

THE OVERLAND TRAIL RANCH
CHOKECHERRY AND SIERRA MADRE WIND ENERGY PROJECT
CONSERVATION PLAN AND LANDOWNER AGREEMENT

This Conservation Plan and Landowner Agreement (this “Agreement”) is entered into as of _____, 2014 between **POWER COMPANY OF WYOMING LLC** (“PCW”) and **THE OVERLAND TRAIL CATTLE COMPANY LLC** (“TOTCO”).

Recitals

A. TOTCO owns and operates a large cattle ranching and agricultural operation known as the Overland Trail Ranch (the “Ranch”), which is located south of Rawlins and Sinclair in Carbon County, and headquartered in Saratoga, the Ranch consists of approximately 320,000 acres. The Ranch is in Wyoming’s “checkerboard” country, consisting of about half private land and half federal land managed by the Bureau of Land Management (“BLM”), along with a small percentage of state-owned parcels.

B. PCW is developing a wind farm known as the Chokecherry and Sierra Madre Wind Energy Project (“CCSM Project”). The CCSM Project will be located on approximately 125,000 acres of the Ranch. Total permanent land disturbance, however, for the turbines, access roads and related facilities is estimated to be less than 3% of the CCSM Project area. The CCSM Project will generate 2,000-3,000 megawatts of clean, renewable wind energy.

C. PCW and TOTCO have entered into that certain Grant of Easement and Easement Agreement and Restrictive Covenant by and between TOTCO and PCW dated November 30, 2007, as amended (the “Wind Easement”), which allows PCW to use the Ranch lands to construct and operate the CCSM Project.

D. The Ranch provides habitat for a variety of wildlife species. The BLM released a Final Environmental Impact Statement on July 3, 2012, which describes the CCSM Project in detail and analyzes and discloses the impacts of the CCSM Project, including impacts to wildlife species (the “Final EIS”) and subsequently issued a Record of Decision for the CCSM Project on October 9, 2012.

E. PCW, TOTCO and Wyoming Game and Fish Department (“WGFD”) have entered into a Memorandum of Understanding (“MOU”) dated December 10, 2012 to promote and maintain through collaborative efforts the availability and use of high quality habitat to sustain and enhance terrestrial and aquatic wildlife populations on the Ranch in conjunction with various land uses, including the continuation of ranching and agricultural operations as well as development of the wind energy resource through construction and operation of the CCSM Project.

F. The Wildlife Protection Recommendations for Wind Energy Development in Wyoming approved by the Wyoming Game and Fish Commission on November 17, 2010 (the “Wildlife Protection Recommendations”) provide for collaboration with the landowner(s) affected by wind energy development to develop a conservation plan for affected private lands incorporating mutually agreed upon goals and practices.

G. The Wildlife Protection Recommendations provide that the conservation plan shall be incorporated into the wind developer’s permit application to the Industrial Siting Council (“ISC”) and shall become the WGFD “recommendations” under W.S. 35-12-110 (b) and (c) and the WGFD recommendation to any local government entity.

H. The Wildlife Protection Recommendations provide that the parties shall jointly advocate for the ISC to incorporate the conservation plan into the wind developer’s permit.

I. The parties desire to enter into a conservation plan for the Overland Trail Ranch pursuant to the Wildlife Protection Recommendations setting forth the mutually agreed upon goals and practices for the Ranch and the CCSM Project, as set forth more fully below.

AGREEMENT

For good and valuable consideration the parties agree that PCW will support TOTCO’s management goals and practices in connection with its livestock operations on the Ranch as set out below:

- 1. TOTCO Operations.** TOTCO currently manages the Ranch as an active, year round livestock operation. TOTCO’s activities include, but are not limited to, raising cattle as a cow/calf and yearling operation, and growing feed for its livestock operations. Range resources within the Ranch consist of intermingled private, state and public lands administered as grazing allotments. The allotments are managed under an intensive rotation system in which grazing is rotated during the growing season among several different pastures within each allotment to provide complete growing season rest for all pastures on alternate years. As a result, water quality in affected streams has improved through soil stabilization, decreased runoff, increased infiltration, and enhanced riparian vegetation health.
- 2. TOTCO Management Goals.** TOTCO’s goals and practices for managing livestock operations on the Ranch are:
 - a.** Manage livestock grazing to meet the Wyoming Standards for Healthy Rangelands;

- b. Maintain and/or increase Animal Unit Month (AUM) levels for livestock grazing when feasible, providing that Wyoming Standards for Healthy Rangelands are met;
- c. Work closely with BLM to determine the most appropriate methods for achieving the desired plant community, in addition to meeting the Standards for Healthy Rangelands; and
- d. Design grazing systems and range improvements to achieve the management goals for livestock grazing and to achieve and maintain healthy rangelands.

