

# **2010 WIND ENERGY TASK FORCE**

**REPORT TO THE LEGISLATURE AND GOVERNOR**

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### **I) WIND ENERGY TASK FORCE BACKGROUND AND TASKS**

Chapter 48, Wyo. Session Laws (2010), continued the Wind Energy Task Force, originally created by 2009 Session Laws, Chapter 159, Section 348. Although the task force was originally asked to study many of the broad topics impacting wind energy development in Wyoming, Chapter 48 required the task force to consider only a narrow range of topics. Specifically, the task force was asked to:

clearly define collector systems, identify and recommend conditions appropriate for the use of condemnation authority authorized pursuant to W.S. 1-26-815 for collector systems for commercial facilities generating electricity from wind, consider and recommend appropriate public policy with respect to the severance of the wind estate from the surface estate and consider and make recommendations regarding the amount, method and duration of payment to landowners who are subject to the construction and operation of wind energy collector systems on their land.

The task force was directed to report its findings and recommendations to the Governor and the Legislature no later than November 1, 2010.

The task force was comprised of ten members; three appointed by the Governor, three appointed by the President of the Senate and four appointed by the Speaker of the House. The task force selected Representative Kermit Brown as its chairman and Senator Drew Perkins as its vice chairman. Other members of the task force were Senator Marty Martin, Senator Michael Von Flatern, Representative Seth Carson, Representative William "Jeb" Steward, Representative Tim Stubson, Commissioner Kent Connelly, Adam Gassaway and John Hay III.

In completing the tasks assigned to it, the task force hosted three meetings. The task force met on May 27, 2010, July 8-9, 2010 and September 30, 2010. The minutes for each of these meetings are included in the appendix and are available on-line at <http://legisweb.state.wy.us>. At all meetings, the public was invited to provide public comment, address issues and provide information. The task force reserved considerable time for public comment at each meeting. In addition to public comment, the task force received reports and testimony from various governmental and non-governmental experts. This information primarily centered around the nature and status of wind energy development in Wyoming, the nature, construction and definition of collector systems, Wyoming's eminent domain law and the compensation paid to landowners whose land is condemned. Much of the testimony and expert opinion delivered to the task force included formal presentations, all of which are included in the appendix to this report.

At the end of the second meeting, the task force formulated formal recommendation alternatives and the Legislative Service Office constructed a formal outline of those alternatives. See Appendix item #2. During the third and final meeting, the task force used the outline to formulate formal recommendations and voted to adopt or reject those recommendations. At the end of the third meeting, the task force had adopted by a majority vote of its members the recommendations contained in this report.

In completing its tasks, the task force received valuable assistance from a number of people. In addition to thanking the public for its valuable participation, the task force would like to recognize the Governor's Office for providing valuable technical support and thank the state agencies that provided testimony. The task force also would like to thank the University of Wyoming for providing significant research for the task force's studies. Specifically, the task force recognizes the efforts of the University of Wyoming Law School, student Crystal McDonough and Professor Dennis Stickley, who completed a comprehensive study of eminent domain law and land-use compensation schemes.

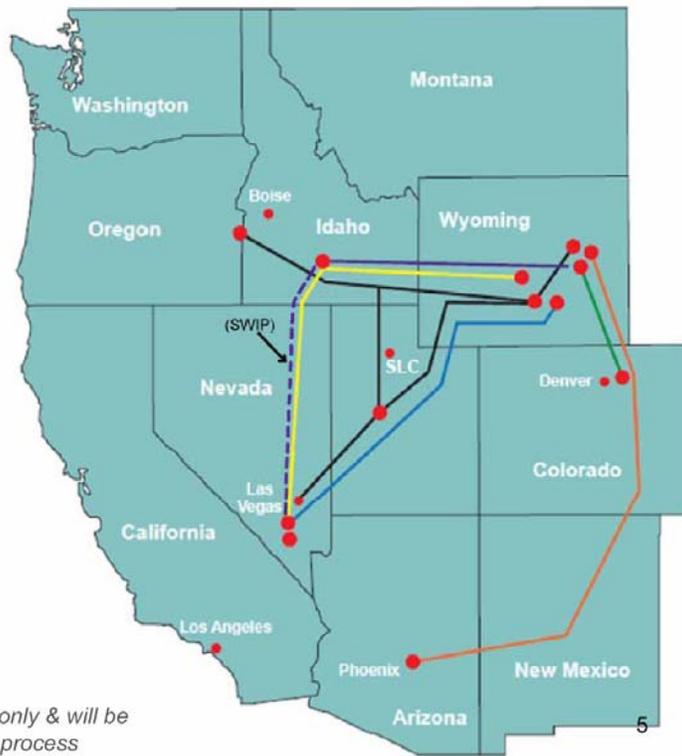
## II) BACKGROUND AND STATUS OF WIND ENERGY DEVELOPMENT

Throughout the task force's two years of study, testimony has consistently shown that one of the most important factors in the development of Wyoming's wind energy is the means for transporting that energy to market. At least six large transmission lines are currently being planned to export energy out of Wyoming. These lines and their approximate routes are indicated in the diagram below:

