

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

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U.S. DISTRICT COURT  
DISTRICT OF WYOMING  
2022 APR -1 AM 11:27

<p><b>UNITED STATES OF AMERICA,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>ESI ENERGY, LLC,</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p style="text-align: right;">MAR 21 2022 CLERK CASSIDY</p> <p><b>Criminal No.</b> <u>22 CP-48-KHR</u></p> <p><b>Ct. 1:</b> 16 U.S.C. §§ 703, 707(a) (Unlawful Take of Migratory Birds)</p> <p><b>Ct. 2:</b> 16 U.S.C. §§ 703, 707(a) (Unlawful Take of Migratory Birds)</p> <p><b>Ct. 3:</b> 16 U.S.C. §§ 703, 707(a) (Unlawful Take of Migratory Birds)</p>
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**INFORMATION**

THE UNITED STATES ATTORNEY CHARGES:

At all relevant times:

**BACKGROUND**

1. ESI Energy, LLC (“ESI” or “defendant”), was a limited liability company and a wholly owned subsidiary of NextEra Energy Resources, LLC, which in turn was a wholly owned subsidiary of NextEra Energy, Inc. ESI owned other limited liability companies, many of which operated wind energy generation facilities in the United States. Among those entities were Cedar Springs Transmission, LLC, which developed, and operated parts of, the Cedar Springs Wind Energy Facility (hereinafter “Cedar Springs”) in Wyoming; Roundhouse Renewable Energy, LLC, which developed and operated the Roundhouse Wind Energy Facility (hereinafter “Roundhouse”) in Wyoming; and FPL Energy New Mexico Wind, LLC, which developed and operated the New Mexico Wind Energy Facility (hereinafter “New Mexico Wind”) in New Mexico.

2. The risks to bald and golden eagles from wind turbines were recognized since at least the early 2000s. Wind power facilities caused the deaths of golden eagles and bald

eagles (“eagles”) and other migratory birds, primarily through birds being struck by wind turbine rotor blades.

3. The Migratory Bird Treaty Act (“MBTA”) prohibited the “taking” of migratory birds without a permit from the U.S. Fish and Wildlife Service (“USFWS”) of the Department of the Interior. 16 U.S.C. §§ 703, 707. “Take” was defined by regulation to mean “to pursue, hunt, shoot, wound, kill, trap, capture, or collect” or to attempt to do so. 50 C.F.R. § 10.12. A list of bird species protected by the MBTA (including golden and bald eagles) was found at 50 C.F.R. § 10.13.

4. Golden and bald eagles were protected under the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c, (“the Eagle Act”), which, like the MBTA, also prohibited killing and wounding eagles without a permit from USFWS.

5. USFWS was tasked with enforcing and implementing the MBTA and the Eagle Act. USFWS issued its first interim guidance on how wind facility developers could avoid and minimize impacts to wildlife, including eagles, from wind turbines in 2003 (2003 Interim Guidance on Avoiding and Minimizing Impacts from Wind Turbines (“2003 Interim Guidelines”)). It issued a more fully informed, but largely similar, set of guidelines in the 2012 Land-Based Wind Energy Guidelines (“2012 LBWEGs”), released in final form on March 23, 2012. Compliance with the 2003 Guidelines and the 2012 LBWEGs was voluntary, but was considered a best practice for avoiding and minimizing impacts to wildlife, including eagles.

6. The 2003 Interim Guidelines and 2012 LBWEGs provided for due diligence to be exercised during the pre-construction stage of a wind energy production facility, which expressly included surveying the wildlife present in the proposed wind energy project area, determining whether the risk to wildlife was too high to justify proceeding and, if it was determined not to be too high risk, carefully siting turbines so as to avoid and minimize the

risk. Conducting and acting on this voluntary due diligence was important for wind projects because post-construction remedies for impacts to eagles that were not avoided during the pre-construction design stage were limited.

