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**February 28, 2017**

**Comments regarding the Proposed California  
Condor Restoration Plan/Environmental Assessment**

Submitted by:

**Energy and Wildlife Action Coalition**

Filed electronically to the attention of:

Redwood National and State Parks  
Attn: California Condor Restoration Plan/EA c/o David M. Roemer  
1111 Second Street  
Crescent City, CA 95531

The Energy and Wildlife Action Coalition (“EWAC”) is a national coalition, formed in 2014, whose members consist of electric utilities, electric transmission providers, renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner.

We appreciate the opportunity to comment on the contemplated California Condor Restoration Plan (“Plan”) proposed for the Redwood National Park (“REDW”) by the National Park Service (“NPS”) and U.S. Fish & Wildlife Service (“USFWS” or “Service”), in collaboration with the Yurok Tribe. EWAC strongly supports the recovery of rare species and particularly those such as the California condor that are both iconic and culturally significant. EWAC members have long histories of seeking to reduce inadvertent mortality of both rare and migratory species in cooperation with the USFWS and other agencies and stakeholders. We provide these comments in that spirit of cooperation towards meaningful conservation outcomes.

We support the Service moving forward with the establishment of the new REDW population of condors under the Plan, as described in Alternative 1 of the Public Scoping documents, as an experimental population and provided for under section 10(j) of the Endangered Species Act (“ESA”). As noted in ESA section 10(j), before an experimental population can be released, the Service must determine whether the population is either “essential” or “nonessential” (to the continued existence of the species). An essential experimental population determination allows the species to be treated as a threatened species within the 10(j) designated area, while a nonessential experimental population is treated as a species proposed for listing as threatened. There are laudable examples of the use of this regulatory tool, including for the Northern Arizona population of California condors in particular and similarly charismatic species such as the eastern whooping crane population, which was established as a nonessential experimental flock in 2001. The flexibility provided by section 10(j) is vital to ensure the support of the public and the regulated community for the Plan. This point has been illustrated by the Service in other instances where it has explained that “a nonessential designation would be the most advantageous to encourage cooperation and should be most actively pursued.”<sup>1</sup>

Also, given the positive reproduction and survival trends in the other four existing condor populations, designation of the proposed new population as nonessential and experimental is scientifically and legally well supported. Further, given that the loss of the proposed REDW experimental population is not “likely to appreciably reduce the likelihood of the survival of the species in the wild”<sup>2</sup> we do not believe that it is consistent or appropriate to designate the proposed experimental population as “essential.” This approach is consistent with Service regulations and the legislative history, where for instance it is noted in the section 10(j) Conference Report that “in most cases, experimental populations will not be essential.”<sup>3</sup> For these and other reasons, the Service should only move forward with establishing the new REDW

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<sup>1</sup> Endangered and Threatened Wildlife and Plants; Experimental Populations, 49 Fed. Reg. 33885, 33888 (Aug. 27, 1984)

<sup>2</sup> 50 C.F.R. § 17.80(b)

<sup>3</sup> H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 34 (1982)

population as “nonessential experimental” and should reject any call to establish it as an “essential” population.

Additionally, we are concerned, that in the public meeting scoping materials it was noted that the 10(j) rule would not exempt power lines and wind energy generation facilities (collectively, “Facilities”) from the “take” prohibition of the ESA. We believe this potential singling out of the Facilities from all other potential forms of anthropogenic take of condors is not appropriate and not in keeping with the numerous, successful instances of cooperation in addressing avian issues between federal and state fish and wildlife agencies and the industries developing and operating those Facilities across the country, including the work of the Avian Power Line Interaction Committee, and implementation of associated guidelines, and the development and implementation of the voluntary Land-Based Wind Energy Guidelines.

