



California Wind Energy Association

June 18, 2018

The Honorable Robert Hertzberg
Chair, Senate Natural Resources and Water
State Capitol Room 5046
Sacramento, CA 95814

RE: AB 2627 (Kalra) As Amended 5/25/18 – Oppose

Dear Chair Hertzberg,

The California Wind Energy Association (CalWEA) is an 18-year-old trade association representing wind energy companies focused on the California market, including owners and operators of wind energy projects located in California. We write to express our opposition to AB 2627.

AB 2627 addresses Section 3513 of the Fish and Game Code. As amended on May 25, the bill would permit an entity to take a migratory nongame bird, as defined, if the take is incidental to otherwise lawful activity and the entity complies with best management practices for avoiding, minimizing, and mitigating take of migratory nongame birds, as specified. As a condition of engaging in that activity, the bill would require an entity to certify to the California Department of Fish and Wildlife (“Department”) that the entity will comply with best management practices.

At the outset, it is important to recognize that the bill is at odds with rulings of the United States Court of Appeals for the Ninth Circuit, as well as a majority of U.S. Courts of Appeal, that the term ‘take’ as defined by Migratory Bird Treaty Act (MBTA) does not include accidental collisions with or impacts from otherwise lawful activities, such as incidental take from generating and transmitting electricity.

CalWEA is nevertheless supportive of the intent of the legislation but is greatly concerned about how some of the specific provisions may affect existing and new wind energy projects. Specifically, the prohibition on incidental take could apply to a single bird, which is inconsistent with CEQA guidelines. Consistent with CEQA guidelines, CalWEA would like the bill to apply to a substantial number of birds.

In addition, the bill creates new legal vulnerabilities for existing wind projects that are already permitted and operating as a result of new rules that were not in place at the time these projects were permitted.

Finally, CalWEA is concerned that, while the bill allows the Department to adopt the U.S. Fish and Wildlife Service’s Final Land-Based Wind Energy Guidelines as its best management practices for wind energy, it also would allow the Department to adopt different, perhaps conflicting, guidelines. The federal guidelines are the product of an intensive process among a broad range of stakeholders that is both workable for industry while providing substantial environmental protections. The bill should recognize, for wind energy, only these federal guidelines as they may be revised.

Sincerely,

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

Nancy Rader
Executive Director

cc: Members of the Senate Natural Resources and Water Committee
Assemblymember Ash Kalra