7. In 2009, following "delisting" of the bald eagle under the Endangered Species Act, USFWS enacted regulations to allow issuance of permits pursuant to the Eagle Act for the non-purposeful take of bald and golden eagles. These regulations, as revised in December 2016, set forth the process by which the operator of a facility could apply for a permit for eagle take that was associated with, but not the purpose of, an activity. 50 C.F.R. § 22.80. Permits were available where the take was compatible with the preservation of bald and golden eagles; was necessary to protect an interest in a particular locality; was associated with, but not the purposed of, the activity; and could not practicably be avoided. *Id.* Neither the MBTA nor the Eagle Act required permits prior to undertaking an action such as operating a wind power facility. Rather, each prohibited the taking of an eagle without such a permit.

8. The federal government provided a tax credit for electricity generated by qualified renewable energy resources, including wind power facilities. 26 U.S.C. § 45. These "Production Tax Credit" rates were established annually. A wind facility qualified for a given year's rate if production of wind energy began before the end of the designated qualification period, typically the end of each calendar year. *Id.*

### **FACTUAL ALLEGATIONS**

#### **Defendant's Development Of, and Eagle Fatalities At, Cedar Springs**

9. Between 2018 and 2019, ESI authorized subsidiary Cedar Springs Transmission, LLC ("CST") to develop a multi-facility commercial wind power facility in Converse County, Wyoming, that is, Cedar Springs, consisting of the Cedar Springs I, II, and III wind power facilities (collectively, "the project").

10. CST hired a consultant to evaluate use of the proposed facility sites by wildlife, including eagles, and determine the expected impact on such wildlife from the facilities. The consultant advised CST that golden eagles were observed in the project area and it was likely that eagle mortalities would be caused by the operation of wind turbines at each of the Cedar Springs facilities.

11. On August 23, 2018, the President and multiple Vice Presidents of ESI were among a group that considered a proposal to develop the Cedar Springs project in Wyoming. During the meeting, the group received information that the Cedar Springs facility sites were located in year-round habitat for golden eagles and that modeling predicted that there would be eagle mortalities from the operation of wind turbines. In September 2018 the group, including ESI officers, approved the development of the Cedar Springs project.

12. On March 28, 2019, USFWS informed defendant, through a letter to its agents, that Cedar Springs I and II, based on CST's consultant's calculations, could result in the collision mortality of 44 golden eagles and 23 bald eagles over the first five years of operations, and recommended that, because of the unusually high number of occupied golden eagle nests, the proposed wind facilities not be built. USFWS further stated that, if the facilities were built, the company should apply for an ETP under the Eagle Act as soon as possible.

13. Following the March 28, 2019, letter, defendant, through CST, continued the development of the Cedar Springs facilities.

14. On July 17, 2019, representatives of CST and CSW met with USFWS representatives. During that meeting, USFWS noted that the project is a high risk site and eagles will be taken and that take of eagles without a permit is illegal.

15. Between September 10, 2019, and September 23, 2019, USFWS wrote additional letters to the defendant's agents, following up on the July meeting, each noting that the defendant's parent company had documented that the project was anticipated to kill eagles and recommending

that the facilities apply for an ETP. USFWS reiterated in each letter its recommendation that a wind project not be constructed in the proposed area for Cedar Springs. In the September 10, 2019, letter, USFWS also recommended that, if the wind project were built, the Cedar Springs I facility should implement seasonal curtailment during daylight hours. At least two officers of ESI were aware of the communications in 2019 with USFWS about risks to eagles in the area of the Cedar Springs projects.

16. On or about September 28, 2020, defendant's affiliates began some turbine operations at Cedar Springs II. Between approximately November 29, 2020, and December 1, 2020, two golden eagle carcasses were found near wind turbines at Cedar Springs II. The Cedar Springs II facility was sold to another wind energy company on December 1, 2020.

17. On or about December 6, 2020, defendant authorized the commercial operation of Cedar Springs I to commence. Between April 2021 and January 2022, seven golden eagle carcasses were found near wind turbines at Cedar Springs I.

18. On or about December 15, 2020, defendant authorized the commercial operation of Cedar Springs III to commence. On approximately January 30, 2022, one golden eagle carcass was found near a wind turbine at Cedar Springs III.

19. No ETP was sought by or issued to ESI or its affiliates in connection with the operations of the Cedar Springs project.

