Westwood

7699 Anagram Drive
Eden Prairie, MN 55344

PHONE 952-937-5150
FAX 952-937-5822
TOLL FREE 888-937-5150

www.westwoodps.com

September 29, 2010

Mr. Terry Ellsworth
U.S. Fish and Wildlife Service
Ecological Services
3425 Miriam Avenue
Bismarck, ND 58501

Re: Border Winds Energy Project, Rolette County, North Dakota – Response to Previous USFWS Comments and Updated Project Layout
File 20071163.00

Dear Terry:

We are submitting this letter on behalf of Sequoia Energy U.S., Inc. (Sequoia) in response to USFWS comments on the 150-megawatt (MW) Border Winds project proposed on 52.5 square miles of land in Rolette County, North Dakota. As you will recall, we have talked occasionally since the North Dakota Public Service Commission (PSC) hearing on this project, which was held on November 3, 2009. The purpose of this letter is to:

1. Provide the updated Border Winds project layout and summary of design revisions since November 3, 2009.
2. Respond to previous USFWS comments on the Border Winds project.
3. Summarize design and mitigation measures implemented to minimize potential effects on migratory birds, other wildlife, and habitats.
4. Request updated USFWS comments and concurrence from the USFWS that the Border Winds project has implemented measures to minimize effects on migratory birds and other wildlife.

Layout Revisions

For your information, we have enclosed three maps of the updated project layout and a table summarizing adjustments in turbine locations. Project designers made several adjustments to the layout of turbines, roads, and electrical collection cables between November 2009 and August 2010 to: (1) ensure turbines will be at least 1,640 feet (500 m) from residences, (2) optimize wind energy conversion, (3) minimize air navigation hazards, (4) reduce effects on wetlands and cultural resources, and (5) improve project compatibility with agricultural land use practices. The net effect of the design revisions is improved compliance with regulations. The project still includes 66 proposed turbines. The project also includes 10 alternate turbine locations that will be used if certain proposed turbine locations cannot be used. Eight previously considered turbine locations were eliminated and replaced with eight new turbine locations. Several access road

alignments were adjusted to shorten road distances and limit agricultural field disturbance. The electrical cable route between Turbines F2 and R1 was revised to follow an existing county road right-of-way and avoid wetlands protected under a USFWS easement.

Ongoing USFWS Coordination

The Border Winds project team understands the USFWS desires multiple opportunities to comment on projects during the project planning process. Wind energy project plans are typically modified throughout the planning process in response to variety of issues including energy conversion optimization, land agreements, construction logistics, wetlands, wildlife, sound, transportation, utilities, aeronautics, telecommunications, and cultural resources. Energy developers customarily revise project plans and then advise agencies of the revisions. This letter and our previous coordination with the USFWS are part of that process.

We understand that on June 18, 2008, when the USFWS first commented on this project, it was envisioned as a 100-MW project consisting of 42 2.4-MW turbines. The USFWS correctly stated at the public hearing on November 3, 2009, that the project was subsequently revised to include 66 turbines and a total capacity of about 150 MW. Although these differences may suggest increased effects on wildlife and natural resources, other revisions such as a more compact layout, have helped to reduce potential impacts.

USFWS Recommendations

As documented in the following table, Sequoia has implemented many of the recommendations that the USFWS included in the June 18, 2008 comment letter.

No.	Recommendation	Executed?	Actions
1.	Construct new or updated overhead power lines in accordance with current guidelines for preventing electrocutions.	Yes	No new power lines are proposed. The project substation is proposed for construction directly beneath an existing power line.
2.	Avoid construction in native prairie.	Yes	Prairie will be avoided except for potential minor encroachment in one location associated with improvement of existing roadways.
3.	Minimize grassland disturbance by using fewer, larger turbines and limiting new road construction.	Yes	The use of 2.3-MW turbines will reduce the number of turbines by 33% in comparison to 1.5-MW turbines. Since October 2008, the project area was reduced from 122 square miles to 52.5 square miles. The revised design avoids Towner County, where USFWS easement lands and grasslands are more abundant.
4.	Use underground transmission lines between turbines and to the primary substation.	Yes	Electrical collection cables will be buried underground.
5.	Locate appurtenant facilities to avoid fill in wetlands.	Yes	Wetlands will be avoided to the extent practicable in compliance with wetland regulations.

