

**Memorandum of Understanding Between  
NaturEner Rim Rock Wind Energy, LLC and  
Montana Audubon**

1. This Memorandum of Understanding ("MOU") is made and entered into between NaturEner Rim Rock Wind Energy, LLC ("RIM ROCK") and Montana Audubon ("MONTANA AUDUBON"). The purpose of this MOU is to outline and memorialize the understanding and cooperation reached between RIM ROCK and MONTANA AUDUBON (individually a "Party" and collectively known as "Parties") with regard to the development of the Rim Rock Wind Energy Project (the "Project") with special attention to measures designed to protect and/or monitor raptors.
2. RIM ROCK is in the process of constructing the 189 MW Project on private property in Toole and Glacier counties in north central Montana. The Project presents a significant opportunity to spur capital investment in Montana, increase local employment, broaden the tax base of the respective counties thus improving county services and/or helping to reduce or limit the increase of property taxes to residents, generate clean renewable energy, enhance national security by accelerating energy independence efforts, and reduce greenhouse gas emissions. The Project was initially conceived of in 2005.
3. MONTANA AUDUBON is a wildlife conservation organization that promotes the appreciation, knowledge, and conservation of native birds, other wildlife, and their habitats.
4. Each Party supports a commitment to environmental sustainability and the desire to maintain the highest standards by which wind energy is developed to insure that such development addresses and mitigates for potential and/or realized biological effects,

including the reasonable and prudent steps necessary to avoid and/or minimize impacts to avian and bat species. It is noted that the east side of the Project is within an Important Bird Area designated by MONTANA AUDUBON, which has been identified because of its high concentration of nesting raptors.

5. RIM ROCK recognizes and acknowledges the contribution of MONTANA AUDUBON's mission to promote appreciation, knowledge and conservation of Montana's native birds, other wildlife, and natural ecosystems to safeguard biological diversity for current and future generations, and that its continuing efforts have been a substantial benefit to all Montanans.
6. Both Parties affirm that their common and individual objectives can best be achieved through cooperation and understanding of the overarching goals of each Party. RIM ROCK recognizes and acknowledges the recent valuable contributions and recommendations of MONTANA AUDUBON during the development of the Project, particularly its advice and counsel regarding wind turbine setback guidelines to help protect from historic and existing raptor nests.
7. MONTANA AUDUBON recognizes and acknowledges the unprecedented and extraordinary responsiveness of RIM ROCK to MONTANA AUDUBON's recommendations during the past several months, by agreeing to relocate 25 wind turbines to the extent possible and at great expense to RIM ROCK, in an effort to try to achieve at least one-half mile setback from historic and existing raptor nests, even after physical construction of the Project had already been initiated. It is recognized that of the 25 turbines that were relocated, it was not possible to fully achieve the minimum one-half mile setback from historic or existing raptor nests for a few turbines, but that

they were moved to the extent possible, and RIM ROCK was able to achieve at least a 0.48 mile setback in every case.

8. Both Parties agree that the recent history of their interactions regarding the development of the Project has involved an open and reciprocal exchange of information and ideas, and candid discussions around various raptor mitigation issues, resulting in a better understanding of each Party's motivation to achieve certain mutual and individual objectives. RIM ROCK agrees to keep MONTANA AUDUBON informed regarding concerns about raptors and related management and mitigation strategies. MONTANA AUDUBON will give RIM ROCK prior notice of any declarations or actions that it proposes to take with respect to raptor issues at the Project. RIM ROCK agrees to discuss and consider inputs proposed by MONTANA AUDUBON with respect to the Bird and Bat Conservation Strategy (BBCS) for the Project presently under preparation by RIM ROCK.
9. MONTANA AUDUBON advocated that RIM ROCK follow the U.S. Fish & Wildlife Service (USFWS), Wind Turbine Guidelines Advisory Committee Recommendations by committing to a fundamental policy to minimize adverse impacts to wildlife; institute specific plans, procedures, and processes to reduce potentially adverse impacts to birds and bats during each stage of project development, construction, and operation; and, provide implementation tools, including training, auditing, and reporting. Specifically, to the extent possible:
  - a. Increase the setback requirements of Project facilities and equipment from both active and historical raptor nest locations to at least ½ mile;



- b. Determine both currently active and historic raptor nest locations dating back to 1988 and implement appropriate measures to avoid potential disturbance of such nests during certain periods of the year;
- c. Deploy the recommendations of the Avian Power Line Interaction Committee (APLIC 2006) to prevent potential raptor collisions and/or electrocution events with Project power lines and guy wires;
- d. Implement night lighting guidelines that avoid (1) confusing migrating birds, and (2) attracting swarming insects that, in turn, attract nocturnal foraging bats;
- e. Provide comprehensive worker environmental and wildlife awareness and education training programs; and
- f. Develop a BBCS for the Project that follows USFWS guidelines and is submitted for review, comment, and discussion with the USFWS, recognizing that certain further modifications may be appropriate given that the Project is under construction and may be in operation before comments, if any, are received from USFWS.

10. In response to concerns and recommendations expressed by MONTANA AUDUBON during the current construction phase, RIM ROCK sought to address these items.

- a. RIM ROCK consulted with USFWS, Montana Fish, Wildlife & Parks (MFWP), and the Bureau of Land Management (BLM) in early 2009 wherein it was suggested that RIM ROCK should consider utilizing setbacks ranging from a ¼ to ½ mile from known raptor nesting locations. Based upon information available at that time, RIM ROCK subsequently elected to implement a ¼ mile setback and revised the proposed layout design by removing ten turbines and moving nine turbines.

