



# Center for Biological Diversity

*protecting and restoring natural ecosystems and imperiled species  
through science, education, policy, and environmental law*

## **LAWSUIT SEEKS REDRESS FOR MASSIVE ILLEGAL BIRD KILLS AT ALTAMONT PASS, CA, WIND FARMS**

**FOR IMMEDIATE RELEASE      January 12, 2004**

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Livermore, CA – The Center for Biological Diversity (“CBD”) filed a lawsuit today against Florida energy producer FPL Group, Inc. (NYSE symbol: FPL) and Danish wind power company NEG Micon A/S for their part in the illegal ongoing killing of tens of thousands of protected birds by wind turbines at the Altamont Pass Wind Resource Area (“APWRA”) in the San Francisco Bay Area of California. Through their subsidiaries and associated entities, FPL Group and NEG Micon own or operate roughly half of the approximately 5,400 wind turbines at the APWRA. Each year, wind turbines at the APWRA kill up to 60 or more golden eagles and hundreds of other hawks, owls, and other protected raptors. These bird kills have continued for 20 years in flagrant violation of the Bald Eagle and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and several California Fish and Game Code provisions. The lawsuit alleges that these violations and bird kills are unlawful and unfair business practices under the California Business and Professions Code.

“Altamont Pass wind turbines are causing extremely high levels of bird mortality along a major raptor migration route and are likely depleting eagle, hawk, and owl populations not only locally but throughout the western U. S.,” said Jeff Miller, spokesperson for CBD. “We absolutely support wind power, but it is past time for the primary turbine owners, FPL Energy and NEG Micon, to address this problem.”

“Altamont Pass has become a death zone for eagles and other magnificent and imperiled birds of prey. Recent studies have proposed numerous recommendations for mitigating the devastating effect of Altamont Pass wind turbines on birds, yet the industry is blindly charging ahead replacing existing turbines with new and much larger turbines without any requirement of effective preventative measures or remediation for ongoing bird kills,” said Richard Wiebe, attorney for the plaintiffs.

The APWRA was established in 1982 on 160 square kilometers of private cattle ranches in eastern Alameda and Contra Costa Counties. Due in part to the local abundance of raptor populations in the region, wind turbines at APWRA cause more bird deaths than any wind facility in the world, a result of poor planning that allowed wind turbines to be built along a major raptor migration corridor and in the heart of the highest concentration of golden eagles in North America. Wind turbines at Altamont Pass kill over

a thousand birds each year, including up to 60 or more golden eagles, 300 red-tailed hawks, 270 burrowing owls, and additional hundreds of other raptors including kestrels, falcons, vultures, and other owl species. In 20 years of operation, the wind power industry has yet to implement any effective measures to reduce the killing of protected raptors or come up with meaningful mitigations to protect bird populations affected by the wind farms. In recent months, the County of Alameda approved repowering and renewed permits for the majority of the wind turbines at APWRA without conducting any public environmental review or requiring any meaningful mitigation measures to reduce or compensate for bird deaths. CBD and CALifornians for Renewable Energy filed a formal appeal of the permit renewals with Alameda County in November 2003.

The extraordinary numbers of raptor deaths continue unabated, due in part to the complete regulatory failure by federal, state, and local officials to enforce wildlife protection laws. “The U.S. Fish and Wildlife Service, U. S. Attorney’s Office, California Department of Fish and Game, and Alameda and Contra Costa Counties bear equal responsibility for the ongoing bird atrocity at Altamont for their failure to impose any meaningful mitigation requirements or protective measures on the Altamont Pass wind power industry,” stated Miller.

To add insult to injury, the Altamont Pass wind power industry has been receiving massive tax credits as well as government cash grants funded by surcharges imposed on California’s electricity consumers as part of the state’s flawed deregulation plan, all of which serve to subsidize the killing of birds. “The wind power industry receives tens of millions of dollars in revenue from California’s consumers, as well as enormous tax credits and government subsidies, based on the perception that it provides ‘green’ energy, yet continues to kill thousands of protected birds annually,” said Miller. “The Altamont companies routinely kill rare birds that are the natural heritage of all Californians, and take taxpayer subsidies home to Florida and Denmark.” According to wind industry reports, the Altamont Pass fiasco has tainted public perception of wind energy and hampered wind power development, as concerns about bird impacts has delayed or discontinued other wind facilities.

The magnitude of bird kills at APWRA has been known since at least 1988, when the first of many studies of raptor mortality was published. To date, the industry has not implemented effective mitigation measures to reduce bird kills, protect and maintain existing bird populations, or to compensate for killing large numbers of birds from imperiled populations, despite numerous studies by the California Energy Commission, the National Renewable Energy Laboratory, and others. “The birds have literally been studied to death, yet the Altamont Pass turbine owners have failed to take action to reduce the risk to birds of prey,” said Miller. In fact some efforts at APWRA, such as a small mammal poisoning program, have actually increased the risk to raptors while also threatening other endangered species inhabiting Altamont Pass such as the San Joaquin kit fox and California red-legged frog. Recent research at APWRA determined that bird mortality has not lessened over time, that the industry’s minimal mitigation measures have been ineffective, and that the actual number of bird deaths is likely 8 to 16 times the industry-reported number of bird kills.

The lawsuit, filed in Federal District Court in San Francisco, is brought under California’s Unfair Competition Law (California Business and Professions Code section 17200), which prohibits businesses from violating other laws, in this case federal and state wildlife protection laws, in the course of their business activities. The lawsuit also alleges that FPL has violated California’s false advertising laws and the federal Lanham Act by making untrue or misleading statements in publicly asserting that it complies with all federal and state environmental laws. The issue at Altamont is not wind power versus birds, but rather whether the wind power industry is willing to take simple steps to reduce bird kills. Raptor experts have suggested numerous measures to reduce bird deaths, including retiring particularly lethal turbines, relocating turbines out of canyons, moving isolated turbines into clusters, increasing the visibility of turbines to birds, retrofitting power poles to prevent bird electrocutions, discontinuing the rodent poisoning program, and

managing grazing to encourage rodent prey away from turbines. Raptor experts have also suggested mitigation through raptor habitat preservation to maintain the stability of the bird populations that are being depleted.

Concerns about the potential for wind turbines at Altamont Pass to kill endangered condors recently scuttled plans by the U.S. Fish and Wildlife Service to reintroduce condors into the Diablo Range east of Morgan Hill and Gilroy. The turbines may also be severely impacting local populations of the western burrowing owl, a declining species for which the CBD and bird conservation groups are requesting protection under the California Endangered Species Act.

The Center for Biological Diversity is a nonprofit environmental organization dedicated to the protection of native species and their habitats. The Center works to protect and restore natural ecosystems and imperiled species through science, education, policy, and environmental law. For more information about the impacts of wind turbines on raptors and the Altamont Pass issue visit <http://www.biologicaldiversity.org/swcbd/programs/bdes/altamont/altamont.html>