

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

CENTER FOR BIOLOGICAL
DIVERSITY, INC., et al.,
Plaintiffs and Appellants,

v.

FPL GROUP, INC., et al.,
Defendants and Respondents.

A116362
(Alameda County
Super. Ct. No. RG04-183113)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on September 18, 2008, be modified as follows:

1. On page 6, the first two sentences of footnote 11 are modified to read:
We take judicial notice that this litigation was settled in January 2007 by an agreement that modified the conditional use permits issued to certain of the defendants “with regard to various measures to reduce raptor mortality at the APWRA.” Among other provisions, the revised conditions call for
2. On page 20, starting with the first full sentence, the remainder of the paragraph is modified to read:
As recited more fully above, in considering the applications to extend the conditional use permits, the county received input from a specially created Wind Power Working Group that included representatives from the California Department of Fish and Game and the United States Fish and Wildlife Service, and from the California Energy Commission, the California Attorney General, expert consultants and others. The extended permits were granted subject to additional conditions designed to reduce avian mortality, and further measures are contemplated to study and to improve the mitigation measures in the future. Although other public interest groups dissatisfied with the action taken by the Alameda County Board of Supervisors filed petitions for a writ of mandate challenging that action—and that litigation has been settled by the inclusion of additional conditions in the conditional use permits issued to certain of the defendants (see fn. 11, *ante*)—plaintiffs filed no writ proceedings and did not proceed against any of the public agencies in this action.

3. On page 21, the first three sentences of the last paragraph are deleted and the following is inserted. The footnote remains.

The Alameda County Board of Supervisors, with the advice and cooperation of numerous other agencies, has attempted to strike a balance between the generation of clean renewable energy with wind turbines and the protection of raptors and other birds adversely affected by the turbines. A challenge to the permissibility of defendants' conduct must be directed to the agencies that have authorized the conduct.

There is no change in the judgment.

The petition for rehearing is denied.

Dated:

McGuinness, P. J.

Trial court: Alameda County Superior Court

Trial judge: Hon. Bonnie Lewman Sabraw

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A116362