- b. Earlier this year, strong, well-supported recommendations by MONTANA AUDUBON for a ½ mile setback from both active and all historically identified raptor nest locations were presented to RIM ROCK. After careful consideration, and even though the Project design had been finalized and construction had already started, RIM ROCK began rapidly implementing a plan for relocating 25 additional turbines to further minimize the impact of the Project on nearby nesting raptors, with an overall goal of achieving a ½ mile setback from all historical raptor nest locations.

11. In further response to MONTANA AUDUBON's recommendations, RIM ROCK has agreed to include in its initial draft of the BBCS submitted to USFWS for consideration by USFWS the following:

- a. Conduct an aerial helicopter survey of the Project Area (10-mile radius of a center point of the Project footprint) to determine the number, location, and the occupying species of each raptor nest in the Project Area (April and June 2012);
- b. Subject to permitting restrictions which may be imposed by the Montana Fish, Wildlife and Parks Service, GPS radio tag at least one resident Golden Eagle in 2013, and for such other periods as are specified in the BBCS, to conduct telemetry monitoring for both territorial range and typical foraging activities, or by implementing such other technology as may be appropriate to determine the nearby habitat use and eagle behavior;
- c. Conduct 800-meter, 20-minute raptor (esp. eagle) point count surveys every other week at 18 point count sites within the Project footprint for at least 12 months, and for such other periods as are specified in the BBCS (started the 1st week of April 2012);

- d. Conduct 800-meter, avian use surveys monthly within the Project footprint for at least 12 months, and for such other periods as are specified in the BBCS, focusing on both breeding birds and migratory species (started the 3<sup>rd</sup> week of April 2012);
- e. Conduct Pre-Construction Wetland Encroachment Clearance Surveys by a qualified wetlands biologist prior to clearing and grubbing for access road construction (started last week of March 2012);
- f. Hire a qualified wildlife biologist to monitor construction activities to ensure that wildlife disturbance is minimized (started the 1st week of April 2012);
- g. Hire a qualified consultant to conduct on-going wildlife familiarization training for all site personnel;
- h. Conduct quarterly environmental audits by RIM ROCK senior management, recording any deficiencies noted, corrective actions required, and determining the schedule for correction;
- i. Ensure that guy wires installed on new met towers and the overhead generator tie-line structures and cabling incorporate Avian Power Line Interaction Committee (APLIC) guidelines for conductor spacing, perch deterrents, and strike diverters during both design and installation to minimize raptor electrocution and impacts (NOTE: this feature was incorporated into the current design revisions, spring 2012);
- j. Use the results of the aerial raptor nest and the eagle point count surveys conducted in 2012 to determine whether the construction sequence and schedule should be adjusted to avoid disturbance of active raptor nests during the breeding season by keeping construction activities at least ½ mile from active raptor nests.

- k. Perform post-construction monitoring consistent with existing USFWS guidelines as they apply to the Project and in accordance with the BBCS. The Project will propose to have included in the BBCS, subject to further consultation with the USFWS, monitoring that includes:
    - i. At least two (2) years of post-construction mortality studies, with additional years of study conducted if RIM ROCK and/or the USFWS determine that the data indicates that it is warranted.
    - ii. An aerial raptor nest survey for occupancy and productivity the timing of which is as specified in the BBCS.
  - l. Submit historic raptor nest locations digitized from Bureau of Land Management studies conducted between 1988 and 2004 to the Montana Natural Heritage program located at the Montana State Library in Helena by December 2012.
12. To the extent permitted by law and/or by any separate agreements to which either Party may be a signatory, RIM ROCK and MONTANA AUDUBON agree to share with each other and with agency representatives of the State of Montana and with USFWS, the results of technical research, environmental data and wildlife studies promulgated by either Party to help manage the impact of wind energy projects on wildlife habitats in accordance with the BBCS, to the extent the information is not considered by a Party to be proprietary, confidential, or beyond the scope of this MOU.
13. RIM ROCK and MONTANA AUDUBON agree to maintain open communications related to the Project and wildlife impacts. In addition, and in order to maintain good faith between the Parties, RIM ROCK and MONTANA AUDUBON also agree to make



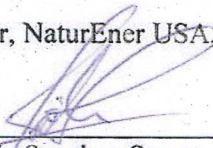
reasonable efforts to confer with each other before issuing any public statements about the other Party in the interest of ensuring accuracy of information.

14. RIM ROCK and MONTANA AUDUBON agree to issue a joint press release announcing the signing of this MOU and any other matters to which they shall both agree and both Parties agree to post the joint press release and MOU on their web sites in a conspicuous location.

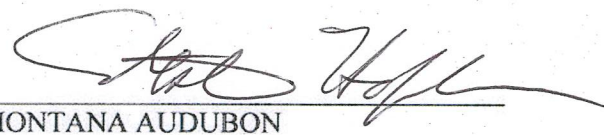
This MOU shall become effective on the date of the last signature and remain in full force and effect until terminated by either Party with 30 days written notice or June 1, 2014, whichever occurs first. This agreement may be reviewed, renegotiated, and modified as needed at the request of RIM ROCK or MONTANA AUDUBON.

NATURENER RIM ROCK WIND ENERGY, LLC

by its Manager, NaturEner USA, LLC

  
By: Jose Maria Sanchez Seara  
Its President and Chief Executive Officer

AUGUST 16, 2012  
Date

  
MONTANA AUDUBON

August 16, 2012  
Date