### Review of Transmission Development in Wyoming

#### Projects (In-service dates)

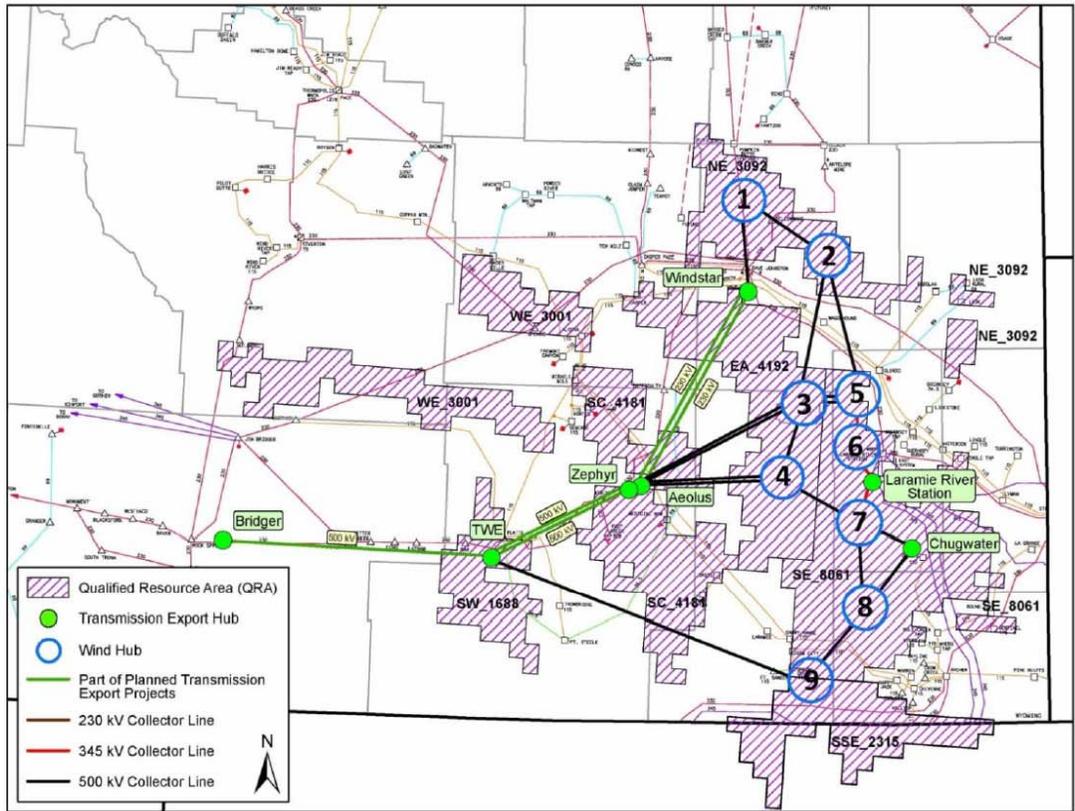
Wyoming-Colorado Interie		(2013)
Energy Gateway (West & South)		(2010-2017)
TransWest Express		(2015)
High Plains Express		(2018)
Zephyr		(2015)
Overland Transmission		(2015)



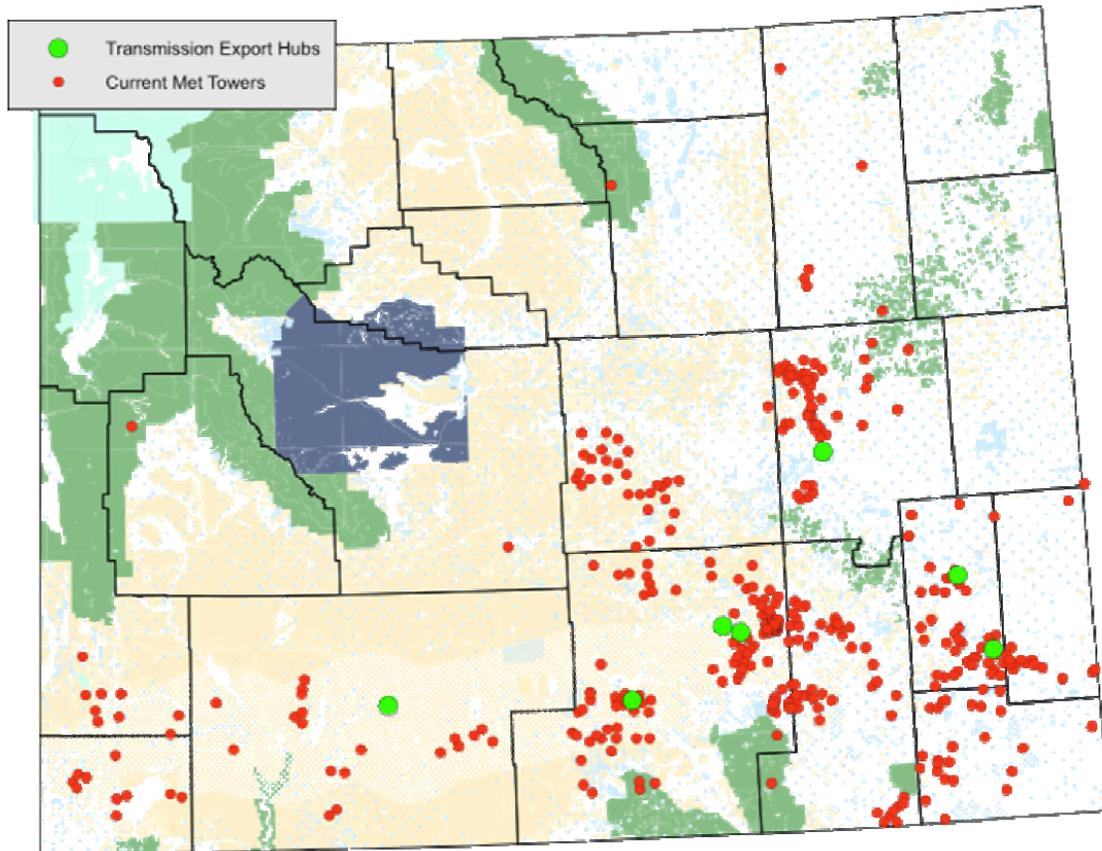
*Routes shown are for illustrative purposes only & will be finalized following the permitting and siting process*

