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California Land Use & Development Law Report

District Court Strikes 30-Year Eagle Take Rule

The U.S. District Court for the Northern District of California has invalidated the U.S. Fish and Wildlife Service's adoption of a new rule increasing the maximum duration of programmatic permits to "take" bald and golden eagles from 5 years to 30 years. [Shearwater v. Ashe, No.14-CV-02830-LHK \(N. Dist. Ca, Aug. 11, 2015\)](#). This 30-Year Rule was adopted in response to concerns by wind energy companies that the uncertainty surrounding renewal of programmatic eagle take permits (which allow for the incidental take of eagles from operation of wind turbines) was preventing operators from obtaining financing for wind energy projects that might last up to thirty years. The Fish and Wildlife Service issued the 30-Year Rule without preparing either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act, concluding that the 30-Year Rule was categorically exempt. In striking the rule, the court found that the Service had not demonstrated an adequate basis in the administrative record for its decision not to prepare an EIS or EA and therefore failed to comply with NEPA's procedural requirements. [Read our full Update here.](#)

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