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**ROCK SPRINGS GRAZING ASSOCIATION**  
ROCK SPRINGS, WYOMING 82901

P.O. Box 247  
Office (307)-362-3921, Fax (307)-352-0466  
[rsga@wyoming.com](mailto:rsga@wyoming.com)

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Wind Energy Task Force  
C/o Ina Shaw  
Legislative Service Office  
200 W 24<sup>th</sup> St.  
Cheyenne, WY 82001

Dear Honorable Members of the Wind Energy Task Force:

Rock Spring Grazing Association (RSGA) has participated in and supported the energy development and transmission infrastructure in Sweetwater County since the initial oil and gas discoveries in the 1930's, followed by iron mines in the 1950's, and the oil gas and coal booms of the 1970's and 1980's. In 2003 RSGA was invited into the discussions for the potential for wind energy in Sweetwater County, and participated in development of the current wind energy regulations for Sweetwater County.

Wind energy is an exciting opportunity for RSGA and Wyoming. Currently RSGA is active in final negotiations for 5 wind energy projects in Sweetwater County. In addition, RSGA has had conversation for three power transmission routes across RSGA that will service wind energy projects in eastern Wyoming.

The surface estate of RSGA is unique, with over 500,000 acres of land holdings intermingled with equal parts of public land within the UPRR Land Grant, or the "checkerboard". The mineral estate under RSGA surface is owned by Anadarko Petroleum. As complicated as it can be, for the past 100 years there has been a good working relationship with the BLM, Union Pacific, and now Anadarko. The general public has enjoyed open access to RSGA lands, to the point many assume the RSGA lands are public land, a fact that now contributes to the debate over preservation of open space and watershed issues.

Today local, state, and federal agencies, developers, and preservationists have intense interest in following land use and resource development across RSGA. With this interest it is difficult to separate those agencies and individuals that desire authority from those with statutory authority to make decisions regarding private land and how it will be utilized. With the ongoing public debates for wind energy, the public and regulatory interests seem to focus on perceived public rights as to how private lands are managed, especially regarding lands remote from cities and communities, while ignoring the property rights of landowners. Wind energy development, and associated transmission, will stir this debate for the foreseeable future. With ill

defined roles and responsibilities of local and state government regarding wind energy, the landowner will be caught in the middle of public debates, and is often on the defensive team.

There have been many challenges to the management of RSGA property, and it has required tact and knowledge to balance the needs of the corporation to sustain viable livestock operations with the needs of developers of the private and federal mineral resources to occupy RSGA land. The public enjoys access to RSGA to observe wildlife, wild horses, and for general recreation.

With wind energy there is opportunity for RSGA to improve its corporate viability for the future, and meet its corporate goals. However, RSGA now faces ever increasing challenges to determine who is in charge of our future and the future for wind energy in Sweetwater County. It now appears that more than ever, federal, state, county agencies, interest groups and the public at large feel they have veto authority for the use of RSGA lands, not only for wind energy but any development that may interfere with their enjoyment of the open space. Public comments from citizens and local officials often include the phrases... "it is our viewshed, or, it is my special place...", when in fact it is not.

One reason for the negative feelings toward wind energy is that at all levels of government there is a lack of coherent and consistent ground rules for the development of this resource, as compared with oil and gas and other mineral development. From a landowner's perspective it is new experience to design fair and negotiable wind energy leases; and from the public perspective they feel a new threat for a change in "their" viewshed and recreational opportunities. Please understand that on the RSGA open public access is tolerated, and on the ground it is difficult to differentiate public and private lands as there are no fences to differentiate federal and private land.

From a "checkerboard" landowner's perspective we offer the following topics that need to be addressed by the Task Force:

1. **Economic Benefit to Landowner:** Wind energy is one resource development where the surface owner will enjoy direct and sustained economic benefit, while retaining the discretionary authority to participate. Typically the interest and authority of the checkerboard surface owner is subordinate to the rights of industry to develop mineral resources, produce power, and provide transmission.
2. **Economic Benefit to Community:** The potential for wind energy development to contribute to local and state governments should be obvious; however it needs intense study for the long term benefit. This topic was discussed in detail at the recent Wind Symposium. An interesting discussion was the Payment in Lieu of Taxes approach that appears to be common in the mid-west and adjacent states.
3. **Economic Viability of the Agricultural Landowner:** Livestock operations and mineral development can continue with wind energy, not so with residential development. Wind energy developments may compromise the open space but surely do not eliminate open space and useable space on the landscape for livestock, wildlife, mineral development, and recreation. Wind energy projects could provide opportunity to sustain livestock operations and relative open space on private lands.

Local public officials and agencies so concerned for open space may have to consider contribution to retain those assets. Based on public comments, and increased use of conservation easements a

land trusts, open space now has value. Landowners cannot be expected to sacrifice potential income and donate this value to satisfy a public opinion of "not in my backyard". Public opinion does not and cannot have the ability to deny wind energy development under existing and developing statutory authority.