Consistent with the final rule establishing the nonessential experimental population of California condor in Northern Arizona, construction and operation of electric transmission and distribution lines (i.e., powerlines) and wind turbines should be exempt from take prohibitions within the 10(j) plan area for the proposed new experimental population, the same as all other lawful anthropogenic activities. As noted in the Service’s response to public comments in the final rule for the Northern Arizona population:

*“Take of an endangered or threatened species is prohibited by the Act, and carries criminal penalties for knowing violation. In this rule, take is prohibited except where such take is unavoidable and unintentional (including killing or injuring), provided such take is non-negligent and incidental to a lawful activity, such as hunting, driving, or recreational activities and the take is reported as soon as possible. Thus activities such as shooting, or intentionally harassing, or attempting to run over a condor with a motor vehicle are prohibited, and subject to criminal prosecution. As noted above, the rule also provides that take that is “non-negligent and incidental to an otherwise lawful activity” is not prohibited. Thus, construction activities, road building or widening, and farming, if performed in the above described manner, would not constitute take.”<sup>4</sup>*

The Northern Arizona population 10(j) rule clarifies that the following activities would not be restricted as a result of the nonessential experimental designation:

*“Current and future land, water, or air uses such as, but not limited to: commercial and business development; forest management; agriculture; mining and energy resource exploration and development (e.g. coal); livestock grazing; development of transportation and utility corridors (e.g. power transmission lines); communication facilities; water development projects; sport hunting and fishing; air tour operations and outdoor recreational activities (e.g. jeep tours, hiking, biking, boating).”<sup>5</sup>*

The forgoing in mind, we believe it would be unreasonable for the Service to reverse itself and now single out and include two specific sources of anthropogenic impact, both of

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<sup>4</sup> Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona, 61 Fed. Reg 54044, 54056 (Oct. 16, 1996)

<sup>5</sup> Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona, 61 Fed. Reg 54044, 54050 (Oct. 16, 1996)

which have been demonstrated to represent limited actual risk to the species, in this rule. Further, this inclusion of power lines and wind turbines as non-exempt activities would be inconsistent with the treatment of these features in both the establishment of the nonessential experimental eastern whooping crane flock, a similarly charismatic avian species of equal conservation concern, as well as its treatment in the recently developed Midwest Wind Energy Multi-species Habitat Conservation Plan (which excluded whooping crane from the covered species list due to its nonessential experimental designation).

Therefore, we strongly encourage the Service to remove electric transmission and distribution lines and wind turbines from the list of nonexempt activities and, consistent with the Northern Arizona population rule, exclude all activities that are “non-negligent and incidental” (to an otherwise lawful activity) in nature.

Should the Plan go forward, our members are committed to continuing to take appropriate steps to minimize the likelihood of the mortality of condors and other species. We note that, to date, the collective Facilities have been a minor cause of condor mortality in comparison to other anthropogenic sources, with no known deaths due to collisions with wind turbines and limited reported mortality associated with collisions with overhead power lines. Moreover, as explained below, we believe that careful planning for and implementation of the release of condors under the Plan will further reduce the likelihood of condor mortality not just from Facilities, but from all potential anthropogenic causes. With that in mind we suggest the following be included as conditions of any 10(j) rule:

- Careful siting of the release location is critical to the success of the Plan. The location should be as remote as possible while still allowing Plan personnel reasonable access and ensuring that the new population has sufficient resources in order to thrive.
- Advance notice of the release location should be given to industry in order to allow a reasonable opportunity to take steps, particularly as to electric power lines in the area, to further reduce the potential for condor mortality. This notice will also provide the opportunity for the Service and other partners to continue collaboration in identification of viable release sites that pose minimal risk to this species.
- Carcass placement and storage for the condors should be well removed from any Facilities and other human activity.
- Similar to the rule establishing the nonessential experimental population in Northern Arizona we strongly encourage the Service to include electric power pole aversion training for the condors in this rule.

In the event power lines are not included as a 10(j) rule exemption then we ask that the Service work with industry to arrive at a reasonable definition of what constitutes “chronic” mortality and best management practices, and what adaptive measures might be implemented should such chronic mortality occur.

Also consistent with the establishment of the Northern Arizona population, we believe the 10(j) rule should cover as expansive a geographic area as possible to guard against collateral effects of the success of the population exceeding current expectations and potentially migrating/foraging beyond the 10(j) rule’s geographic limits. Given the extensive range condors

are known to travel in a single day, the Service should consider automatically including individuals that migrate/forage outside the nonessential experimental population area.

EWAC desires to be a productive partner in the development and implementation of the Plan, and, like other stakeholders, we look forward to the day the condor retakes this beautiful and culturally important portion of its historic range. Thank you for your consideration of these comments, and you may contact us through the parties indicated below.

Please feel free to contact the following EWAC representatives:

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