



April 21, 2010

Ed Mignery, President
Wyoming Game and Fish Commissioner
181 Miller Creek Rd
Sundance, WY 82729

Ronald "Jerry" Galles
Wyoming Game and Fish Commissioner
3332 Allendale Blvd
Casper, WY 82601

Fred Lindzey, Vice President
Wyoming Game and Fish Commissioner
17 Millbrook Rd
Laramie, WY 82070

Michael Healy
Wyoming Game and Fish Commissioner
1205 N Hillcrest Dr
Worland, WY 82401

Clark Allan, Commissioner
Wyoming Game and Fish Commissioner
PO Box 4068
Jackson, WY 83002

Clifford Kirk
Wyoming Game and Fish Commissioner
2591 Whitetail
Gillette, WY 82718

Aaron Clark
Wyoming Game and Fish Commissioner
PO Box 249
Wheatland, WY 82201

Re: "Wildlife Protection Recommendations for Wind Energy Development in Wyoming" and "Wind Energy Development Best Management Practices" (Drafts of April 5, 2010)

Dear Commissioners:

The purpose of this letter is to express our endorsement of the above-captioned work being carried out by the Game and Fish Department ("WGFD") and our strong support for rapid adoption of "best management practices" ("BMPs") for wildlife protection in the context of wind energy development.

The scale of development contemplated by the Wyoming Infrastructure Authority and its industry collaborators – 12 gigawatts of wind energy, equivalent to 120 installations of the size of the 10,500-acre Campbell Hill project north of Glenrock - would industrialize and web with "collector" transmission lines a vast area of the State. It's crucial that this development be properly sited if it is not to destroy the landscapes and wildlife that are so much a part of the quality of life in Wyoming. The Game and Fish Commission (the "Commission") and WGFD have a key role in strengthening the siting process to ensure that it adequately protects the habitat and wildlife that are central to the character and heritage of our State.

The Northern Laramie Range Alliance

The Northern Laramie Range Alliance ("NLRA" or the "Alliance") is a citizen group that formed one year ago to oppose wind energy development and associated transmission corridors that threaten to

industrialize much of the mountain country in Albany, Converse and Natrona Counties. The Alliance is not opposed to wind energy development *per se*, and has worked successfully with Rocky Mountain Power (to improve siting of the Gateway West transmission corridor) and with Duke Energy (to ensure that it could proceed with its well-conceived project in the high plains of Converse County). Rather, the Alliance is concerned that wind energy development be sited in a way that protects the open-space heritage of the Wyoming and, in particular, the State's iconic, varied-use landscapes such as the Northern Laramie Range ("NLR").

More than 800 citizens now have joined the Alliance, and it has been active at the county and state level to protect a landscape that contributes immensely to the quality of life in our part of the State. Our membership is a demographic cross-section: Town and country, rich and not-so-rich, working and retired, landowners and non-owner users of public and private lands in the mountains. It includes, notably, many active ranchers who live on and operate successfully their ranches in the Northern Laramie Range and who have rejected industrial wind energy development because of its affect on the wildlife, landscape and land values that are central to the success of their operations and their quality of life.

Alliance Support for Best Management Practices

As is well known to WGFD, the high country of concern to the Alliance is major habitat for a wide variety of wildlife of all descriptions. It contains some of the richest game management areas in the State, and the associated hunting and fishing activity forms a major part of the local economy. So the Alliance and its members have a direct and vital stake in the approach being taken by WGFD in seeking to ensure that industrial-scale wind development is sited only where it will not materially impair wildlife habitat and that wind developers conduct their activity in ways that minimize the possibility of any such impairment.

Accordingly, we strongly support efforts by WGFD to actively and persuasively fulfill its statutory responsibility to participate in permitting deliberations by the Wyoming Industrial Siting Council ("WISC") pursuant to W.S. 35-12-110(b), and in carrying out its cooperating agency responsibilities under the National Environmental Policy Act ("NEPA").

We also support promulgation of BMPs as a basis for WGFD recommendations in WISC deliberations. We believe that the Commission should adopt at its meeting on April 23, 2010, the BMPs as reflected in the captioned version. However, we also believe that the BMPs as contained in the above-captioned draft need strengthening in two principal respects:

- **Habitat protections.** In a number of respects, the BMPs as presently drafted are substantially less protective of the wildlife resources of the State than earlier drafts and that the more protective provisions should be restored. In particular, we urge the Commission and WGFD to restore provisions from the earlier drafts specifying that developers should avoid (1) further fragmentation of intact native habitats and (2) siting turbines within two miles of large wetlands (and one mile of smaller wetlands), forested habitats and perennial streams, reservoirs and riparian areas.
- **Economic implications.** The BMPs contain no provisions requiring assessment of the overall impact of a wind energy facility and/or the associated transmission lines on the use of the surrounding landscape (for example, a game management district within which all or part of a facility may be located) by hunters and fishermen and, accordingly, on the associated revenues to

the State (and WGFD), neighboring landowners and the local community associated with such activity. These impacts should be of central concern in WISC deliberations and to WGFD generally.

Notwithstanding the foregoing suggestions, we commend WGFD on the comprehensiveness of the research underlying its recommendations, and urge it to continue refining this work, and updating BMPs, as more information becomes available on the habitat and economic implications of industrial-scale wind energy development.

The “Property Rights” Issue

We are aware that the handful of landowners anxious to profit from wind-energy industrialization have urged the Commission to weaken and/or defer consideration of the proposed BMPs, and have asserted that action of this kind could amount to a “taking” of their property rights (presumably as that term is used in the 5th Amendment to the U.S. Constitution).

On the contrary, it is settled law – as concisely and persuasively delineated in the “Takings Guidelines and Checklist” prepared in 1995 for State agencies by the Wyoming Attorney General – that government has broad authority, when duly and properly exercised, to regulate land use in the public interest. To be a “taking,” a regulation would have to deprive a landowner of all or nearly all economically viable use of the land. The proposed BMPs are so clearly within the scope of public authority – and so remote from its boundaries – as to make a “taking” assertion simply laughable.¹

Conclusion

In closing, we once again urge you to take the responsible course in protecting the wildlife of the state and its habitat by adopting the proposed BMPs on April 23.

Respectfully,

THE NORTHERN LARAMIE RANGE ALLIANCE

By Its Steering Committee:

Kenneth G. Lay	Bret Frye
Tom E. Swanson	Lisa Mangus
Sharon Rodeman	Willard McMillian
Diemer True	Sally H. Sarvey

¹ At the same time, unbridled industrial wind development in scenic, multi-use areas itself deprives neighboring landowners of a substantial part of the value and potential uses of their property, and may accordingly constitute a public or private “nuisance.”