For the avoidance of doubt, TOTCO is not obligated to manage the Ranch as set forth in Section 1 or Section 2 above, nor shall such sections otherwise limit TOTCO's complete discretion in the management of the Ranch.

3. **PCW Agreement to Cooperate and Support TOTCO Management Goals.** To the extent consistent with its goals and objectives for developing the CCSM Project and the terms and conditions of the Wind Easement, PCW agrees to cooperate and support TOTCO in meeting TOTCO's goals and objectives for managing livestock operations on the Ranch through the following actions:

- a. By implementing a reclamation plan with the objective of emphasizing eventual ecosystem reconstruction to maintain a safe and stable landscape, which means returning the land to a condition approximate to or better than pre-disturbance conditions. Reclamation objectives include initial stabilization goals and long-term reclamation measures to ensure biophysical conditions are maintained in the short term to achieve long-term goals of revegetation and ecosystem reconstruction.
- b. By implementing a weed management plan to prevent, mitigate, and control the spread of noxious and/or invasive plant species during construction and operation of the CCSM Project. The goal of weed management in the CCSM Project area will be to minimize the spread of noxious and/or invasive plant species during the construction and operation of the CCSM Project. PCW will assist federal, state, and local agencies' weed control efforts; comply with appropriate agency requirements designed to prevent the spread of noxious and/or invasive plant species; and implement weed control measures on areas of the CCSM Project that are identified to be of special concern. Success standards will be used to assess whether revegetation requirements for the CCSM Project are being met. Part of successful revegetation includes maintaining native or desirable plant communities with minimal undesirable plant species. Success standards and management goals will be designed to be site-specific to each surface-disturbing activity and the surrounding vegetation.
- c. By implementing the Applicant Committed Mitigation Measures set forth in Appendix Table C-2 of the Final EIS. Implementing these measures will avoid,

minimize and mitigate impacts to grazing operations, wildlife, aquatic resources and other resources within the Ranch.

- d. By controlling dust generated by CCSM Project construction activities through implementation of best management practices (BMPs) as listed in Appendix Table C-2 of the Final EIS. Controlling dust will avoid and minimize potential impacts resulting from reduced palatability of livestock forage and serve to maintain livestock health.

4. **Sage-grouse.** Through The Chokecherry and Sierra Madre Wind Energy Project Sage-Grouse Conservation Plan developed by PCW and dated August 2012 (the “Sage-grouse Conservation Plan”), PCW has committed that the CCSM Project will be developed in a way that complements and furthers federal, state and local goals to conserve the greater sage-grouse (*Centrocercus urophasianus*; hereafter sage-grouse). This Conservation Plan promotes sustainable sage-grouse populations and conservation of habitat through environmentally responsible planning and by incorporating the following principles: (1) protection of un-fragmented habitats (PCW’s commitment to no development within sage-grouse core population areas [EO 2011-5, Version 3 map]); (2) minimization of habitat loss and fragmentation (CCSM Project long-term footprint is less than 2,000 acres); and (3) management of habitats to maintain, enhance or restore conditions that meet sage-grouse life history needs (implementation of conservation measures). This conservation program will address threats to sage-grouse and will set the standard for the development of renewable resources in an environmentally responsible manner. This will be achieved by implementing science-based conservation measures for sage-grouse that will reduce or eliminate current threats as well as protect, restore and enhance habitat of sage-grouse and other species of interest on the Ranch and within the CCSM Project site. These conservation measures will insure that vital seasonal and year-long habitats on the Ranch are managed responsibly for the benefit of the sage-grouse. These measures will have ancillary benefits to BLM sensitive species and other species including sagebrush obligates, grassland endemics, avian species, big game species and aquatic species (See Appendix 1 to Sage-grouse Conservation Plan).