\*Provided by the Wyoming Infrastructure Authority

Wind energy, however, is not generated at one single point where it can be directly connected to these large, interstate transmission systems. Instead, wind farms and wind energy potential are spread across large areas in Wyoming. The diagrams below indicate the locations of existing wind energy generation, as well as the locations of potential future development.



\*Provided by ICF International



\*Provided by the Wyoming Governor's Office

If wind energy generation facilities were developed in the areas indicated on the diagrams, a corresponding system likely would be developed to carry electrons from their point of generation to the points where they could be placed onto the interstate transmission systems.

According to the testimony, one of the scenarios that could be anticipated for future development includes approximately 12GW of wind energy power throughout Wyoming. Because existing transmission systems are near their operating limits and are not designed to collect energy from multiple, additional generation sources, new systems capable of collecting and transporting this power would need to be constructed. These systems have been generically referred to as collector systems.<sup>1</sup> This report will concentrate on the formal definition of "collector system" because it is the term used for purposes of regulating the siting of electric transmission systems.

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<sup>1</sup> ICF International was contracted through the Wyoming Infrastructure Authority and the Wyoming Collector System Task Force to consider the technical reality of creating collector systems in Wyoming to carry 12GW of developed electricity to export points in Wyoming. ICF concluded that such development is technically possible and feasible in Wyoming. A summary of the ICF report is included in the Appendix, item #4.

Any effort to develop collector systems in Wyoming will necessarily involve using private and/or public lands on which to site the systems. This report analyzes both eminent domain law, which allows collector system developers to use private lands for the placement of their systems, and the compensation schemes used to compensate landowners who host collector systems. The compensation schemes include compensation that is constitutionally required when the power of eminent domain is exercised to take land, compensation methods used in open-market land use negotiations and the compensation required by governmental agencies when public lands are occupied for wind energy development.

### **III) TOPICS CONSIDERED BY THE TASK FORCE:**

The following topics were studied by the task force as required by Chapter 48, Wyo. Session Laws (2010). Within this report, each study topic includes a discussion of the issues that the task force found relevant to the study topic.

#### **Topic 1: Defining the Collector System**

The task force was asked to define the term "collector system." Chapter 48, Wyo. Session Laws (2010), §3. The formal definition of a "collector system" is important because it is the term used for purposes of regulating the siting of electric transmission systems. The term "collector system" is currently defined in the Wyoming Industrial Siting Act to mean:

the electrical transmission infrastructure, including conductors, towers, substations, switchgear and other components necessary to deliver power from any commercial facility generating electricity from wind up to, but not including, electric substations or similar facilities necessary to interconnect to existing or proposed transmission lines that serve load or export energy from Wyoming.

W.S. 35-12-102(a)(xiv).

The task force received testimony concerning the collector systems which will be necessary to transport Wyoming's wind energy to hubs where it can serve load or be transported out of state. This testimony included information regarding the size and potential designs for such systems and the intermediate hubs which could be used to combine generation sources for transport to larger hubs. The testimony raised questions as to whether the term "collector system" should include only those lines which lead directly from wind towers to a first hub, or whether the term should be broader to include all lines, hubs and other infrastructure connecting wind towers to the point where wind generated electricity can serve load or be placed onto an interstate transmission system.

Various entities, including the Governor's Office, The Industrial Siting Council, Rocky Mountain Power and Renewable Energy Transmission Company, Inc., testified that the existing definition of "collector system" contemplates all parts of an electrical

transmission system from the point of generation at a wind turbine to the last point before the electricity enters a facility allowing it to serve load or be exported out of the state. All entities that provided testimony on this issue were asked if a more appropriate definition is available. No testimony indicated any concerns with the current definition or its interpretation and the task force received no suggestions for a better or more appropriate definition.