#### **Defendant's Development Of, and Eagle Fatalities At, Roundhouse**

20. Between 2018 and 2019, ESI authorized a subsidiary, Roundhouse Renewable Energy, LLC ("RRE"), to develop a commercial wind power facility in Laramie County, Wyoming, that is, Roundhouse.

21. On April 25, 2018, the President and multiple Vice Presidents of ESI were among a group which considered a proposal to develop Roundhouse. During the meeting, the group received information that the facility was located in a golden eagle habitat area and was predicted

to result in eagle mortalities from the operation of the wind turbines. The development of Roundhouse was approved by the group, including ESI officers.

22. A consultant was retained to evaluate the impact of the Roundhouse site on wildlife, including eagles, and determine the expected impact on such wildlife from the facility. The consultant advised RRE that golden eagles were observed in the project area and that it was likely that some eagle mortalities would be caused by wind turbine operations at Roundhouse.

23. Between February 10, 2019, and February 19, 2019, RRE and its consultant provided to USFWS eagle-use and eagle nest survey data from 2016 and 2017 collected by the prior facility owner.

24. In a letter dated March 28, 2019, USFWS stated that, based on RRE's consultant's calculations, Roundhouse could result in the collision mortality of 19 golden eagles and 4 bald eagles over the first five years of operation, and recommended that RRE apply for an ETP under the Eagle Act.

25. Defendant continued the development of Roundhouse.

26. On July 3, 2019, RRE and its consultant provided to USFWS eagle-use and eagle nest survey data from 2018 and 2019. The data were not collected following standard methodologies across the full project area, and the remaining needed data collection would not be completed until September 2019. Nevertheless, in a letter dated August 27, 2019, USFWS provided recommendations on opportunities to avoid and minimize impacts to eagles using the available data. Although RRE followed recommendations relating to the siting of 20 wind turbines (but not one other recommendation), USFWS again stated that the facility was predicted to take eagles even if all USFWS recommendations were implemented, and recommended that an ETP be sought. At least two officers of ESI were aware of the communications in 2019 with USFWS about risks to eagles from Roundhouse.



27. On June 12, 2020, the defendant authorized the commercial operation of Roundhouse to commence. No ETP was sought or issued in connection with the operation of Roundhouse.

28. Between approximately September 17, 2020, and April 17, 2021, four golden eagle carcasses were found near wind turbines at Roundhouse.

**Defendant's Development Of, and Eagle Fatalities At, New Mexico Wind**

29. In 2003, ESI authorized a subsidiary, FPL Energy New Mexico Wind, LLC ("NMW"), to begin operations at a commercial wind power facility in De Baca and Quay Counties, New Mexico, that is, New Mexico Wind.

30. In 2017, the repowering of the turbines at New Mexico Wind was authorized by a group which included officers of ESI. By that time, representatives of NMW were aware that there was a risk to eagles in the vicinity of the New Mexico Wind facility. No ETP was sought or issued in connection with the operations or repowering of New Mexico Wind.

31. On or about December 29, 2020, two golden eagle carcasses were found near a wind turbine at New Mexico Wind.

**Unauthorized Eagle Fatalities at ESI's Other Wind Energy Facilities**

32. ESI's and its affiliated companies' actions in Wyoming and New Mexico were taken under a nationwide posture and corporate policy of not applying for ETPs. At no time did ESI or any of its subsidiaries or affiliated companies or their personnel or agents apply for or obtain any ETP authorizing the killing or wounding of any eagles relating to any of its wind power facilities, including for the killing or wounding of any of the 136 eagles listed below. ESI and its affiliates deliberately elected not to apply for or obtain an ETP intended to ensure the preservation of bald and golden eagles, and instead chose to construct and operate facilities it knew would take eagles, and in fact took eagles, without any permits authorizing that take. This decision was motivated by ESI's belief that the legal requirements of the ETP process were unworkable, as well

