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California Land Use & Development Law Report

Fish and Wildlife Service Reissues 30-Year Eagle Take Rule

As we [previously reported](#), in August 2015, a U.S. District Court in San Francisco nullified the U.S. Fish and Wildlife Service's new rule increasing the length of programmatic permits to "take" bald and golden eagles from 5 years to 30 years. [Shearwater v. Ashe, No.14-CV-02830-LHK \(N. Dist. Ca, Aug. 11, 2015\)](#). In striking the rule, the court held that the Service had not demonstrated a sufficient 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. The Service subsequently prepared a draft programmatic Environmental Impact Statement (available [here](#)) and, on May 6, 2016, issued a new version of the [proposed rule](#). As with the 2013 version invalidated by the District Court, the rule would substantially change how the Service administers its conservation and management program under the Bald and Golden Eagle Protection Act (Eagle Act). The rule would extend the maximum permit term under the Eagle Act from five to 30 years, and change permit criteria and mitigation standards. These proposed changes, if adopted, would impact renewable energy and other project development, particularly in the Western United States. Our full Update on the rule is available [here](#).

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