4. **County vs. State Authority, Need for a Wyoming Energy Wind Commission:** Local county governments and staffs cannot be allowed to have veto authority for wind energy development. Local officials can come and go with elections, and there is a necessity for a central state agency to limit local authority over private land use, especially if in conflict with public land objectives and state statutes. The ability to prohibit development through stipulations placed on conditional use permits can eliminate the feasibility of multi-million dollar projects on remote agricultural zoned lands. The purported basis for these stipulations has been the public desire to maintain open space and viewsheds on the private lands upon which the development is requested. We are now experiencing this very situation. For wind energy, a model law and regulations are needed at the state level to guide present and future county officials and staff.

The rationale for regulation and standards for wind energy should follow the rationale for rules and procedures for oil and gas production and conservation. Otherwise there will be at least 6, and potentially 24, individual sets of county regulations for wind energy development in Wyoming, including the transmission of this energy. There needs to be a Wyoming Wind Energy Commission established to develop rules and regulations. The Wyoming wind resource and wind energy developments have potential for inter-state and regional significance that will override local politics, and individual agendas.

5. **Transmission and Regulatory Authority:** There is a need to revisit authority for eminent domain and the minimum required negotiations with landowners prior to a formal taking. The option for the landowner to insist on leasing of rights-of-way, and term easements, should be defined as a bundle of the rights for a landowner to negotiate transmission routes. The typical "before and after" appraisal analysis is out of date, as open space/viewshed now has value, and the income approach is common place. There need to be incentives for landowners to appreciate and accept projects on their land into the future. Annual income is a positive incentive for landowners to enter into negotiations for wind energy and transmission.

Wind energy invites development of transmission by non-utility corporations. These interests may not have the power of eminent domain based on public need. In these situations, a lease agreement may be the common arrangement with the landowner, and the utility corporations may have to give this option consideration if projects are to occur.

6. **Not in My Back Yard:** In Southwest Wyoming the public perceives a given right to preserve viewsheds on public as well as private land, especially within the checkerboard. The public appears to assume a prescriptive right to preservation of the viewshed. This right does not exist except in designated special management areas on public lands.

To create this assumed right, creative zoning and conditional use stipulations are now routinely developed by county planning staff and commissions to honor the interests of special groups and holes in existing regulations in order to stop or delay wind energy projects on private land. Public statements by local officials discredit the due process of existing land use regulations, and support “not in our back yard” interests prior to due process. These comments reflect the situation in Sweetwater County and reaction to projects on RSGA. The decisions of county officials have little or no authority on federal land; hence a conflict of land use authority now exists. The role and limits of local government must be discussed and defined by the Task Force.

- 7. Threatened and Endangered (TE) Species:** State officials must communicate and consult with private landowners regarding topics related to potential federal TE designations, and strategy to avoid listing of a species. Subjective and arbitrary decisions regarding critical habitats and core areas have severe economic consequence to the state and especially private land owners. By federal statute, economic impacts are not considered in the federal TE decisions, yet are a basic fact of life for land owners, and local governments.

If restrictive regulations and executive orders eliminate a viable wind project, a landowner may be forced to consider other options to generate needed income. These options may be counterproductive to the original intent to restrict use of the land and protect the species of interest. Sub-divided land for residential and industrial use would be more intrusive to the species of interest than the wind energy projects. Obviously every landowner has their unique situation.

Sage Grouse Core Areas may now prohibit several wind energy projects in many areas in Southwest Wyoming. There was limited discussion for the viability of the core area designations, nor consultation with landowners in the decision to identify and designate. RSGA does appreciate the concept if it helps to counter federal efforts to list the sage grouse, and we understand the significance of the impact of a listing. However this places the entire burden on the landowner and industry to prove there will be no impact on sage grouse within the designated core areas. It is unknown if BLM decisions will follow the Governor's lead. Therefore it is possible that small wind energy projects, those not requiring Industrial Siting permit, could be permitted on public land by federal decision, and prohibited on adjacent private land by Executive Order. These realities need to be discussed by the Task Force; otherwise it is the landowner that is being asked to sacrifice income for the cause.

- 8. Industrial Siting, and NEPA Procedures:** With NEPA regulations and other procedures, once the formal process starts, landowners are just one of the audience, and generally a minority of opinion, especially during the hearings associated with these processes. The landowner has more of a role than being the minority during public debates. Often the landowner must rely on a third party public organization to represent their interest during the formal public process. Public agencies are often landowners too, yet control public agendas, and determine when private landowners have input into processes that include private land.

Existing authorities and regulations were developed when typical landowners focused on their agricultural operations and were inexperienced and often naive to the procedures and complications of environmental analysis, so the agencies assumed that role---hence landowners were seldom invited to the table. Not so today, many landowners are well educated and experienced in environmental and socio economic issues and often have more experience than agency staffs assigned to do the analysis. It is time to redefine the role of land owners in public discussions, and they deserve at least affected interest status with a seat at the table to negotiate approaches to environmental analysis and industrial siting hearings for wind energy on their land.

Rock Springs Grazing Association appreciates the opportunity to express our views to the Wind Energy Task Force.

Sincerely yours,

*Signed*

John W. Hay III, President