## **Topic 2: Appropriate Use of Eminent Domain for Collector Systems**

Pursuant to Chapter 48, Wyo. Session Laws (2010), §3, the task force was asked to "identify and recommend conditions appropriate for the use of condemnation authority authorized pursuant to W.S. 1-26-815 for collector systems for commercial facilities generating electricity from wind." The power of eminent domain is founded in the Wyoming Constitution, in the Wyoming Eminent Domain Act and in Wyoming's court rules. See Wyo. Const. Art. 1, §33, W.S. §§1-26-501 through 817 and W.R.Civ.P. 71.1. W.S. 1-26-815, referenced in Chapter 48, Wyo. Session Laws (2010), provides specific authority for private enterprises to exercise the power of eminent domain for "the location, construction, maintenance and use of...electric power transmission and distribution." W.S. 1-26-815(a). This language likely is broad enough to include the construction, maintenance and use of wind energy collector systems.

If a private business wishes to exercise its eminent domain authority, it must initiate an action by filing suit in state district court. There are various criteria and procedures which determine whether the condemnation will be allowed. See W.R.Civ.P. 71.1 and W.S. 1-26-501 through 817. W.S. 1-26-504 provides the substantive elements which must be proven before a court can allow condemnation:

(a) Except as otherwise provided by law, the power of eminent domain may be exercised to acquire property for a proposed use only if all of the following are established:

(i) The public interest and necessity require the project or the use of eminent domain is authorized by the Wyoming Constitution;

(ii) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and

(iii) The property sought to be acquired is necessary for the project.

W.S. 1-26-504(a). Pursuant to W.S. 1-26-509, a condemner must make reasonable and diligent efforts to acquire property in good faith negotiations before seeking condemnation. See W.S. 1-26-509 and 510. While a public entity can be given fee title to land condemned by it, private entities are entitled only to an easement. W.S. 1-26-514.

Although Wyoming law grants private businesses the authority to exercise eminent domain for the construction of collector systems, the Legislature has placed a temporary moratorium on such activity. In addition to organizing the task force, Chapter 48, Wyo. Session Laws (2010) adds a new subsection to W.S. 1-26-815:

(d) No person qualified to exercise the condemnation authority granted by this section, except a public utility that has been granted a certificate of public convenience and necessity pursuant to W.S. 37-2-205, shall exercise the authority for the erection, placement or expansion of collector systems associated with commercial facilities generating electricity from wind. The prohibition imposed by this subsection shall be effective immediately and shall end June 30, 2011, or upon the effective date of legislation establishing additional conditions for the use of condemnation authority for the erection, placement or expansion of collector systems associated with commercial facilities generating electricity from wind, whichever occurs earlier. As used in this subsection, "collector systems associated with commercial facilities generating electricity from wind" means the conductor infrastructure, including conductors, towers, substations, switchgear and other components necessary to deliver power from any commercial facility generating electricity from wind up to but not including electric substations or interconnections facilities associated with existing or proposed transmission lines that serve load or that export energy from Wyoming.

Enrolled Act No. 48, Wyo. St. Legislature (2010), §1. In the context of this moratorium, the task force considered whether the power of eminent domain should be restored to private businesses seeking to use the power to construct wind energy collector systems.

In considering this question, the task force received testimony concerning the procedural and substantive protections provided to private property owners whose land is sought to be condemned. The task force noted the substantive elements of W.S. 1-26-504, outlined above, which must be proven by a condemner before condemnation will be allowed. The task force also noted the extensive revisions to Wyoming's eminent domain law during the 2007 legislative session and the important protections provided to landowners as a result of the 2007 legislation. See Chapter 81, Wyo. Session Laws (2007). Among other things, that legislation included extensive notice requirements and the requirement that entities seeking condemnation negotiate in good faith with the affected landowner.

The testimony, however, highlighted important limits on landowner protections. These limits include the fact that landowners are given as little as fifteen days from the date they receive formal notice of a condemnation action to the day they must defend that action in court. See W.R.Civ.P. 71.1(e). Further, it is the landowner, not a condemning developer, who has the burden at trial of proving the value of condemned land. The testimony also pointed to the fact that Wyoming's eminent domain law does not require a private condemner to have obtained all necessary environmental or other permits prior to filing a condemnation action. The task force heard testimony indicating that, in at least one case,

a landowner defended and lost a condemnation action after which the action became moot as a result of the condemner's inability to satisfy environmental requirements imposed by the Wyoming Environmental Quality Council.

