

FILED



4:34 pm, 4/6/22

Margaret Botkins
Clerk of Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA

vs

ESI ENERGY, LLC

Case Number: 22-CR-48-KHR

Defendant's Attorney(s):
Jeffrey Pope, Benjamin Wagner, Thomas
Sansone

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT pled guilty to counts 1, 2 and 3.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):


<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
16 U.S.C. §§ 703, 707(a)	Unlawful Take of Migratory Birds	January 31, 2022	1
16 U.S.C. §§ 703, 707(a)	Unlawful Take of Migratory Birds	November 17, 2020	2
16 U.S.C. §§ 703, 707(a)	Unlawful Take of Migratory Birds	December 29, 2020	3

The defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the Court and the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's USM No: N/AApril 5, 2022

Date of Imposition of Sentence


 Kelly H. Rankin
 Chief United States Magistrate Judge

Date

4/6/2022

PROBATION

The defendant is hereby placed on unsupervised probation for a term of sixty (60) months, beginning April 5, 2022, subject to the following terms:

The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (see 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.

The defendant shall also comply with the following additional conditions:

On or before October 1, 2022, the defendant shall make restitution of a total of Six Million Two Hundred Ten Thousand Nine Hundred Ninety-One dollars (\$6,210,991.00) to the relevant agency of each state. The amount of restitution to each state is specifically:

California: \$4,645,619.83
Wyoming: \$403,966.94
New Mexico: \$100,991.74
North Dakota: \$656,446.28
Colorado: \$151,487.60
Michigan: \$151,487.60
Arizona: \$50,495.87
Illinois: \$50,495.87

Defendant is credited with already paying, through a subsidiary, to the State of California, pursuant to a prior civil agreement with the Attorney General of California and the Audubon Society Chapters of Golden Gate, Ohlone, Mount Diablo, Santa Clara Valley and Marin, and Californians for Renewable Energy, \$2,206,260.00 making the final amount owed in restitution to California \$2,439,359.83. Restitution will be paid to the Clerk of the District of Wyoming, to be paid to the relevant state agencies as directed by the U.S. Fish and Wildlife Service ("USFWS"). The defendant will not claim any of the restitution, or any other amount herein, as a tax deduction or characterize it in any manner or forum as a donation or contribution or voluntary action.

The defendant will implement the Eagle Management Plan ("EMP") set forth in Attachment B to the Plea Agreement in this matter (ECF Doc. 2), which was developed with the assistance of USFWS and the Department. The purpose of the EMP is to avoid and minimize eagle mortalities during the period between sentencing and final action on an application under the Bald and Golden Eagle Protection Act (hereinafter "Eagle Act") for an Eagle Take Permit ("ETP") for the following 50 wind facilities; Vasco Wind, North Sky River, Golden Hills, Golden Hills North, Cedar Springs I, Cedar Springs, III, Roundhouse, New Mexico Wind, Broncos Plains, Soldier Creek, Jordan Creek, Wheathridge II, Hubbard, Buffalo Ridge, Heartland Divide II, Eight Point, Irish Creek, Clearwater, Wilton, Ashtabula, Ashtabula II, Borderlands, Brady, Langdon, Langdon II, Oliver, Pheasant Run I, Skeleton Creek, Tuscola

Bay I, Tuscola Bay II, Blackwell, Crystal Lake I, Crystal Lake II, Crystal Lake III, Golden West, Green Power, Limon Wind I, Limon Wind II, Montezuma, Peetz I, Rush Springs, Sky River, Stateline, Torrecillas, White Hills, Pratt, Perrin Ranch, Lee/DeKalb, Casa Mesa and Emmons Logan (hereinafter "the Listed Facilities"). The EMP will terminate at each of these facilities upon the issuance of a final ETP decision for the facility or upon termination of any extended non-prosecution period for the facility, whichever is earlier. The EMP has been approved by the Chiefs of Migratory Birds for the relevant USFWS Regions and the Department. The EMP may be modified from time to time to the extent there is mutual agreement of USFWS and the defendant.

The defendant, USFWS, and the Department will meet at least once every six months during the first two years of the probationary period, and once every 12 months thereafter, to discuss the defendant's overall progress in implementing the EMP and to address any issues with, or proposed amendments to, the EMP. Every 12 months during the probation period, the defendant shall report in writing to the Court, USFWS, and the Department on the defendant's progress in implementing the EMP.

The defendant shall apply for ETPs for each of the Listed Facilities by the dates established in the EMP, and diligently pursue the EPTs thereafter.

As noted in the EMP, the parties recognizing that actual costs may vary from year to year based on advances in science and technology and the specific measures implemented during the term of the EMP, agree that the defendant, either directly or through its affiliates, will not be required to spend more than \$27 million of the five years of probation, and no more than \$7 million in either of its first two years of probation and no more than \$9 million in any of the third, fourth and fifth years of probation, to implement the EMP (not including certain costs as set forth in the EMP).

Within 30 days of the entry of the plea in this matter, the defendant shall provide to USFWS its site assessments (including risk assessments) and turbine sitting plans for the four Listed Facilities not yet under construction or operation and due to become operation in 2022 and if this has not been done, shall occur immediately following entry of this Judgment.

The Court further incorporates all terms and conditions of defendants probation as expressly stated in the Plea Agreement (ECF Doc. 2). Those conditions are fully incorporated herein by reference.

FINANCIAL PENALTIES

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below.

Count	Assessment	Restitution	Fine	
1	\$50.00	\$6,210,991.73	\$1,861,600.00	
Notes:				
2	\$50.00	\$0.00	\$0.00	
Notes:				
3	\$50.00	\$0.00	\$0.00	
Notes:				
Totals:	\$150.00	\$6,210,991.73	\$1,861,600.00	

The fine and assessments are due immediately and inclusive of all penalties and interest, if applicable.

All of the below payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	Amount of Restitution
Office of the Clerk United States District Court 2120 Capitol Avenue 2nd Floor, Room 2131 Cheyenne, WY 82001	\$6,210,991.73

Restitution shall be paid in one lump sum on or before October 1, 2022.

The amount of restitution to each state is specifically:

California: \$4,645,619.83
Wyoming: \$403,966.94
New Mexico: \$100,991.74
North Dakota: \$656,446.28
Colorado: \$151,487.60
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SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) fine; (3) restitution; (4) interest; (5) penalties.

The total fine and other monetary penalties shall be due in full immediately.

IT IS ORDERED the defendant shall pay a special assessment fee in the amount of \$150, which shall be due immediately. Payments for monetary obligations shall be made payable by cashier's check or money order to the Clerk of the U.S. District Court, 2120 Capitol Avenue, Room 2131, Cheyenne, Wyoming 82001 and shall reference the defendant's case number, 22-CR-48-KHR. The fine shall be directed to the North American Wetlands Conservation fund as provided under 16 U.S.C. § 4406(b).