In addition, the parties have jointly prepared and submitted an application to the U.S. Fish and Wildlife Service (USFWS) for an Enhancement of Survival Permit under Section 10(a)(1)(A) of the Endangered Species Act. The USFWS is currently reviewing the parties draft Candidate Conservation Agreement with Assurances (“CCAA”) for sage-grouse, which will be expanded to include a Candidate Conservation Agreement (“CCA”), which will apply to the federal lands within the Ranch.

The parties agree as follows with respect to the Sage-grouse Conservation Plan and any CCAA and CCA ultimately approved by the USFWS:

- a. TOTCO agrees to cooperate with PCW so that PCW and its contractors can implement conservation measures outlined in the Sage-grouse Conservation Plan and any CCAA ultimately approved by the USFWS covering lands within the Ranch. The parties acknowledge that such conservation measures may include, but are not limited to, removing and marking fences, water improvement projects and other habitat improvements, reclamation of unnecessary two-track and other roads, and control of noxious and invasive plants.
 - b. To the extent that the finalized Sage-grouse Conservation Plan and any CCAA approved by the USFWS provide for actions on the Ranch that affect TOTCO's grazing or other agricultural operations, TOTCO agrees to fully implement all such measures as provided for in the Sage-grouse Conservation Plan and/or CCAA. TOTCO and PCW will allocate the cost of implementation of such measures on an equitable basis between them depending on the particular conservation measure involved.
 - c. TOTCO agrees that sage-grouse hunting will not be permitted on the Ranch in areas where no public access is permissible, including TOTCO-owned lands as well as intermingled federal lands to which TOTCO controls access, throughout the life of the CCSM Project.
 - d. The parties agree to each make available appropriate staff as necessary for implementation of the conservation measures outlined in the Sage-grouse Conservation Plan and any approved CCAA as well as to make available appropriate management level employees as may be needed to attend meetings with the BLM, WGFD, and USFWS or other applicable wildlife agencies with respect to implementation and monitoring of the Sage-grouse Conservation Plan and any approved CCAA.
5. **Mule Deer.** TOTCO and PCW agree to cooperate with WGFD and BLM in developing conservation and mitigation measures related to the Baggs Mule Deer Herd and the Platte Valley Mule Deer Herd. Such measures may include: cooperative research with the University of Wyoming; collaring animals to obtain more information on the herd; and monitoring of the habitat. TOTCO has and will continue to cooperate with the WGFD and the University of Wyoming on pronghorn antelope studies by providing access to the Ranch as requested on a case-by-case basis. The CCSM Project is not expected to have an impact on either the Sierra Madre or the Elk Mountain elk herds because the majority of the high quality elk habitat is located within Sage-Grouse Core Population Areas, where no wind development activities will occur.

6. **Birds and Bats.** PCW is developing an avian and bat protection plan for those species under the jurisdiction of the WGFD as directed by the Wildlife Protection Recommendations. PCW is working with the USFWS on a Bird and Bat Conservation Strategy (“BBCS”) and an Eagle Conservation Plan (“ECP”) that address conservation measures that will avoid, minimize and mitigate potential impacts of the CCSM Project on Avian and Bat Trust Species. TOTCO agrees to support PCW in implementation of the BBCS and ECP by providing reasonable access throughout the Ranch for avian and bat surveys and monitoring. TOTCO also agrees to allow PCW access to the Ranch to implement conservation measures required under the USFWS approved BBCS and ECP so long as such conservation measures do not unreasonably interfere with TOTCO’s operations and are consistent with TOTCO’s livestock management goals and practices as set forth in this Agreement.
7. **Watersheds.** PCW has developed a watershed monitoring plan for the CCSM Project designed to better define current watershed conditions and monitor future conditions of the watersheds. Sites from which channel characteristics and water quality will be monitored are located on TOTCO lands and state and public lands. TOTCO agrees to provide reasonable access to PCW to watershed monitoring sites on the Ranch as currently located or as may be from time to time established or relocated.
8. **Fish.** As set forth in the MOU, TOTCO has agreed to provide access to the Upper Muddy Creek drainage to designated WGFD personnel, or their supervised designees from the BLM or U.S. Forest Service, during the term of the MOU for the purpose of conducting fish surveys, the installation and maintenance of fish migration barriers, and performing mechanical and chemical treatments for habitat enhancement. The goal is to restore native roundtail chub (*Gila robusta*), bluehead sucker (*Catostomus discobolus*), flannelmouth sucker (*Catostomus latipinnis*), mountain sucker (*Catostomus platyrhynchus*), Colorado River cutthroat (*Oncorhynchus clarkii pleuriticus*) and speckled dace (*Rhinichthys osculus*) (“Upper Muddy Creek Fish Species”) through improvement and enhancement of habitat.
9. **Post-Construction Monitoring.** PCW has agreed to post-construction monitoring as set out in Attachment A. TOTCO agrees to support PCW in implementation of its post-construction monitoring commitments by providing reasonable access throughout the Ranch as required for PCW to comply with its commitments.