as profit considerations, including meeting deadlines for qualification for tax credits, fulfilment of power purchase agreements, and other related factors. While ESI and its affiliated companies conferred to varying extents with USFWS regarding anticipated eagle takes at wind facilities, and adopted some USFWS recommendations, because it was not seeking a permit it made unilateral decisions: (1) to build wind facilities in locations that presented a high risk of eagle takes, at times disregarding the recommendations of the voluntary guidelines; (2) not to move the planned locations of certain high risk turbines in accordance with its eagle risk consultant's recommendations and/or in accordance with USFWS recommendations; (3) to construct individual turbines in locations posing a risk to eagles; and (4) not to implement some USFWS recommendations, either pre- or post-construction to avoid, minimize and mitigate the killing and wounding of eagle by wind turbine blades at its facilities. In some instances, even after the killing of multiple eagles by one turbine, ESI determined to continue that turbine's operation without change. Similarly, after the killing of multiple eagles at one facility, the defendant did not apply for an ETP but elected to continue facility operations unchanged. ESI and its affiliated companies also constructed and began operating new wind energy facilities in high risk locations without seeking permits, even after receiving letters from USFWS informing ESI of its past and anticipated violations and recommending that it apply for ETPs. All of this despite the acknowledgement by one of ESI's affiliated companies, through an employee, in a federal court filing, that "[i]n order to comply with . . . federal laws prohibiting the take of special status species, and to avoid legal liability (including criminal liability in some cases), . . . [the affiliated company] must avoid the take of any birds covered by . . . [laws including the MBTA and the Eagle Act], including . . . the golden eagle." ESI's decision to not seek permits resulted in additional unpermitted eagle fatalities and restricted potential minimization measures under any eventual eagle take permit to the more limited post-construction, rather than pre-construction, remedies for impacts to eagles.



33. Because ESI determined not to seek any ETPs, it avoided any federal obligation to avoid and minimize eagle take to the maximum degree practicable and to pay for compensatory mitigation for the eagle deaths. Because some other wind energy companies (1) altered proposed operations as required to avoid and minimize take levels to the maximum degree practicable, (2) applied for ETPs, (3) obtained ETPs that in some cases were impacted by take levels caused by ESI's unpermitted facilities, and/or (4) paid mitigation for eagle takings, ESI, by not doing these things, gained a competitive advantage relative to those wind energy companies. In addition, ESI and its affiliates began commercial operations at new facilities on a schedule intended to meet, among other things, power purchase agreement commitments and qualifying deadlines for particular tax credit rates for renewable energy, and with production amounts not impacted by avoidance and minimization measures that might have been required under an eagle take permit. ESI and its affiliates received hundreds of millions of dollars in federal tax credits for generating electricity from wind power at facilities it operated, knowing that multiple eagles would be killed and wounded without legal authorization, and without, in most instances, paying restitution or compensatory mitigation.

34. Since 2012, there were at least 150 documented eagle deaths at 50 of defendant's 154 wind power facilities in the United States. The actual number was probabilistically higher, as studies have established that even with rigorous monitoring, which was not conducted at all facilities nor at all relevant times, not all carcasses are found. At least the following 136 eagles were killed or wounded by blunt force trauma from a wind turbine blade; some turbines killed multiple eagles:

Approximate Date	Location Where Found	Eagle Species
February 12, 2012	Vasco Winds Near turbine #5	golden eagle
January 29, 2013	North Sky River Energy Near turbine #75	golden eagle
April 19, 2013	Limon Wind I Near turbine #7	golden eagle
June 19, 2013	Vasco Winds Near turbine #17	golden eagle
November 29, 2013	Vasco Winds Near turbine #5	golden eagle
February 10, 2014	Perrin Ranch Wind Near turbine #17	golden eagle
April 11, 2014	Pheasant Run I Near turbine #10	bald eagle
April 23, 2014	Vasco Winds Near turbine #11	golden eagle
May 23, 2014	Vasco Winds Near turbine #11	golden eagle
July 24, 2014	Vasco Winds Near turbine #34	golden eagle
August 7, 2014	Vasco Winds Near turbine #13	golden eagle
January 9, 2015	North Sky River Energy Near turbine #49	golden eagle
March 24, 2015	Limon Wind I Near turbine #55	golden eagle
February 16, 2016	North Sky River Energy Near turbine #47	golden eagle
March 21, 2016	North Sky River Energy Near turbine #4	golden eagle
March 25, 2016	North Sky River Energy Near turbine #71	golden eagle
April 26, 2016	Golden Hills Wind Near turbine #11	golden eagle
May 17, 2016	Golden Hills Wind Near turbine #24	golden eagle
May 20, 2016	Golden Hills Wind Near turbine #3	golden eagle
September 20, 2016	Golden Hills Wind Near turbine #14	golden eagle
September 27, 2016	Golden Hills Wind Near turbine #17	golden eagle
October 7, 2016	Golden Hills Wind Near turbine #23	2 golden eagles

