

**Written Testimony of Lesly Swanson
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House Committee on Natural Resources
Subcommittee on Water, Wildlife, and Fisheries
Legislative Hearing: Oversight of the Migratory Bird Treaty Act**

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Chairwoman Hageman, Ranking Member Hoyle, Vice Chairman Ezell, and Members of the Subcommittee, thank you for the opportunity to testify today regarding the Migratory Bird Treaty Act. My name is Lesly Swanson, and I am a Principal Environmental Compliance Scientist at the Salt River Project (SRP). For more than fifteen years I have served as SRP's lead subject matter expert on avian power line interactions and have extensive experience in avian compliance matters. My work focuses on translating wildlife protection requirements into practical, field level compliance measures for a large electric utility. In this role, I manage SRP's voluntary Avian Protection Program, oversee federal permitting and reporting, and work closely with field crews, internal teams, as well as Federal and state agencies to implement practical, science-based protections for migratory birds.

I also serve as Immediate Past Chair of the Avian Power Line Interaction Committee (APLIC). APLIC is an organization comprised of electric utilities and resource agency partners, including the U.S. Fish and Wildlife Service, whose purpose is to provide educational resources; identify and fund research; develop industry best practices for managing bird/utility issues; and to serve as a focal point for avian/ power line interactions. APLIC has developed guidance documents and best practices to reduce avian interactions with electrical infrastructure while supporting safe and reliable system operations. My testimony today reflects SRP's experience implementing the Migratory Bird Treaty Act and does not represent APLIC's position.

The Salt River Project

SRP was formed more than 120 years ago and today is the third largest not-for-profit community based public power utility in the country. SRP provides electricity to nearly three million people in Arizona, with an energy portfolio that includes nuclear, natural gas, hydropower, coal, solar and battery storage. We are a vertically integrated utility meaning we generate, transmit and deliver electric power across SRP's 2,900 square-mile service territory in central and eastern Arizona. We also maintain a large transmission system and distribution grid, with more than 22,000 miles of distribution lines and nearly 2,500 miles of transmission lines ranging in voltage from 69 kV to 500 kV. SRP power lines are located on Federal, tribal, state, municipal, and private lands.

SRP is also the largest raw water provider in the Phoenix Metropolitan area, managing and operating water infrastructure throughout Arizona including seven dams and

reservoirs that can store approximately 2.3 million acre-feet of water, as well as 1,300 miles of canals, laterals, ditches, and pipelines to deliver water to approximately 250,000 acres of land.

From the beginning, SRP has been committed to the protection and preservation of natural resources. SRP worked with Congress to establish National Forests in Arizona for the protection of the watersheds that supply SRP's reservoirs. SRP has long standing bird conservation programs, and we work closely with and support Federal, state, and non-profit agencies and organizations to proactively minimize and address avian issues related to SRP's operations. For example, in addition to the voluntary Avian Protection Program, we secured and implemented two Endangered Species Act Habitat Conservation Plans and recently obtained the first Bald and Golden Eagle Act power line general permit for eagles.

Bird Interactions with SRP's Infrastructure

SRP operates and maintains transmission and distribution assets including rights-of-way, substations, switchyards, and generation facilities in addition to dams, hydroelectric facilities, reservoirs, canals, and well sites. In addition to these utility specific assets, SRP operates a fleet of equipment and vehicles, and maintains office buildings, warehouses, and garages. We address avian issues across all of these assets, with most interactions occurring on the transmission and distribution system. The species most commonly involved include great horned owls and red-tailed hawks.

Birds and animals in general are common causes of power outages for electric utilities. Birds are attracted to utility infrastructure. Utility poles offer birds a place to perch, hunt, roost, and nest. SRP's service territory includes the Phoenix metropolitan area and the surrounding Sonoran Desert. We have high voltage transmission lines traversing large parts of the state in forested areas, where SRP transmission and distribution poles are the tallest perch option on the landscape. This means birds are regularly seen on SRP power infrastructure.