10. **Reimbursement of Expenses.** Except as expressly provided otherwise in this Agreement, PCW shall reimburse TOTCO for all costs and expenses reasonably and directly incurred by TOTCO in its performance of its obligations under this Agreement.
11. **No Third-party Beneficiaries.** TOTCO and PCW are the only intended beneficiaries of this Agreement and no rights are hereby created for the benefit of any third party, including without limitation any government agency. WGFD is not a party to or an intended beneficiary of this Agreement.
12. **Breach and Remedies.** In the event of TOTCO's or PCW's material breach of this Agreement, the other party's sole remedy shall be to require specific performance of the breaching party's obligations under this Agreement. There shall be no other remedy in law or in equity other than specific performance of this Agreement, including a claim for damages of any kind. The parties shall endeavor to settle any dispute, controversy or claim arising out of or relating to this Agreement, or its breach, termination or validity, which has not been resolved by negotiation by the parties, by mediation under the then current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Disputes. The neutral third party will be selected from the CPR Panel of Neutrals, with the assistance of CPR, unless the parties agree otherwise. If the matter has not been resolved within 10 days of the appointment of the neutral third party, then either party may bring an action related to the matter in any state court in Wyoming. PCW's breach of this Agreement shall not give rise to any claim of PCW's breach of (a) the MOU or (b) the Wind Easement.
13. **Covenants Running with Lands.** The provisions of this Agreement shall be covenants running with the Ranch lands and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
14. **No Representations or Warranties.** No representations or warranties of any kind are made by any party to this Agreement.
15. **Entire Agreement; Modification.** This agreement comprises the entire agreement between TOTCO and PCW with regard to the subject matter herein. The agreement shall not be modified, deleted or added to, except in writing signed by an authorized representative of TOTCO and PCW.
16. **Waiver.** The delay or failure of any party to enforce any of its rights under this Agreement shall not constitute a waiver of any such rights, unless such waiver is signed by an authorized representative of the waiving party and delivered to the other party. No custom or practice that may arise between the parties in the course of operating under this Agreement will be construed to waive any party's rights to either

ensure the other party's strict performance with the terms and conditions of this Agreement, or to exercise any rights granted to it under this Agreement. Neither party shall be deemed to have waived any right conferred by this Agreement or under any applicable law unless such waiver is set forth in a written document signed by the party to be bound, and delivered to the other party. No express waiver by either party shall be construed as a continuing waiver of any future rights, including as a result of future breaches or defaults or defaults by the other party.

17. **Severability.** If any of the terms of this Agreement are in conflict with any applicable rule, regulation, order or law of a federal, state, county or municipal body, the terms so in conflict shall not apply and the applicable rule, regulation, order or law shall prevail. The provisions of this Agreement shall be deemed severable and the invalidity of any provision hereof shall not affect the validity of the remaining provisions.
18. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the law of the State of Wyoming, excluding its conflict of laws provisions.
19. **Term.** This Agreement shall remain in effect for the life of the CCSM Project, including decommissioning and reclamation.
20. **Execution.** This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission in .pdf format shall constitute effective execution and delivery of this Agreement as to the parties, and shall be deemed to be their original signatures for all purposes. Any party that delivers an executed counterpart signature page by facsimile or in .pdf format shall promptly thereafter deliver a manually executed counterpart signature page to each of the other parties; provided, however, that the failure to do so shall not affect the validity, enforceability or binding effect of this Agreement.
21. **Recording.** This Agreement shall not be recorded.

[Signature page follows]

The Parties have executed this Agreement as of the date first written above.

