

Questions for Settling Parties Response—Follow-Up to Feb 5 SRC Meeting

1. How to handle level of precision, e.g. how will the parties respond to a 55% reduction if there is a +/- 10%

The parties are committed to a 50% reduction in avian mortality. If it is determined that there is a 55% reduction with a +/- 10% statistical variability factor, the parties will accept the number as 55%. If it is determined that there has been a 45% reduction, +/- 10%, the parties will accept that number. Future avian mortality numbers will be based on the monitoring protocols and searcher and scavenger efficiency established by the SRC (See Paragraph 3.(a)(ii)). Additionally, as stated in Paragraph 3.(b) of the Settlement Agreement, the Parties have committed to confer at least annually to determine if corrections are appropriate during the 3 year raptor reduction mortality program.

2. Relocation criteria for turbine type

The relocation criteria set forth in Exhibit A do not contain criteria for turbine type. However, it is the understanding of the parties that no new turbine towers will be erected. As a result, the relocation of a motor and blades will have to be made on an existing tower that will fit that motor and blades. This will result in a like-for-like replacement, albeit at a less risky location. Pursuant to Paragraph 11, the SRC is free to make recommendations that may help to reduce or avoid avian mortality.

3. Will the settling parties, subject to Exhibit G-1, be required to move rock piles and removing end of row turbines / derelict turbines, as required in Exhibit G-2?

The Exhibits do not cross-reference each other. Each Exhibit presents an alternative approach to reducing avian mortality. The Settlement Agreement outlines the mitigation actions to which the settling companies have committed in order to reach the 50 percent reduction requirement. Pursuant to Paragraph 11, the SRC is free to make recommendations that may help to reduce or avoid avian mortality.

4. Will the Buena Vista and Diablo Winds Repowering projects be measured as part of the 50% reduction? (Turbines replaced by Buena Vista and Diablo Winds were part of the 1300)

The 50 percent mortality reduction requirement applies APWRA-wide, per the Smallwood/Thelander/Spiegel reports of 2004-2005. Non-repowered turbines will be monitored according to the SRC/County approved monitoring protocols. Each set of repowered turbines has separate monitoring requirements in its permit. Projected mortality at these projects will be addressed pursuant to those results and will be incorporated into the 50% reduction measurement. We expect the NCCP to consider these issues as well.

5. Response to Letter of Tara Mueller to SRC, dated March 1, 2007

1. Does the settlement agreement misstate the baseline number based on the 2004 Smallwood/Thelander Report?

No. The settlement states that the baseline number for all raptors is 1300. The settlement does not state that the baseline for the four focal raptors is 1300. The parties have previously explained to the SRC that their intent is to be bound by the number for the four focal raptors found in the 2004 Smallwood/Thelander Report: 1130.2. The 1300 number controls for all raptors, not for the four focal raptors.

2. What is the relationship between observed deaths and adjustments for searcher efficiency and scavenger removal?

The more efficient and frequent the search, the greater the percentage of actual deaths will be observed. As a result, the “correction” or scaling factor will be lower. For example, during the five years utilized in the 2004 Smallwood/Thelander Report, 359.2 raptor deaths were observed, an average of only 72 per year. This relatively low number of observed deaths was due in part to the lower frequency of monitoring and perhaps to searcher inefficiency. It is common sense that fewer birds will be found if monitoring occurs less frequently, due to scavenging or decomposition, and thus the correction factor would probably be greater.

The suggested scaling factor of 3.15 is incorrect because it aggregates 5 years of data as if it were one. The scaling factor used would have been substantially higher. A higher scaling factor in these prior years was likely more appropriate at a time when the frequency and efficiency of the monitoring was reduced as compared to now. Diablo Winds provided the best real-world example to the Parties at the time of settlement. The monitoring team for Diablo Winds calculated a scaling factor of 1.64. A critic has suggested that the scaling factor should be 1.98. In either event, the factor for Diablo Winds is substantially less than the scaling factor used in the Smallwood/Thelander Report.

3. What is the meaning of the number “2.5” as used in the settlement agreement?

The settlement agreement provides that the SRC shall determine the appropriate scaling factors for calculating raptor mortality at the Altamont. The settlement does not establish or cap the scaling factors at 2.5. Any criticism of the settlement that suggests that the SRC's discretion in establishing scaling factors is constrained is simply incorrect.

If the SRC determines that the scaling factors are greater than 2.5 for monitoring conducted pursuant to the conditional use permits, then raptor mortality will be greater than the parties were led to believe based on the best scientific data available at the time, including the Smallwood/Thelander Report. In that case, a fundamental assumption underlying the settlement would be in question. Therefore, the settlement calls for the parties, in consultation with the SRC, to renegotiate the baseline or the raptor mortality

percentage reduction requirement that triggers adaptive management measures if the scaling factor exceeds 2.5 (See paragraph 3(a)(iii) of the Settlement Agreement).

Some have suggested that the settlement caps the scaling factors for the Smallwood/Thelander report at 2.5, resulting in an automatic reduction in raptor mortality. This is wrong. The issue about scaling factors exceeding 2.5 applies to monitoring performed pursuant to the conditional use permits. It has no bearing on the calculations used in prior monitoring reports.⁴

4. Is the 50% reduction requirement real?

Yes. The Parties established the baseline and the provision regarding scaling factors in order to precisely define the 50% reduction requirement and to prevent any gaming of the system. Additionally, the settling Parties have reserved the right to meet, confer, and make corrections should unexpected events occur.