October 13, 2016	Ashtabula Wind Near turbine #73	bald eagle
February 20, 2017	North Sky River Energy Near turbine #20	golden eagle
April 8, 2017	North Sky River Energy Near turbine #15	golden eagle
April 11, 2017	Golden Hills Wind Near turbine #12	golden eagle
April 11, 2017	Golden Hills Wind Near turbine #22	golden eagle
May 9, 2017	Golden Hills Wind Near turbine #15	golden eagle
May 22, 2017	Golden Hills Wind Near turbine #12	golden eagle
June 27, 2017	Golden Hills Wind Near turbine #11	golden eagle
July 27, 2017	Golden Hills Wind Near turbine #25	golden eagle
September 8, 2017	Golden Hills Wind Near turbine #36	golden eagle
October 18, 2017	Golden Hills Wind Near turbine #1	golden eagle
October 18, 2017	Golden Hills Wind Near turbine #30	golden eagle
January 17, 2018	Golden Hills Wind Near turbine #19	golden eagle
January 28, 2018	Lee/DeKalb Wind	bald eagle
February 8, 2018	Golden Hills Wind Near turbine #5	golden eagle
February 13, 2018	North Sky River Energy Near turbine #18	golden eagle
February 28, 2018	Golden Hills North Wind Near turbine #65	golden eagle
March 28, 2018	Pheasant Run I	bald eagle
April 11, 2018	Golden Hills Wind Near turbine #8	golden eagle
April 18, 2018	Brady Wind Near turbine #33	golden eagle
April 18, 2018	North Sky River Energy Near turbine #49	golden eagle
May 1, 2018	Golden Hills Wind Near turbine #11	golden eagle
May 25, 2018	North Sky River Energy Near turbine #35	golden eagle

May 31, 2018	Golden Hills North Wind Near turbine #59	golden eagle
May 31, 2018	Golden Hills Wind Near turbine #16	2 golden eagles
June 19, 2018	Langdon Wind II Near turbine #64	bald eagle
June 22, 2018	Golden Hills Wind Near Turbine #37	golden eagle
July 6, 2018	Vasco Winds Near turbine #33	golden eagle
July 6, 2018	Diablo Winds Near turbine #10	golden eagle
July 6, 2018	Golden Hills Wind Near turbine #36	golden eagle
July 12, 2018	Golden Hills Wind Near turbine #14	golden eagle
July 25, 2018	Brady Wind Near turbine #57	bald eagle
July 25, 2018	Golden Hills Wind Near turbine #11	golden eagle
August 23, 2018	Golden Hills Wind Near turbine #14	golden eagle
September 10, 2018	Golden Hills Wind Near turbine #39	golden eagle
September 24, 2018	Golden Hills Wind Near turbine #29	golden eagle
October 16, 2018	Golden Hills North Wind Near turbine #62	golden eagle
October 25, 2018	Golden Hills North Wind Near turbine #58	golden eagle
January 31, 2019	Golden Hills Wind Near turbine #15	golden eagle
February 22, 2019	Golden Hills North Wind Near turbine #53	golden eagle
March 14, 2019	Golden Hills Wind Near turbine #46	golden eagle
May 29, 2019	Ashtabula Wind II Near turbine #206	bald eagle
July 2, 2019	Golden Hills Wind Near turbine #14	golden eagle
July 11, 2019	Golden Hills North Wind Near turbine #59	golden eagle
July 17, 2019	Golden Hills Wind Near turbine #2	golden eagle