No.	Recommendation	Executed?	Actions
6.	Install and maintain erosion control measures to reduce sedimentation and water quality degradation.	Yes	Erosion control Best Management Practices will be implemented in compliance NPDES Permit requirements.
7.	Replace unavoidable wetland losses with functionally equivalent wetlands.	Yes	Compensatory wetland mitigation will be provided in compliance with U.S. Army Corps of Engineers Section 404 Permit requirements.

Assessment Methodology

The USFWS encouraged use of the Potential Impact Index (PII) analysis methodology to select a project site that minimizes impacts on migratory birds. Sequoia selected the location of the Border Winds Project in coordination with the Rolla Job Development Authority (RJDA). The RJDA has been collecting meteorological data in the project area for nearly five years. The wildlife assessment methods initiated in 2007 incorporated components of the PII analysis, including review of:

1. Threatened and Endangered Species;
2. Designated Critical Wildlife Habitats;
3. Wildlife Congregation Areas (e.g., known maternity roosts, raptor attraction features, hibernacula, communal nest sites, migration stopovers, leks);
4. Government Lands and Easements; and
5. Probable Wildlife Migration Corridors (e.g., riparian corridors, rim and bluff edges).

Federal Involvement and NEPA

The project does not entail federal involvement that would trigger a formal Environmental Assessment under the National Environmental Policy Act (NEPA). The project is designed to avoid impacts on wetlands protected by the USFWS on federal wetland easement lands and it will not connect to a Western Area Power Administration transmission line. The routine federal permitting involved with the Federal Aviation Administration and the U.S. Army Corps of Engineers (Section 404 Nationwide Permit) does not trigger NEPA. The project will not involve a U.S. Department of Energy loan guarantee, affect lands with USDA Farm Service Agency real estate mortgages, require improvement of transmission facilities on the U.S.-Canadian border, or sell energy into the Canadian market.

USFWS Lands

The project team has designed the Border Winds project to avoid USFWS lands to the extent practicable. The project includes two turbines proposed on USFWS wetland easement lands (Turbines B5 and B6) and two additional locations where proposed electrical cables cross USFWS wetland easement lands. The project has been designed to avoid impacts on wetlands protected by the USFWS on wetland easement lands. In response to the November 4, 2009 field meeting with the USFWS, the project team re-routed the proposed electrical cable southeast of Turbine F2 to follow an existing county road easement and avoid wetlands protected under a USFWS easement. To verify avoidance of USFWS jurisdictional wetlands, the project team will

continue coordination with Neil Powers and other USFWS staff as appropriate, once the construction limits of the project are fully determined.

Consistent with previous North Dakota wind projects, Sequoia proposed an 0.25-mile buffer from USFWS WPAs. The actual minimum spacing between turbines and WPAs will be 1.5 miles. The project team understands that the USFWS has no formal guidance or policy on this matter.

Threatened and Endangered Species

The USFWS identified the endangered whooping crane and candidate Dakota skipper as federally endangered and candidate species that may occur in the project's area of influence. The USFWS indicated that, with suitable conservation measures, a determination of "may effect, not likely to adversely affect" might be appropriate for Border Winds. The USFWS indicated that effective measures to avoid or reduce potential effects on whooping cranes include actions such as burying new electrical transmission lines.

No whooping cranes or other federally listed avian species were observed during the Pre-construction Avian Survey and Risk Assessment completed for the project. Given the project location outside the eastern edge of the whooping crane migration corridor and the project design that minimizes wetland impacts, adverse effects on whooping cranes are considered unlikely to occur. The project team recognizes that migration stopover habitat is the most critical resource for whooping cranes in North Dakota and , because whooping cranes can potentially occur throughout North Dakota, the potential for whooping crane collisions at North Dakota wind projects cannot be ruled out.