Testimony also indicated that Wyoming's case law dilutes landowner protections by adopting relatively liberal standards for evaluating a condemner's offers of proof. "When a condemner seeks to establish the requirement of necessity..., it need only show a reasonable necessity for the project." Bd. of County Comm'rs of Johnson County v. Atter, 734 P.2d 549, 553 (Wyo. 1987); also see Conner v. Bd. of County Comm'rs, Natrona County, 2002 WY 148, 54 P.3d 1274 (Wyo. 2002). Further, in the context of condemnation for energy delivery within Wyoming, the Wyoming Supreme Court has interpreted the "public interest and necessity" requirement to be broadly satisfied by the "ever-increasing demand for more electric power." Bridle Bit Ranch Co. v. Basin Electric Power Co., 2005 WY 108; 118 P.3d 996, 1015 (Wyo. 2005). Whether an equally broad interpretation of public interest and necessity would be adopted where the "ever-increasing demand for more electric power" is an out-of-state demand, the task force does not know.<sup>2</sup> However, the Wyoming Supreme Court has held that, to constitute a public interest, it is not necessary that an entire community, or even a considerable portion of it, directly enjoy or participate in a condemnation project. Associated Enters., Inc. v. Toltec Watershed Improvement Dist., 656 P.2d 1144 (Wyo. 1983). The task force concluded that there is merit to the testimony expressing concern about the level of scrutiny applied to Wyoming condemnation actions.

In considering the context in which eminent domain is allowed in Wyoming, the task force gave special consideration to the fact that private businesses are given the power to condemn, a power normally reserved to governmental sovereigns. 26 Am. Jur.2d Eminent Domain, §28 (2009). Unlike governmental entities, private businesses are not responsible to an electorate and are under no obligation to adopt or comply with open meeting standards or other processes that promote transparency. The task force, however, did note the distinct position occupied by regulated public utilities.<sup>3</sup> Although regulated utilities generally are private businesses, public utility projects are subject to regulation by Wyoming's Public Service Commission (PSC). Further, in addition to satisfying the other substantive and procedural standards required of every condemner, a public utility must acquire from the PSC a certificate of public convenience and necessity (CPCN) prior to filing any condemnation action. See W.S. 1-26-816. The detailed notice and application procedures for a CPCN are contained in W.S. 37-2-205 and include notice to impacted landowners, both individually and by publication, proof of having

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<sup>2</sup> Testimony indicated that much of the energy collected by Wyoming wind farms will be transported out of state to meet energy demands in larger population centers. As a result, the Wyoming Supreme Court might distinguish condemnation cases involving Wyoming's "ever-increasing demand for more electric power" from cases seeking condemnation to satisfy increasing demand elsewhere.

<sup>3</sup> Most business constructing collector systems or developing wind energy are not public utilities. A public utility is defined by statute to include only those businesses which sell their power directly to the public. A business is not regulated as a public utility if it sells its power, wholesale, to another company who, in turn, sells that power to the public. W.S. 37-1-101; Bridle Bit Ranch Co. v. Basin Electric Power Co., 2005 WY 108; 118 P.3d 996 (Wyo. 2005).

acquired necessary rights-of-way and an opportunity for all affected private property owners to be heard. See W.S. 37-2-205.

In addition to the nature of eminent domain power and the protections provided to private landowners, the task force gave considerable attention to the frequency with which private businesses are using eminent domain for purposes of developing wind energy collector systems. The testimony was unanimous among private condemners and indicated that eminent domain is used only as a last resort in siting collector systems. Collector systems and their associated transmission lines have a useful life approaching or exceeding seventy-five years. Collector system developers recognize the need to develop long-term, cordial working relationships with landowners who will have to host electric facilities and allow continued facility maintenance on their property. The testimony indicated that, even with large, multi-state projects, eminent domain is involved in no more than 2-3% of typical transmission projects. Only a small fraction of those cases actually go through the entire process and require court ordered condemnation. These same developers did explain, however, that transmission systems cannot be sited for one landowner. Rather, they must be sited and developed in a way that is good for the largest number of landowners and with a view toward the logistics of the entire route. Their testimony indicated that the power of eminent domain is necessary when there are a limited number of landowners who intend to defeat an otherwise properly sited project.

In response to the testimony indicating that eminent domain is rarely used, the task force received considerable testimony indicating that it is not the use, but rather the existence or threat of use, that presents a problem for Wyoming's private landowners. Consistent with this testimony, the task force found that bestowing eminent domain authority on private collector system developers skews and distorts the normal balance of negotiating power. A company that can condemn private land has a significant advantage in negotiation because of the spoken or unspoken threat of imposing the burdens and expense of defending a condemnation lawsuit and, ultimately, because they have the ability to use a landowner's land without the landowner's consent. Further, as more thoroughly discussed below, the fair market value given to private lands in a condemnation action is not likely to be satisfactory to the landowner. The task force believes that the grant of eminent domain authority given to private collector system developers does prevent normal market factors from operating in land-use negotiations and places a significant cloud over a landowner's ability to negotiate.

When considering the issue of eminent domain's impacts on negotiating power, the task force asked collector system developers, regulators and experts about the impact of removing private developers' eminent domain authority. The testimony showed that removing the authority would likely have the impact of encouraging developers to work together, to pool their efforts and to consolidate their systems where possible into common corridors with smaller over-all footprints. The testimony also indicated that, without the threat of being individually forced into condemnation actions, landowners would be much less constrained to negotiate in groups, to form landowner associations and to collectively bargain. The public utilities did indicate that this practice might result

in developers paying more for the use of private land and, therefore, might increase overall costs of electricity.

