to nests than these buffers call for, and there should be some flexibility for such mitigation.

- The basis for setbacks appears to be the USFWS Interim Guidelines. A Federal Advisory Committee is currently working to extensively revise these guidelines and the industry strongly suggests that CDOW not refer to the Interim Guidelines as a source for protocol or best management practices at this time.
- Requirement to provide interim pre and post construction study reports, including raw data, on an annual and interim basis (p. 8): In the interest of responsible development and siting, wildlife studies are conducted at great expense to a wind farm project. To require that incomplete analysis (interim reports) and raw data be freely distributed for scrutiny is counterproductive and may provide conflicting information on a given project.
- Requirements to predict impacts and set thresholds for mitigation (p.8): At this point these predictions would amount to nothing more than a shot in the dark.
- Requirement to study migration routes (p. 12): Most studies of nocturnal migration suggest that nocturnally migrating birds or bats tend to follow broad front patterns with passage rates varying in time and space. It is likely that all areas of the country have migrant birds passing over. Studying nocturnal migration will not lead to discovery of “well-defined migration corridors for birds and bats”. Also the methods that are detailed in the guidelines will present variable result within a site because they study different airspace and are potentially highly biased (ceilometers attracting birds).
- Bat Surveys (p.12): The requirement to conduct the extensive list of surveys, including long term acoustical monitoring, not only during preconstruction surveys but also during post construction would appear to be overly arduous considering the bat population along the eastern plain does not appear to be at risk.
- Cumulative Impact Assessments (p. 14): It is highly unclear how these assessments will fit into the development timeline and how the results from these assessments will be applied to individual projects.
- Seasonal construction setback from leks and raptor nests—the list of setbacks and limits on construction time frames are very restrictive and will greatly impact the construction schedules for wind energy facilities. Furthermore, many of the setbacks are not based on scientific data and are unsubstantiated. The industry recognizes the need to limit disruption of wildlife (especially during the breeding season) during construction. However, other techniques could be utilized that would still protect wildlife while allowing longer periods for construction activities that maybe in close proximity to sensitive areas. (p 14)
- No construction in areas of a floodplain – currently many counties in Colorado already have floodplain permit requirements. Limiting construction of wind facilities and related infrastructure seems to unfairly constrain wind development as opposed to other types of development. In addition, the U.S. Army Corp of Engineers regulates water crossings by

utility infrastructure as well as certain playas and wetlands connected to those water features. There are also extensive stormwater management requirements that must be followed during the construction of wind energy facilities. Given these currently regulations, industry does not feel it is necessary for CDOW to add further regulations that will only complicate and extend an already lengthy permitting process.

- Intense survey requirements that vary between being highly prescriptive to vague and undefined: While recognizing the importance of standardizing these surveys, the protocol for carcass searches is too prescriptive and there are no alternatives offered within the searcher efficiency trial if there are no bat carcasses available (p. 7). On the other hand, in the case of the Mountain Plover survey requirements, there is no indication how the surveys would go about meeting the stated purpose of reducing fatalities. The USFWS guidelines presented in Appendix D provide protocols for P/A surveys, documenting breeding and estimating relative abundance or density.

The guidelines imply or inappropriately attempt to elevate CDOW's roles/responsibilities into an agency that has permitting authority over wind projects

- This paragraph indicates the developer must prepare various surveys and studies in order to comply with PUC regulations requiring consultations. This paragraph significantly overstates the role that is required through the PUC process as state in 4 CCR.723-3 3656(b), which states as follows – “For eligible energy resources larger than two MW with any wind turbine structures extending over 50 feet in height, the QRU shall require project developers to include in the bid package written documentation that consultation occurred with appropriate governmental agencies (for example, the Colorado Division of Wildlife or the U.S. Fish and Wildlife Service) responsible for reviewing potential project development impacts to state and federally listed wildlife species, as well as species and habitats of concern.” (p. 1)
- Suggesting that CDOW and FWS review and make determinations regarding cumulative impacts (p. 14)
- Suggesting avoidance of “water features” in various locations. It’s unclear in the guidelines how the avoidance of waterways would avoid potential impacts. Generally this issue is regulated by ACOE. As it presently stands it remains unclear why this matter is addressed by CDOW.
- Discussion of the use of mitigation in the context of NEPA. NEPA review is outside of the scope of CDOW’s consideration. As such, the discussion included on pages 16-17 should be removed as it has no relevance in promoting “voluntary guidelines”
- Including reporting requirements in various locations in the guidelines.

The best management practices and site specific recommendations measures lack scientific justification or misrepresent the known scientific understanding of the issue

- The Baerwold study on bat mortality due to air pressure changes is a hypothesis, not a known or documented fact.
- Ridgeline setbacks, lek setbacks and all species specific setbacks lack scientifically based justification.

Unsubstantiated statements that are used throughout the guidelines that are not cited or related to scientifically based data

- For example, on page 5: “The data would be used to prepare a detailed habitat map that identifies areas of potential concern, such as cliff areas, which are attractive to large numbers of birds and bats.” If this is valid, it needs to be cited.

The guidelines include vague statements that are subjective and open to interpretation

- No definitions are included to define what “active nests” include.
- The site specific mitigation measures consistently use the phrase “no surface occupancy” based on a distance around an environmental constraint. It’s unclear what this phrase would include.

The requirements specified in the guidelines are not consistent with the environmental constraint maps included in the appendices

- The maps in the appendices indicate that there are very few environmental constraints in the eastern plains. If that’s the case, then why is there is need to conduct the extensive surveys noted in the guidelines if there are few environmental factors to consider?

The wind industry believes that implementing these guidelines would significantly inhibit the amount of wind that could be developed in Colorado.

- The overly restrictive tenor of these guidelines could significantly slow further progress of the New Energy Economy, which has already produced undeniable economic and environmental benefits to Colorado.
- It is possible these guidelines could confer a competitive advantage on our neighboring states that have equally good wind resources, thus denying Colorado critical new market opportunities.
- It is also possible that these guidelines would prohibit the development of wind projects within some of the better wind resource areas in the state by overly restrictive without using site specific information.
- While many of these guidelines would greatly lengthen the cost and time for development there is no basis for believing that many of the requirements would actually reduce environmental impacts on wildlife.

We believe that wind development guidelines should be developed through an open stakeholder process involving industry, non-governmental organizations, the Colorado Division of Wildlife, county government and other parties.

- This stakeholder process is already beginning to take shape through the Colorado Renewables Conservation Collaborative, and we urge you to allow this multi-stakeholder Collaborative to play a key role in the final development of these guidelines.
- Such a deliberative, multi-stakeholder process will provide great legitimacy in final guidelines, making implementation and compliance much less problematic for all parties involved.