The Dakota skipper is known to occur approximately 13 miles southwest of the Border Winds project area in Rolette County. Because the Dakota skipper requires high quality native prairie, it is unlikely to occur in the project area. The predominant cover type in the project area is small grains. Very few areas of native prairie exist in the project vicinity. Native prairie will not be affected by project construction except for some very minor encroachment that may occur in one location due to improvement of existing roads that adjoin a prairie. Based on multiple field reviews and the scarcity of native prairie, the project area is not likely to support or affect Dakota skippers.

Because the project is outside the 200-mile-wide whooping crane migration corridor and the project design implements the USFWS recommendations listed in the table above, we believe that the project will not likely affect the endangered whooping crane. The project team recognizes that Section 7 of the Endangered Species Act (16 USC 1533) requires federal agencies to consult with the Secretary of the Interior to ensure that actions authorized, funded, or carried out by such agencies are not likely to jeopardize the continued existence of any endangered or threatened species. However, we also understand that the project does not trigger the formal USFWS consultation requirement under Section 7. As we discussed on the phone on August 31, 2010, we believe the Border Winds project will not jeopardize whooping cranes and

that a Section 10 Habitat Conservation Plan is not warranted for whooping cranes on this project. The project avoids National Wildlife Refuges, Waterfowl Production Areas, Wildlife Management Areas, other state lands, and major concentrations of wetlands interspersed with croplands that could provide stopover magnets for whooping cranes.

Migratory Birds

The USFWS suggested that impacts on migratory birds can be minimized by gathering information on avian resources related to project siting and implementing mitigation measures. The Border Winds project used that approach to minimize impacts on migratory birds by completing the following actions:

1. Obtained information on land cover, public lands, Conservation Reserve Program (CRP) lands, rare species, sensitive resources, and wetlands.
2. Focused project facility siting on less sensitive parts of the project area to the extent practicable.
3. Met with USFWS staff in the field on June 11, 2008 and November 4, 2009 to discuss, understand, and address USFWS easement lands and related concerns.
4. Completed Desktop Wetland Mapping for much of the 52-square-mile project area.
5. Completed a Desktop Avian and Bat Risk Assessment to understand wildlife resource issues in the project area.
6. Completed a Pre-Construction Avian Survey and Risk Assessment and raptor nest surveys during the spring season to characterize the avian community and identify avian risks based on flight patterns.
7. Delineated wetlands within preliminary construction corridors during July 13-17, 2009.
8. Completed a Rare Species and Natural Community Assessment based on agency comments, available ecological information, and field reviews.
9. Revised the project design to avoid USFWS easement lands, raptor nesting areas, wetlands, grasslands, and woodlands to the extent practicable.
10. Re-routed the proposed electrical cable southeast of Turbine F2 to follow an existing county road easement and avoid wetlands protected under a USFWS easement.

The Border Winds project team understands that the Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. We also understand that the MBTA is a "strict liability" statute, meaning that no intent or prior knowledge is required to result in a violation, and that the USFWS has protected migratory birds by using enforcement, prosecutorial discretion, and relationships with private entities to encourage good faith efforts to minimize avian impacts and the potential for an "incidental take" of migratory birds. As indicated by the USFWS during the public hearing, some birds may be killed by wind turbines and power lines, even if all reasonable measures to protect them are used.

The Border Winds planning process has implemented actions to minimize potential effects on migratory birds. We are requesting concurrence from the USFWS that the actions described herein demonstrate a good faith effort and adequately minimize the potential for an incidental take of migratory birds.

Avian Survey and Mitigation

The USFWS stated at the public hearing that the Border Winds project area has relatively high waterfowl and raptor use and that coordination of the avian survey with the USFWS would have allowed for USFWS input to minimize avian fatalities.

The project team studied potential avian impacts and implemented impact minimization measures based on established protocols, previous studies, and agency guidance. The avian survey protocol was similar to previous avian studies for wind projects North Dakota. The 10-week avian survey revealed information on the abundance and diversity of waterfowl, raptors, and raptor nests in the project that was not available from breeding bird surveys or species lists. Avian impact minimization measures are consistent with USFWS guidelines and previous USFWS comments on this project. The revised Border Winds layout minimizes impacts on the avian community and avian habitats by:

1. Siting turbines and other facilities at least 0.25 mile (400 m) from USFWS Waterfowl Production Areas (WPAs);
2. Avoiding turbine placement in wetlands and avoiding USFWS wetland easement lands to the extent practicable;
3. Minimizing the effects of turbines and related infrastructure on grasslands;
4. Shrinking the project layout to avoid turbine placement in Towner County where USFWS wetland easement lands and grasslands are more abundant;
5. Siting turbines at least 0.25 mile (400 m) from known active raptor nest locations wherever practicable; and
6. Avoiding turbine placement in areas of substantial woodland.