Based upon all the information provided on the topic of eminent domain authority, the task force considered various options for changing the current system. The options which were most seriously considered by the task force are outlined in the 2010 Wind Energy Task Force Draft Report Outline, Appendix item #2. They included the option of removing eminent domain authority for private businesses developing collector systems and the option of requiring developers to successfully negotiate land use agreements with a high percentage of landowners prior to being allowed to exercise eminent domain authority.

### **Topic 3: Proper Compensation for Landowners Who Host Collector Systems**

The final topic considered by the task force was the amount, method and duration of payment to landowners who are subject to the construction and operation of wind energy collector systems on their land. Chapter 48, Wyo. Session Laws (2010) §3.

The Wyoming Constitution states that "[p]rivate property shall not be taken or damaged for public or private use without just compensation." Wyo. Const. Art. 1, §33. In a condemnation action, just compensation is generally considered to be the fair market value of the property interest condemned. In a condemnation proceeding, fair market value generally is determined by three appraisers. W.R.Civ.P. 71.1(e)(2)(D) and (h). The determination of fair market value is guided by a number of statutory provisions. See W.S. 1-26-701 through 714. If the parties do not agree with the valuation determined by the appraisers, the valuation issue is decided at a trial in which the landowner carries the burden of proving the value of the interest that has been taken. Energy Transp. Sys. v. Mackey, 620 P.2d 1152 (Wyo. 1982).

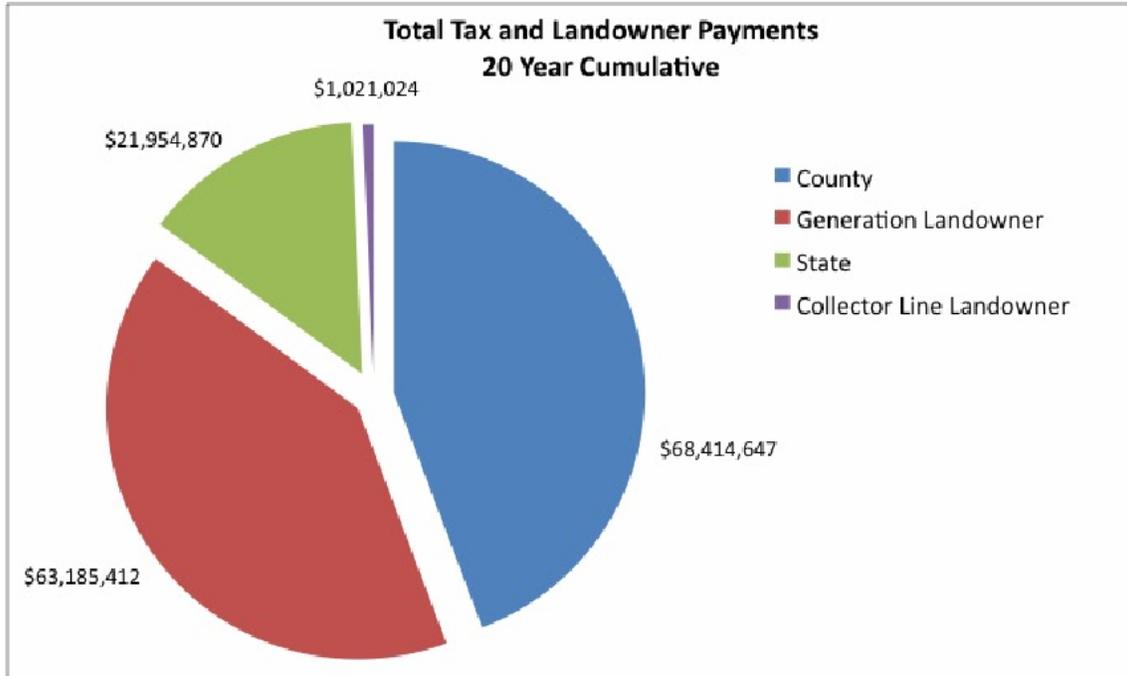
Once a court has determined the amount of damages to be awarded in a condemnation action, the court is authorized to allow lump-sum payments, annual installments or amortized payments to a landowner. See W.S. 1-26-514(b). Testimony to the task force indicated that one-time, up-front, lump-sum payments are the generally recognized standard for landowner compensation. Further, the testimony indicated that, regardless of whether payments are structured over time, they are designed only to compensate landowners for the value of the interest taken at the time of the condemnation. Importantly, the task force confirmed that Wyoming law does not provide any basis for awarding a condemned landowner continuing rental payments for the use or occupation of land, even where such use or occupation is for extended periods of time. Similarly, under Wyoming law, there is no means for compensating condemned landowners for the loss of future uses of land, even where the project for which the land is condemned may exist on the land for decades or even a century. The task force heard the testimony of second and third-generation Wyoming ranchers complaining that Wyoming's eminent domain law has forced them to host active transmission lines for which only their grandparents or great-grandparents received one-time payments, decades ago.