July 25, 2019	Golden Hills Wind Near turbine #26	golden eagle
July 31, 2019	Golden Hills Wind Near turbine #15	golden eagle
September 5, 2019	Golden Hills Wind Near turbine #15	golden eagle
September 26, 2019	Golden Hills North Wind Near turbine #59	golden eagle
October 1, 2019	North Sky River Energy Near turbine #43	golden eagle
October 3, 2019	Oliver County Wind	bald eagle
October 5, 2019	Langdon Wind II Near turbine #2	bald eagle
October 15, 2019	Golden Hills North Wind Near turbine #62	golden eagle
October 15, 2019	Wilton Wind II	bald eagle
October 28, 2019	Golden Hills Wind Near turbine #37	golden eagle
October 28, 2019	Golden Hills Wind Near turbine #14	golden eagle
October 28, 2019	Golden Hills North Wind Near turbine #68	golden eagle
November 4, 2019	Golden Hills Wind Near turbine #1	golden eagle
November 8, 2019	Golden Hills Wind Near turbine #30	golden eagle
November 13, 2019	Golden Hills Wind Near turbine #12	golden eagle
November 26, 2019	Golden Hills North Wind Near turbine #65	golden eagle
January 25, 2020	Golden West Wind	golden eagle
March 10, 2020	Vasco Winds Near turbine #3	golden eagle
March 12, 2020	Pratt Wind Near turbine #102	bald eagle
April 12, 2020	North Sky River Energy Near turbine #91	golden eagle
April 21, 2020	Golden Hills Wind Near turbine #15	golden eagle
April 21, 2020	High Winds	golden eagle
April 30, 2020	Oliver County Wind	bald eagle
May 4, 2020	Golden Hills Wind Near turbine #25	golden eagle

May 6, 2020	North Sky River Energy Near turbine #55	golden eagle
May 6, 2020	Tuscola Bay Wind II	bald eagle
June 1, 2020	Ashtabula Wind Near turbine #5	2 bald eagles
June 5, 2020	North Sky River Energy Near turbine #52	golden eagle
June 16, 2020	Golden Hills Wind Near turbine #15	golden eagle
July 10, 2020	Langdon Wind II	bald eagle
July 16, 2020	Golden Hills Wind Near turbine #20	golden eagle
July 24, 2020	Golden Hills North Wind Near turbine #59	golden eagle
July 29, 2020	Golden Hills Wind Near turbine #40	golden eagle
July 31, 2020	Golden Hills Wind Near turbine #14	golden eagle
August 7, 2020	Golden Hills Wind Near turbine #1	golden eagle
August 12, 2020	Golden Hills Wind Near turbine #15	golden eagle
September 17, 2020	Golden Hills Wind Near turbine #41	golden eagle
September 17, 2020	Roundhouse Wind Near turbine #65	golden eagle
October 5, 2020	Roundhouse Wind Near turbine #13	golden eagle
October 13, 2020	Golden Hills Wind Near turbine #34	golden eagle
October 14, 2020	Golden Hills Wind Near turbine #42	golden eagle
November 17, 2020	Roundhouse Wind Near turbine #78	golden eagle
November 30, 2020	Cedar Springs II Near turbine #10	golden eagle
December 1, 2020	Cedar Springs II Near turbine #72	golden eagle
December 29, 2020	New Mexico Wind Near turbine #12	golden eagle
December 29, 2020	New Mexico Wind Near turbine #134	golden eagle
January 7, 2021	Golden Hills North Wind Near turbine #64	golden eagle



February 6, 2021	Golden Hills North Wind Near turbine #65	golden eagle
February 18, 2021	North Sky River Energy Near turbine #43	golden eagle
April 1, 2021	Roundhouse Wind Near turbine #69	golden eagle
April 8, 2021	Golden Hills Wind Near turbine #14	golden eagle
April 9, 2021	Cedar Springs I Near turbine #28	2 golden eagles
April 21, 2021	Cedar Springs I Near turbine #2	golden eagle
April 23, 2021	Golden Hills Wind Near turbine #34	golden eagle
May 3, 2021	Golden Hills Wind Near turbine #24	golden eagle
May 14, 2021	Ashtabula Wind Near turbine #27	Bald eagle
July 6, 2021	Cedar Springs I Near turbine #36	golden eagle
September 17, 2021	Cedar Springs I Near turbine #70	golden eagle
October 20, 2021	Golden Hills Wind Near turbine #25	golden eagle
November 17, 2021	Montezuma I	golden eagle
December 3, 2021	Golden Hills Wind Near turbine #33	golden eagle
December 14, 2021	Emmons-Logan Near turbine #111	bald eagle
January 5, 2022	Cedar Springs I Near turbine #38	golden eagle
January 7, 2022	Cedar Springs I Near turbine #61	golden eagle
January 30, 2022	Cedar Springs III Near turbine #28	golden eagle