High Value Habitats

The USFWS recommended avoiding construction of wind towers and related facilities in prairies, wetlands, wooded draws, and riparian forests wherever possible. Avoidance of prairies and wetlands is discussed under preceding sections of this letter. The revision of the project area from 122 square miles to 52.5 square miles helped decrease the proportion of the project area covered by grassland. Individual woodlands within the project area are smaller than 40 acres and many are associated with shelterbelts. Woodlands and field shelterbelts will be avoided by project facilities wherever practicable. Although the project design emphasizes avoidance of high value habitats, the linear interconnected access roads and electrical collection cables will necessitate crossing shelterbelts and wetland corridors in a limited number of locations.

Nesting Birds and Construction
The USFWS recommended scheduling construction for late summer to early winter (July 16 to January 31) to avoid impacts to nesting migratory birds. If construction will occur between February 1 and July 15, the USFWS recommends:

1. Use of a qualified biologist to survey affected habitats for nesting migratory birds;
2. Sharing biologist qualifications and nest avoidance measures with the USFWS; and
3. Avoiding and buffering active nests from construction activity until young have fledged.

Sequoia will work with the USFWS to minimize potential adverse effects on nesting migratory birds. Construction is likely to start between May 1 and May 15, 2011. Our review of the literature suggests that very few waterfowl nests are initiated before May 1 (see Troft et al. 1982, http://www.eve.ucdavis.edu/catoft/reprints/Toft_etal_1982_AN.pdf). Outside of road ditches, most grassland nesting habitat in the project area consists of CRP fields. Surveying grasslands for nests prior to construction would miss most nesting activity. Instead, Sequoia proposes to mow construction zones in CRP fields during the fall of 2010 or early spring of 2011. This practice will avoid impacts on nesting birds by modifying grassland nesting habitat to make it unsuitable for nesting.

Most turbines will be located at least a 0.25 mile from known active raptor nests. Westwood located 23 raptor nests in and around the project area during a spring 2010 raptor nest survey. Of these nests, five are located within a 0.25 mile of a proposed turbine location, and three are located within 0.25 mile of an alternate turbine location. To minimize potential effects on raptors, we believe it will be prudent to remove the trees containing these eight nests during the fall or early winter of 2010 when raptors are not nesting.

Avian Monitoring
The USFWS encourages monitoring wildlife collisions with wind turbines with studies designed to determine effects of project site selection, layout, turbine design, operation, and habitat alteration on avian mortality. Sequoia is considering conducting some monitoring at Border Winds. However, we believe that small private studies of single projects contribute relatively little information toward answering questions about effects of site selection, layout, turbine design, operation, and habitat alteration on avian mortality. These questions would be better answered through a larger, more rigorous research program that is cooperatively funding by public agencies and private industry.

The USFWS recommended that Sequoia develop an Avian and Bat Protection Plan (ABPP) that includes mortality monitoring, impact reduction, and adaptive management. Sequoia is currently reviewing how an ABPP would fit into their overall operations plan.

Conclusion
We look forward to receiving further comments from the USFWS and working toward a mutually agreeable resolution and mitigation of avian and natural resource issues. In particular, we are interested in obtaining USFWS concurrence that the Border Winds planning process has

implemented measures to minimize effects on migratory birds. Please contact me at rob.bouta@westwoodps.com or (952) 906-7436 if you have questions or would like additional information.

Sincerely,

WESTWOOD PROFESSIONAL SERVICES

Robin P. Bouta, CSE, WDC
Senior Environmental Scientist

Enclosures: Final Project Layout (3 exhibits), Table of turbine location adjustments

cc: Ian Witherspoon, Juergen Kraus, Sequoia Energy
Jerry Lein, North Dakota Public Service Commission
Neil Powers, U.S. Fish and Wildlife Service