

**Seattle Audubon \* Friends of the Columbia Gorge \*  
Conservation Northwest \* American Bird Conservancy \*  
Gifford Pinchot Task Force**

October 5, 2011

Ken Berg, Manager  
Western Washington Fish & Wildlife Office  
U.S. Fish & Wildlife Service  
510 Desmond Drive SE, Suite 102  
Lacey, WA 98503

Andrew M. Montaña, Environmental Protection Specialist  
Bonneville Power Administration  
P.O. Box 3621, KEC-4  
905 NE 11th Avenue  
Portland, OR 97208-3621

**Re: Whistling Ridge Energy Project**

Dear Messrs. Berg and Montaña:

Please accept this request from Seattle Audubon, Friends of the Columbia Gorge, Conservation Northwest, American Bird Conservancy and the Gifford Pinchot Task Force for your agencies to reinstate consultation under the Endangered Species Act of 1973, (“ESA”), 16 U.S.C. § 1531–1544, regarding the proposed Whistling Ridge Energy Project (“Project”). The Bonneville Power Administration (“BPA”) is proposing to interconnect up to 75 megawatts of new wind energy from the Project to the federal transmission system. The Project site is located within Washington State’s White Salmon Spotted Owl Special Emphasis Area. In a July 19, 2010 letter (“Concurrence Letter” or “Letter”) from Mr. Berg to Mr. Montaña, the U.S. Fish and Wildlife Service (“USFWS”) concurred with BPA’s determination that the Project “is not likely to adversely affect” the threatened northern spotted owl (“NSO”). However, for the reasons explained below, our organizations believe it is necessary for BPA and USFWS to reinstate consultation on this Project to ensure that all pertinent information is appropriately considered *prior to* any final decision regarding the proposed action.

1) **The conclusions in the USFWS Concurrence Letter appear to be based on inaccurate information.**

The Concurrence Letter contains multiple factual errors that call into question its conclusion that the Project is not likely to adversely affect NSOs. The USFWS appears to have made a decision based on incorrect information regarding the detection of an NSO in the vicinity as well as the amount of suitable NSO habitat at the Project site. Specific factual errors include the following:

- a. The Concurrence Letter discusses “[t]he discovery of a new owl in 2010 in the extreme north of the Moss Creek owl circle . . .” (Letter, p. 3, ¶ 2). Yet, as is noted in sworn testimony in the Washington State Energy Facility Site Evaluation Council (“EFSEC”) adjudication for this Project by Jeff Reams, the project manager for the 2010 field survey work that detected the NSO, the discovery was actually in the Mill Creek owl circle (MSNO 0991), not the Moss Creek owl circle (MSNO 1003). (Reams pre-filed direct testimony (Ex. 5.00), p. 8, line 8; EFSEC Jan. 6, 2011 Hearing Transcript at 783, lines 1–5.)
- b. The Concurrence Letter erroneously implies that the NSO discovered in 2010 in the vicinity of the Project was detected only three times. In fact, this NSO was detected a total of nine times in the vicinity of the Project from May through July 2010. (EFSEC Jan. 6, 2011 Hearing Transcript at 763, lines 24–25.) The Concurrence Letter apparently failed to consider two-thirds of the total NSO detections made in 2010.
- c. The Concurrence Letter states that the owl discovered in 2010 was “located more than 2 miles northwest of the northernmost turbine” proposed for the Project (Letter, p.3, ¶ 2, emphasis added). Yet as was noted by Mr. Reams during the EFSEC adjudicative hearing, that statement in the Letter is also inaccurate; the owl was in fact detected to the northeast within 1.8 miles of the northernmost turbine and the Project site. (Reams pre-filed direct testimony (Ex. 5.00), p. 9, line 8; EFSEC Jan. 6, 2011 Hearing Transcript at 793–95.)
- d. The Concurrence Letter states that “*the remainder of the Project [outside of the spotted owl circle] does not contain suitable spotted owl habitat.*” (Letter, p. 3, ¶ 2.) Mr. Reams indicated in sworn testimony that this statement by USFWS is inaccurate and that the Project site in fact contains a patchwork of stands containing suitable habitat for NSOs. (Reams pre-filed direct testimony (Ex. 5.00), p. 6, lines 15–16; EFSEC Jan. 6, 2011 Hearing Transcript at 755–58, 783.) In addition, the Final Environmental Impact Statement (FEIS) developed by EFSEC and BPA for the Project contains a map

identifying multiple stands in the Project that are more than 80 years of age (FEIS, fig. 2-3), an age class that can support NSO habitat.

These factual mistakes collectively raise serious concerns regarding the accuracy of the BPA's and USFWS's analysis of the Project's potential impacts on NSOs and the Concurrence Letter's ultimate determination of "not likely to adverse effect." Your agencies should reinitiate consultation on this Project to ensure that any decision is based on accurate factual information.