The compensation demanded by state and federal agencies places doubt on the appropriateness of Wyoming's eminent domain compensation scheme. The task force received a lengthy report from the University of Wyoming Law School and heard testimony from the Bureau of Land Management and Wyoming Office of State Lands and Investments concerning the compensation demanded from developers who seek to place wind energy collector systems on federal or state lands. The testimony conclusively showed that governmental entities consistently require developers to pay continuing rental payments. Some of these payments, like those due under special use leases issued by Wyoming's Office of State Lands and Investments, adjust depending on the value or quantity of the commodity being generated on the land (e.g. rent payments according to the electrical generating capacity placed on the land). Further, the rental payments typically are not static and are periodically adjusted to reflect inflation as well as new and changing conditions. None of these benefits are mandated under Wyoming's eminent domain statutes and are therefore unavailable to Wyoming's condemned private landowners.<sup>4</sup>

The task force also gave careful consideration to a study conducted by the Governor's Office which estimated the payments which would be made to private and governmental entities by a hypothetical, but typical Wyoming wind farm and its associated collector system. The study estimated the total payments made over a twenty year period to: 1) the landowner/hosts of the generation facility, 2) the county in which the project would be located, 3) the state of Wyoming and 4) the landowners/hosts of the wind energy collector system. The study revealed a startling discrepancy in compensation levels assuming a typical 300MW wind farm located in a hypothetical county with a tax structure like that found in Converse County and with typical types of land ownership. Specifically, the study estimated that the county would receive approximately \$68 million in total payments by the end of the twenty year period. Individual landowners hosting the wind turbines and associated generation facilities would receive approximately \$63 million in payments during this time. The state of Wyoming would collect approximately \$22 million. However, the landowners who would host the entire collector system would receive, in aggregate, approximately \$1 million dollars. The study included a pie chart which demonstrates the distribution of funds:

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<sup>4</sup> With regard to state and federal agencies, the task force also considered the burdens imposed on collector system developers by governmental entities for use of public property. These burdens include extensive permitting requirements as well as higher compensation which must be paid for the use of public lands. The task force considered whether these burdens have the effect of driving development onto private lands, where regulatory burdens and excess costs do not exist. Although this issue was not resolved by the task force, the testimony indicated that large project developers who are faced with negotiating with hundreds or even thousands of landowners tend to prefer to develop on public lands where they can enjoy the benefit of working with a single entity. Conversely, small projects, involving few land owners, prefer avoiding regulatory burdens and costs by developing on private lands.



\*Provided by the Wyoming Governor's Office

An enormous lack of balance between the collector system hosts and all others is apparent from the pie chart. The task force heard considerable testimony indicating that it is the threat of condemnation that drives compensation levels down for collector system hosts. Because continuing, adjustable land-use payments generally are not available in condemnation actions, developers generally do not offer such payments to collector system hosts. As a result, the collector system hosts generally receive only a one-time, up-front payment for use of their land. Unlike the others, they do not receive any continuing payments nor do they share in any part of the economics of the project.

As a result of the testimony and evidence received by the task force, the members agreed that those landowners who host wind energy collector systems are not being compensated at a level which is commensurate with compensation paid to other involved entities. Similarly, while taking no specific position regarding the compensation scheme required in condemnation actions, the task force members generally felt that the current practice of preferring one-time, up-front, lump-sum payments is often inadequate to compensate landowners for the long-term use of their lands.

Consistent with the task force's concerns about how collector system hosts are compensated, both in eminent domain proceedings and otherwise, the task force considered various options for providing more equitable compensation. The options which were most seriously considered by the task force are outlined in the 2010 Wind Energy Task Force Draft Report Outline, Appendix item #2. These options included requiring developers to successfully negotiate land use agreements with a high percentage of landowners and only then allowing standard eminent domain compensation law to set the compensation due to the remaining landowners whose property would be subject to eminent domain; requiring a high percentage of negotiated land use agreements

and then using the average of such negotiated agreements to set the compensation level for the remaining landowners whose property would be subject to eminent domain; and the option of allowing condemned landowners to receive periodic rental payments for the use of their lands.

In considering the options, the task force was mindful of the need to maintain a competitive position among states who want to promote wind energy development. The task force acknowledged that, in order to stay competitive and not unnecessarily increase the costs of wind energy development in Wyoming, any solution which provides increased compensation for collector systems hosts likely will have to draw that increased compensation from one of the other parties who is receiving compensation. In this way, the over-all cost of development does not increase. Although not within its purview, the task force contemplated the adoption of tax incentives for collector system developers who use periodic rent payments with appropriate periodic adjustments in their negotiated land use agreements. This approach would effectively redistribute a portion of the revenues received by the state to those who gained the benefits of the period payments, i.e. collector system hosts/landowners.