### **COUNT ONE**

Between on or about November 2020 and January 2022, in the District of Wyoming, the defendant, ESI ENERGY, LLC, through an entity and others acting on its behalf, did unlawfully take migratory birds at its “Cedar Springs” wind facility in Converse County, including at least 4

golden eagles, without a permit or other authorization from the United States Fish and Wildlife Service.

In violation of 16 U.S.C. §§ 703 and 707(a).

**COUNT TWO**

Between on or about September 17, 2020, and November 17, 2020, in the District of Wyoming, the defendant, ESI ENERGY, LLC, through an entity and others acting on its behalf, did unlawfully take migratory birds at its “Roundhouse” wind facility in Laramie County, including at least 3 golden eagles, without a permit or other authorization from the United States Fish and Wildlife Service.

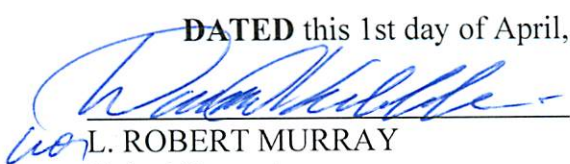
In violation of 16 U.S.C. §§ 703 and 707(a).


**COUNT THREE**

On or about December 29, 2020, in the District of New Mexico, the defendant, ESI ENERGY, LLC, through an entity and others acting on its behalf, did unlawfully take migratory birds at its “New Mexico Wind” facility, including at least 2 golden eagles, without a permit or other authorization from the United States Fish and Wildlife Service.


In violation of 16 U.S.C. §§ 703 and 707(a).

**DATED** this 1st day of April, 2022.

  
L. ROBERT MURRAY  
United States Attorney  
District of Wyoming

  
DAVID A. KUBICHEK  
Assistant U.S. Attorney  
District of Wyoming

TODD KIM  
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Environment and Natural Resources Division  
U.S. Department of Justice

  
ELINOR COLBOURN  
Senior Counsel for Wildlife Programs  
Environmental Crimes Section

**PENALTY SUMMARY**

**DEFENDANT NAME:** ESI ENERGY, LLC

**DATE:** April 1, 2022

**INTERPRETER NEEDED:** No

**VICTIM:** States of Wyoming, California, New Mexico, North Dakota, Colorado, Michigan, Arizona, and Illinois.

**SEAL CASE:** No

**OFFENSE: Ct. 1: Unlawful Take of Migratory Birds**  
16 U.S.C. §§ 703, 707(a)

**PENALTIES:** Not more than \$15,000.00 fine or twice gross gain or loss from conduct; not more than five years' probation; \$50.00 Special Assessment.

**OFFENSE: Ct. 2: Unlawful Take of Migratory Birds**  
16 U.S.C. §§ 703, 707(a)

**PENALTIES:** Not more than \$15,000.00 fine or twice gross gain or loss from conduct; not more than five years' probation; \$50.00 Special Assessment.

**OFFENSE: Ct. 3: Unlawful Take of Migratory Birds**  
16 U.S.C. §§ 703, 707(a)

**PENALTIES:** Not more than \$15,000.00 fine or twice gross gain or loss from conduct; not more than five years' probation; \$50.00 Special Assessment.

**TOTALS:** Not more than \$45,000.00 fine or twice gross gain or loss from conduct; not more than five years' probation; \$150.00 Special Assessment

**AGENT: FWS Matt Martin      AUSA: DAVID A. KUBICHEK      DOJ-ENRD: ELINOR COLBOURN**

**ESTIMATED TIME OF TRIAL:** \_\_\_\_\_ 7-10 days \_\_\_\_\_

**THE GOVERNMENT WILL NOT SEEK DETENTION IN THIS CASE**