2) **The Concurrence Letter fails to evaluate key information.**

The Concurrence Letter also fails to consider significant information relevant to the potential impacts of this Project on NSOs. It appears that USFWS was either not provided or chose not to consider pertinent information in its consultation and ultimate concurrence. Among the omissions are the following:

- a. The Concurrence Letter fails to acknowledge that many of the nine NSO detections made in 2010 occurred at distinct locations separated by significant distances. As acknowledged by Mr. Reams under cross-examination, the NSO was actively moving around the Project vicinity and could potentially travel through the actual Project site. (EFSEC Jan. 6, 2011 Hearing Transcript at 762–67.) USFWS appears to not have considered the geographically dispersed locations of the NSO detections, the high degree of mobility exhibited by this NSO, and the likelihood of the NSO utilizing habitat on project lands.
- b. The Concurrence Letter fails to address the key fact that the Project site includes land within the Mill Creek owl circle. The letter states that "*Two spotted owl territories are located on Washington Department of Natural Resources (DNR) and National Forest lands located north of and adjacent to the Project.*" (Letter, p. 2, ¶ 2, emphasis added.) This statement fails to recognize that the Project is in fact proposed *within* these two NSO territories. (FEIS p. 3-50, ¶ 1 ("*A total of 9 turbines are proposed within the 1.8 mile provincial range of two northern spotted owl activity centers.*") (emphasis added).) Elsewhere, the Letter does note that the Project site is partially located within the Moss Creek circle (Letter, p. 2, ¶ 3), but it fails to acknowledge that the Project site also overlaps with the Mill Creek circle, which is where the NSO was detected multiple times in 2010.
- c. The Concurrence Letter fails to make any mention of the concerns expressed by the DNR, the state land manager for the Mill Creek and Moss Creek NSO site centers, regarding potential impacts of the Project on NSO and NSO habitat. The DNR's

Habitat Conservation Plan (“HCP”) for NSOs includes these two owl circles, and the DNR’s conservation objective for these circles is to provide habitat for NSOs, including habitat that will facilitate NSO dispersal. In its comment letter on the Draft Environmental Impact Statement for the Project, the DNR stated that “*This project may interfere with a spotted owl’s ability to disperse from the DNR HCP conservation area to other areas in the vicinity.*” (FEIS, Appendix H, at 736.) The Concurrence Letter makes no mention of the potential impacts of the Project on the DNR’s HCP, nor any assessment of the prospects for the DNR to successfully achieve its conservation objectives if the Project were built.

- d. The Concurrence Letter fails to address the potential effects from the operation and maintenance of the Project on NSO behaviors and functions other than nesting activities. The Letter states that USFWS does “*not expect disturbance to nesting owls from maintenance,*” (Letter, p. 3, ¶ 3, emphasis added.) But it appears that no consideration was given to the potential for the operation and maintenance of the Project to adversely affect NSO foraging, dispersal, and other activities. As was noted above, the Project site contains a patchwork of stands containing suitable habitat for NSOs. Even if these stands are not utilized by NSOs for nesting, their potential to support other types of NSO activity must be evaluated.

Given the apparent failure of the Concurrence Letter to consider these key facts, our organizations have serious concerns regarding the credibility of the analysis of the Project’s potential impacts on NSOs and the resulting conclusions by USFWS. Your agencies should ensure that all relevant information is included in your analysis and is explicitly addressed in your conclusions.

**3) The Revised Recovery Plan recommendations must be evaluated.**

USFWS and BPA must reevaluate the proposed action in light of new findings regarding the important role that private lands can play in the recovery of the NSO. The final Revised Recovery Plan for the Northern Spotted Owl (“Recovery Plan”), issued by USFWS on June 28, 2011, establishes new criteria for considering proposed actions in NSO habitat. The Recovery Plan includes multiple recommendations that have significant bearing on the Project and its potential impact on NSOs. For instance, the Recovery Plan states that “*in light of the continued decline of the species, the apparent increase in severity of the threat from barred owls, and information indicating a recent loss of genetic diversity for the species, this revised recovery Plan identifies a more important role for State and private lands.*” (Recovery Plan at III-56.) The Plan also specifically recommends “*conserving occupied sites and unoccupied, high value spotted owl habitat on State and private lands wherever possible.*” (Recovery Plan at III-51.) Given that the Project site is located on private land

within Washington State's White Salmon Spotted Owl Special Emphasis Area and overlaps with two owl circles, including the Mill Creek circle where NSO activity was recently detected, it is essential that your agencies reevaluate the Project. We request that you:

- a) Analyze the consistency of the Project with the recommendation in the Recovery Plan to conserve occupied sites and NSO habitat. The Concurrence Letter explicitly acknowledges that suitable NSO habitat on private land—including both dispersal and foraging habitat—would be harvested under the proposed action (Letter, p.3, ¶ 2). And as noted above, the Project is proposed within an occupied owl circle. The USFWS should ensure that its consultation conclusions meet the standards the agency established in its own Recovery Plan.
- b) Calculate the amount of NSO habitat remaining within the Mill Creek and Moss Creek owl circles to determine whether the Project would reduce suitable habitat in the territories to below 40%. While the Concurrence Letter cited personal communication with Jason Spadaro in 2009 that the Project would not cause habitat to fall below 40% (Letter, p. 2, ¶ 2), testimony by Mr. Spadaro and Mr. Reams in January 2011 indicated that to the extent older stands of habitat existed within the Project site as of 2009, much of that has since been harvested (EFSEC Jan. 3, 2011 Hearing Transcript at 157, lines 3–22 (testimony of Mr. Spadaro); EFSEC Jan. 6, 2011 Hearing Transcript at 759, lines 6–14 (testimony of Mr. Reams)). In light of the revised guidance for habitat protection contained in the Recovery Plan, it is essential for your agencies to confirm the actual amount of NSO habitat that currently remains within the Mill Creek and Moss Creek owl circles.
- c) Consider how the pending revisions to the NSO Critical Habitat Designations may affect the Project site. Private lands with occupied NSO sites or suitable NSO habitat, such as the Project site, are being considered for designation as critical habitat; your agencies should evaluate and explicitly address how such a designation might impact the Project.

The guidance in the Recovery Plan regarding NSOs constitutes new information revealing the potential effects of the Project that was not considered in the previous consultation. Accordingly, your agencies should re-analyze that prior consultation as specified by USFWS (Letter, p. 4, last paragraph) (“*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 . . .*”).

Because the Project is one of the first wind power proposals to be considered for a forested landscape within the range of the NSO, it is essential that your agencies conduct a thorough

analysis of the potential impacts. Because of the inclusion of multiple factual errors in the original analysis of this Project, as well as the omission of several other significant facts from that analysis, it is imperative for your agencies to reinitiate consultation on this Project. In addition, the new guidance provided by the Revised Recovery Plan for the NSO also necessitates a reevaluation of the Project and its potential impacts.

Thank you for your consideration of our request. If you have any questions about the request or need additional information from us, please contact Shawn Cantrell of Seattle Audubon by telephone at (206) 523-8243 ext. 15 or via email at [shawnc@seattleaudubon.org](mailto:shawnc@seattleaudubon.org).

Sincerely,

A handwritten signature in black ink that reads "Shawn Cantrell". The signature is written in a cursive, flowing style.

Shawn Cantrell, Executive Director  
Seattle Audubon

and on behalf of

Kevin Gorman, Executive Director  
Friends of the Columbia Gorge

Dave Werntz, Science and Conservation Director  
Conservation Northwest

Steve Holmer, Director of Bird Conservation Alliance  
American Bird Conservancy

Bob Dingethal, Executive Director  
Gifford Pinchot Task Force

cc: Peter Goldmark, Washington State Commissioner of Public Lands

Attachments: cited EFSEC testimony & hearing transcripts

Citations:

- Concurrence Letter from Mr. Ken Berg, U.S. Fish and Wildlife Service, to Mr. Andrew Montano, Bonneville Power Administration, dated July 19, 2010  
<http://www.efsec.wa.gov/Whistling%20Ridge/Adjudication/Applicant%20Prefiled%20Testimony/EFSEC/Exhibit%20No.%205.04%20Reams%20USFWS%20ESA%20Letter.pdf>
- Pre-filed Direct Testimony of Jeff Reams in the Energy Facility Site Evaluation Council Adjudicative Proceeding for the Whistling Ridge Energy Project (Exhibit 5.00)  
<http://www.efsec.wa.gov/Whistling%20Ridge/Adjudication/Applicant%20Prefiled%20Testimony/EFSEC/Exhibit%20No.%205.00%20Reams.pdf>
- Hearing Transcripts for the Washington State Energy Facility Site Evaluation Council Adjudicative Proceeding in the matter of the Whistling Ridge Energy Project, dated January 3, 2011 and January 6, 2011  
<http://www.efsec.wa.gov/Whistling%20Ridge/Adjudication/wradj.shtml#transcripts>
- Whistling Ridge Energy Project Final Environmental Impact Statement, August 2011  
<http://www.efsec.wa.gov/Whistling%20Ridge/SEPA/FEIS/FEIS.shtml>
- Revised Recovery Plan for the Northern Spotted Owl, U.S. Fish and Wildlife Service, June 2011  
<http://www.fws.gov/oregonfwo/Species/Data/NorthernSpottedOwl/Recovery/Library/Documents/RevisedNSORecPlan2011.pdf>