Power outages can occur when birds come into contact with electric infrastructure; when birds build nests on energized assets; when birds fly into utility infrastructure; when large groups of birds flush off of power lines causing the lines to gallop into each other; when birds drop prey items on utility infrastructure; when bird excrement comes into contact with energized components; or when bird excrement builds up on equipment causing the equipment to malfunction or fail.

SRP's Avian Protection Program

SRP operates a voluntary Avian Protection Program that reduces the risk of bird interactions with utility infrastructure across both our power and water operations.

SRP's Avian Protection Program helps maintain the safety and reliability of our electric transmission and distribution systems. The Avian Protection Program implements a comprehensive set of measures to reduce bird impacts from early planning to post-construction operations including:

- Considering birds and wildlife during the project planning phase to avoid nests, when feasible;
- Conducting pre-construction surveys for birds and other natural resources;
- Implementing avoidance and minimization practices such as nest buffers or timing restrictions during construction, operations, and maintenance;
- Training field personnel to avoid impacts to birds while employees conduct their day-to-day work activities;
- Developing and using integrated vegetation management practices, within power line rights-of-way, to minimize impacts to nesting birds;
- Supporting organizations that promote avian conservation, protection, research, and education;
- Fostering partnerships with the Arizona Game and Fish Department, U.S. Fish and Wildlife Service, Audubon Southwest, and local wildlife rehabilitators like Liberty Wildlife, an Arizona-based non-profit dedicated to wildlife rehabilitation, natural history education, and conservation services in Arizona.

Except where required under State and Federal law, all of these conservation efforts are voluntarily implemented to reduce impacts to birds and to maintain the reliability of the electric system. The following examples further illustrate the programs and efforts SRP implements as part of our Avian Protection Program.

SRP has transmission and distribution design standards that seek to minimize bird interactions and we continue to develop avian safe design standards to further enhance protections across our system. Our selection of the appropriate bird guarding techniques takes into consideration the width of the right-of-way, the age and type of power system equipment, the surrounding environment, and the potentially affected bird species. Retrofitting can be reactive or proactive, but both methods involve assessing the structure in question and consider the nature of the surrounding environment and how birds might interact with the asset.

SRP has a webpage for the public to learn more about our programs protecting natural resources. We have a "bird line" phone number that anyone can call to report bird issues or ask questions about our avian protection efforts. From a customer service standpoint, the most common inquiries we receive concern bird excrement beneath power lines and ducks in our canals. While these are not specific utility related issues usually addressed by Avian Protection Programs, SRP provides callers with other resources and suggestions, where applicable.

During nesting season, we ask employees and the public to report nests on power poles. We evaluate details like the asset type, nest location, the species, status of the nest, and we work with several departments at SRP such as our engineers and maintenance

teams for their input on how to bird guard the specific pole. We have a Special Purpose Utility Permit from the US Fish and Wildlife Service. In emergency situations, this permit allows us to remove and relocate active nests on structures, if they pose a safety risk. We have left nests in place in some specific instances, but large stick nests constructed on energized utility poles are a concern. SRP often relocates active nests to a nest platform which we install nearby. SRP biologists work with biologists from Liberty Wildlife to ensure the success of all nest relocations.

Over the years, we have been asked to supply equipment to assist with the rescue of a variety of different bird species. These efforts included rescuing a great-blue heron tangled in fishing line and dangling from a tree, removing an osprey trapped in the safety netting at a golf course, and saving a fledgling red-tailed hawk that got stuck upside down in the crook of a tree. In addition to supporting rescue efforts, SRP also assists Arizona Game and Fish and the Southwestern Bald Eagle Management Committee with their statewide bald eagle management. Each year, SRP provides a bucket truck to allow Arizona Game and Fish biologists to access bald eagle nests to evaluate nestling health and to band nestlings with State and Federal bands, often inaccessible to biologists if not for the bucket truck.

