



1515 CLAY STREET, 20<sup>TH</sup> FLOOR  
OAKLAND, CA 94612-1413

Public: 510-622-2100  
Telephone: 510-622-2137  
Facsimile: 510-622-2270  
E-Mail: ken.alex@doj.ca.gov

September 8, 2006

Mr. Peter Weiner  
Paul Hastings  
1127 Eleventh St., Suite 905  
Sacramento, CA 95814

Mr. George Caplan  
Kaye Scholer, LLP  
1999 Avenue of the Stars, Suite 1700  
Los Angeles, CA 90067

Re: Dr. Smallwood's Research at Altamont Pass Wind Resources Area

Dear Mr. Weiner and Mr. Caplan:

As you know, the Attorney General's Office is continuing to monitor and evaluate issues related to bird mortality from wind turbines at the Altamont Pass Wind Resources Area. Because of your participation in many proceedings related to the site, we wanted to make you aware of what we believe to be a significant matter. It has recently come to our attention that Dr. Shawn Smallwood, who has conducted in-depth research on bird mortality at Altamont Pass, has been subjected to numerous attacks on his professional integrity and credibility for his role in conducting research at the site. I assume that you are aware of this situation. The attacks threaten the ability of scientists working on issues at Altamont Pass to engage in open exchange of ideas and to work toward an effective resolution of these issues. Unfortunately, at least some of the attacks appear to be orchestrated by the California Wind Energy Association and segments of the California wind industry, including companies operating at Altamont Pass. As you know, Dr. Smallwood has conducted more field research and authored and published more studies concerning the bird deaths at Altamont Pass than any other scientist in his field. Dr. Smallwood's research and studies have been conducted with funding from a wide range of entities, including a variety of state and local government agencies, wind companies, and private organizations. This is not to suggest that Dr. Smallwood's methodology and conclusions should not be subject to review, discussion, and constructive criticism as part of the scientific process. The attacks that we have seen, however, do not so qualify.

We believe that the attacks are unwarranted and unprofessional, and do nothing to promote resolution of the issues at Altamont Pass. Because of our concerns, we have reviewed a

Mr. Peter Weiner  
Mr. George Caplan  
September 8, 2006  
Page 2

number of the issues raised and have determined that, in most instances, the criticisms are incorrect, irrelevant, or based on a misunderstanding or mis-characterization of the data and conclusions. For example, an unidentified and undated alert entitled "Altamont Pass Bird Mortality Study, Based on Altered Data, Misleads California Energy Commission," as well as an unidentified and undated power point slide show entitled "Behind the Curtain," both claim that Dr. Smallwood "materially" and "systematically" altered data relied upon in his August 2004 report to the California Energy Commission, *Developing Methods to Reduce Bird Mortality in the Altamont Pass Wind Resource Area*. The alert claims that the report "wrongfully" categorized all "unknown" bird deaths as caused by wind turbines. Those are serious charges. We reviewed Dr. Smallwood's report and found that it states that the probable cause of death was determined based on the carcass' distance from, and position relative to, the nearest wind turbine or power pole. (Smallwood (2004), p. 48.) We understand this to be a common practice, used recently by WEST Inc. in its report entitled "Diablo Winds Wildlife Monitoring Progress Report, March 2005–February 2006," dated April 2006.

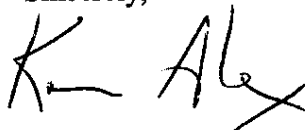
Another document entitled "Numerical Accuracy in the 2004 PEIR Report," by Carol Pilz Weisskopf, claims that the August 2004 report overestimated golden eagle mortality at Altamont Pass by 162%, but provides no apparent basis for that conclusion. We reviewed Dr. Smallwood's August 2004 report and found a series of factors reflecting conservative assumptions related to the report's final estimated range of golden eagle mortality, including the use of only searcher detection and scavenger removal biases, and exclusion of crippling bias (e.g. birds injured by wind turbines that die outside of the designated search area) and human removal of carcasses in the search area (for delivery to the U.S. Fish and Wildlife Service pursuant to the Wildlife Reporting and Response System or for other reasons). (Smallwood (2004), pp. 48-52.) To a lay person's reading, these factors seem to reflect a conservative approach to mortality estimates. Furthermore, in some respects more important than the content of the attacks themselves, the tone of the attacks is sensationalized, non-scientific, personal, and petty.

We believe that the best science results from an open and honest dialogue on the substantive issues, with a meaningful exchange of studies, constructive criticisms, and responses. The inaccurate and personal attacks on Dr. Smallwood are antithetical to such a dialogue and threaten the potential for a progressive discussion among the interested parties. In light of the growing need for alternative energy in California, we need to do better. The development of good and sound science and constructive, professional scientific dialogue is essential to the future of the industry. These attacks do not reflect well on the wind industry and on the operators at Altamont Pass. I hope that you will join the Attorney General's Office in promoting good and sound science in connection with resolution of the issues at Altamont Pass and that you will discourage needless, inappropriate, unprofessional, and personal attacks on those who reach conclusions with which the wind industry might disagree.

Mr. Peter Weiner  
Mr. George Caplan  
September 8, 2006  
Page 3

Please feel free to call me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Alex". The letters are stylized and cursive.

KEN ALEX  
Supervising Deputy Attorney General

For BILL LOCKYER  
Attorney General

cc: Dr. Shawn Smallwood  
Ann Malcolm, DFG  
Linda Spiegel, CEC  
Chris Bazar, Alameda County  
Gina Bartlett, Center for Collaborative Policy