#### **Topic 4: Severance of the Wind Estate**

Chapter 48, Wyo. Session Laws (2010), §3 provided for the task force to consider appropriate public policy with respect to the severance of the wind estate from the surface estate. This topic also was assigned as an interim study topic to the Joint Judiciary Committee. Upon confirmation that the Joint Judiciary Committee was studying and considering the topic, the task force members voted not to make an independent evaluation of the issue.

### **IV) TASK FORCE RECOMMENDATIONS:**

Having studied the issues required by Chapter 48, Wyo. Session Laws (2010), the task force makes the following recommendations to the Wyoming Legislature and to the Governor:

#### **Topic 1: Defining the Collector System**

**Recommendation:** The task force recommends that the definition of "collector system" as found in W.S. 35-12-102(a)(xiv) not be amended or changed.

#### **Topic 2: Appropriate Use of Eminent Domain**

**Recommendation:** The task force recommends that the authority of non-governmental entities to exercise the power of eminent domain for the construction of collector systems, as defined by W.S. 35-12-102(a)(xiv), be removed. However, the task force further recommends that the power to exercise eminent domain for the construction of collector systems not be removed for public utilities that are regulated by the Wyoming Public Service Commission.

*\*Appendix item #1 is draft legislation which would accomplish this recommendation.*

*\*\*The final vote for this recommendation was six members in favor, four members opposed.*

### **Topic 3: Proper Compensation for Collector System Hosts**

**Recommendation:** The task force believes that removing the power of eminent domain from non-governmental collector system developers will provide landowners with increased negotiating power and will allow regular market factors to adjust the prices negotiated in land-use agreements. For this reason, the task force does not recommend any change to the existing law or rules regarding the compensation due in a condemnation action.

Respectfully submitted this 1<sup>st</sup> day of November, 2010:

A handwritten signature in cursive script, appearing to read "Kermit Brown", with a horizontal line extending to the right from the end of the signature.

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Representative Kermit Brown  
2010 Wind Energy Task Force Chairman

## Appendix

### NOTE:

*All information referenced in this appendix is available for review on the Legislative Service Office's web site:*

*<http://legisweb.state.wy.us/>*

- 1) 11 LSO 236, Wind Energy Collector Systems–Eminent Domain. Formal Draft Legislation.
- 2) 2010 Wind Energy Task Force Draft Report Outline.
- 3) Steve Ellenbecker, Wyoming Infrastructure Authority, Transmission and Generation Development in Wyoming, May 27, 2010. Powerpoint presentation.
- 4) Robert Henke, ICF International, Wyoming Collector and Transmission System Conceptual Design, May 27, 2010. Powerpoint presentation.
- 5) Stephen Burnage, Renewable Energy Transmission Company, Wind Collector System Task Force, May 27, 2010. Powerpoint presentation.
- 6) Butch Parks, State Lands and Investments, How Are Landowners Currently Paid for Transmission Easements, May 27, 2010. Formal memo submitted to the Wind Energy Task Force.
- 7) Walt George, Bureau of Land Management (BLM), Federal Land Use Decisions - - Effects on Private Land, May 27, 2010. Powerpoint presentation.
- 8) Bob Whitton, Renewable Energy Alliance of Landowners (REAL), My Turbine, Your Transmission Line, A perspective on Eminent Domain, May 27, 2010. Powerpoint presentation.
- 9) Matt Grant, Rocky Mountain Power, Task Force on Wind Energy, May 27, 2010, May 27, 2010. Bulletpoint letter summarizing Rocky Mountain Power's public comments.
- 10) Crystal McDonough, University of Wyoming Law School, Just Compensation in Eminent Domain Proceedings, July 8, 2010. Formal research memo submitted to the Wind Energy Task Force.
- 11) Crystal McDonough, College of Law and School of Energy Resources, University of Wyoming, Condemning the Wind: Eminent Domain Issues for Wind Collector Systems, September 21, 2010. Formal research paper submitted to the Wind Energy Task Force.

12) Aaron Clark, Wyoming Governor's Office. The Collector Line Debate in Wyoming, July 8, 2010. Powerpoint presentation.

13) Matt Micheli and Mike Smith, "The More Things Change, The More Things Stay The Same: A Practitioner's Guide to Recent Changes to Wyoming's Eminent Domain Act", 8 Wyo. L. Rev. 1 (2008), submitted to Wind Energy Task Force by Larry Wolfe, Holland and Hart (July 8, 2010).

14) Jeff Richards, Rocky Mountain Power, Wyoming Wind Task Force, July 8, 2010. Written handout summarizing Rocky Mountain Power's public comments.

15) Eminent domain authority of electricity producers and transmission companies, Informal attorney general opinion, November 25, 2009.

### **Meeting Minutes**

16) Legislative Service Office, Task Force Meeting Minutes for May 27, 2010 Meeting.

17) Legislative Service Office, Task Force Meeting Minutes for July 8 - 9, 2010 Meeting.

18) Legislative Service Office, Task Force Meeting Minutes for September 30, 2010 Meeting.