Fully implementing and supporting SRP's Avian Protection Program stretches across the company. In addition to the more common departments such as line maintenance and construction crews, troubleshooters, and substation maintenance personnel who regularly address avian issues, there are many other departments that play key roles. For example our vegetation management crews incorporate best management practices into their work process, our supply chain team procures and warehouses bird guarding materials, and our land agents coordinate with land owners to allow us to conduct pre-construction surveys, our GIS Services and IT departments have been instrumental in developing systems that allow us to collect information from field personnel, analyze data and trends over time, and develop ways to incorporate tracking and reporting efforts into existing departmental work processes.

As highlighted above, SRP is committed to the protection and preservation of natural resources, including local bird and wildlife communities while at the same time ensuring that we can generate and deliver safe, reliable, and affordable electricity to our customers. Our voluntary Avian Protection Program is incorporated into business processes for departments across the organization, and as such, the work done to conserve migratory birds and limit their interactions with our equipment will continue into the future, regardless of treatment under the MBTA.

Migratory Bird Treaty Act & Policy Considerations

The Migratory Bird Treaty Act is one of the oldest wildlife protection laws, enacted in 1918 in an attempt to curtail the overhunting of birds. Today, it protects over 1,100 species of birds. The human environment has experienced significant changes since 1918, most of which could not have been anticipated by Congress when they drafted the statute. In some instances, the ways in which birds and the human

environment interact have transformed. Advancements have been made across a variety of sectors, including the utility industry.

The last fifty years have seen fluctuations in the application of the Migratory Bird Treaty Act. A swing in interpretation has resulted in inconsistent application of the statute causing ambiguity and creating significant regulatory uncertainty for utilities. As utilities navigate the complex web of regulatory requirements, regulatory certainty with respect to the application of environmental laws, including MBTA is important. Clearly defined compliance standards and criteria are essential for planning, permitting, construction, operation, and maintenance of the network of energy infrastructure supplying power throughout the country. With more-than 1,100 species protected by the Migratory Bird Treaty Act, a one-sized fits all approach creates significant implementation challenges for regulators and creates uncertainty for utilities.

Unlike the MBTA, more recent wildlife conservation statutes like the Endangered Species Act and Bald and Golden Eagle Protection Act allow for tailored compliance for individual at-risk species in addition to the recognition and prevention of significant threats to those species. Utilities with infrastructure on Federal lands comply with land use laws such as the Federal Land Policy Management Act or FLPMA. Under FLPMA, the agency policies require incorporating the conservation of bird and wildlife populations and the habitats where they live into the siting, design, construction, and maintenance phases of utility infrastructure projects.

SRP's voluntary Avian Protection Program is not unique to the power industry. For decades, utilities have been at the forefront of conservation and sought ways to identify and reduce impacts on birds and wildlife. Organizations such as Edison Electric Institute, National Rural Electric Cooperative Association, the Electric Power Research Institute, and Renewable Energy Wildlife Institute have funded research and developed partnerships with conservation organizations and State and Federal wildlife agencies to better understand bird interactions with utility infrastructure and to reduce the impact of utility infrastructure on birds and their habitats. For example, APLIC collaborated with US Fish and Wildlife Service, and others, to publish suggested practices documents, best management practices, and Technical Resources addressing bird/power line interactions. More recently, utility associations and the Association of Fish and Wildlife Agencies developed a similar communication process for siting solar facilities.

In summary, SRP has a long history of partnering with stakeholders to meet the rapidly growing demand for power, while maintaining a safe and reliable power grid and delivering affordable electricity to customers. The migratory bird conservation work carried out by SRP will continue to provide significant long-term benefits to birds without the need to expand the current reach and scope of the Migratory Bird Treaty Act.

Thank you for the opportunity to testify today and to highlight SRP's Avian Program.

I look forward to answering any questions Committee members may have.