THE OVERLAND TRAIL CATTLE COMPANY LLC

By: _____

Name: William J. Miller

Title: President

POWER COMPANY OF WYOMING LLC

By: _____

Name: Garry Miller

Title: Vice President of Land and Environmental Affairs

By its signature below, the Wyoming Game and Fish Department acknowledges that it has reviewed this Agreement and concurs with the terms and conditions applicable to the parties set forth above, and further acknowledges that this Agreement satisfies the applicable requirements of the Wildlife Protection Recommendations.

Wyoming Game and Fish Department

By: _____

Name:

Title:

ATTACHMENT A

Chokecherry and Sierra Madre Wind Energy Project

Wyoming Game and Fish Department Wildlife Protection Recommendations for Wind Energy Development in Wyoming
Implementation of Post-Construction Monitoring Recommendations

Wildlife Resource	Citation ¹	WGFD Recommendations			CCSM Project Implementation
		Survey Type	Survey Objective and Use	WGFD Post-Construction Survey Duration Recommendation	
Bats	App. B, pp. 38 - 44	Habitat Evaluation	The results of habitat evaluations can be used to identify potential roosting and foraging areas for bats within project sites to prioritize surveys. A post-construction habitat evaluation is recommended following development of the project site. Compare pre- and post-construction habitat evaluations to quantify changes in habitats within the project site.	One-time	No sensitive bat habitats were identified in the CCSM Project Site; in addition, the CCSM Project design avoids placing wind turbines near the Bolten Rim, forested areas and reservoirs where bat habitat may exist. The location of the CCSM Project components precludes the need to re-evaluate bat habitat.
		Passive Acoustic	Identify and quantify bat species and relative abundance near the rotor sweep zone. Results can be used to identify bat species presence and describe bat behavior (e.g., spatial and temporal use, etc.) likely to occur near rotor sweep zone.	Three years	Should bat mortality exceed thresholds that will be identified with concurrence from the USFWS ⁴ , the Technical Advisory Committee will provide recommendations for additional monitoring. ³
		Carcass Search	Identify and quantify bat species mortality after construction of turbines. The results of post-construction carcass searches are used to estimate mortality rates of bats at wind energy development sites.	Three years	PCW will conduct monitoring for two years post-construction as recommended by the U.S. Fish and Wildlife Service Land-based Wind Energy Guidelines (Wind Energy Guidelines) ⁵ or as agreed upon with USFWS through concurrence on the BBCS ⁶ for the CCSM Project.
Passerines and Raptors	App. B, pp. 45 - 48	Fixed-radius 20 minute Point Count Surveys	Detect resident and migrant passerines, and other localized birds.	Three years	PCW will conduct monitoring for two years post-construction as recommended by the Wind Energy Guidelines ⁵ and Eagle Conservation Plan (ECP) Guidance ⁷ or as agreed upon with USFWS through concurrence on the BBCS and ECP for the CCSM Project.
		Fixed-radius Day-long Point Count Surveys	Document the species and number of birds observed, their movements and distribution, the proportion of birds occurring within the rotor sweep area, and altitude and orientation of flight during various weather conditions	Three years	PCW will conduct monitoring for two years post-construction as recommended by the Wind Energy Guidelines ⁵ and ECP Guidance ⁷ or as agreed upon with USFWS through concurrence on the BBCS and ECP for the CCSM Project.
		Nest Search Surveys	Locate raptor nest structures within suitable habitat	Three years	PCW will conduct monitoring for two years post-construction as recommended by the Wind Energy Guidelines ⁵ and ECP Guidance ⁷ or as agreed upon with USFWS through concurrence on the BBCS and ECP for the CCSM Project.
		Carcass Search and Collection	Estimate annual fatality rates	Three years	PCW will conduct monitoring for two years post-construction as recommended by the Wind Energy Guidelines ⁵ and ECP Guidance ⁷ or as agreed upon with USFWS through concurrence on the BBCS and ECP for the CCSM Project.
Sage-Grouse	App. B, pp. 48 - 49	Lek Counts	Collect research response variables to support multi-state industry supported research programs and identify changes in distribution, movements, and habitat use	Three years	PCW will continue to work with BLM and WGFD to perform annual lek counts within the Ranch for five years post-construction.

Chokecherry and Sierra Madre Wind Energy Project

Wyoming Game and Fish Department Wildlife Protection Recommendations for Wind Energy Development in Wyoming Implementation of Post-Construction Monitoring Recommendations

Wildlife Resource	Citation ¹	WGFD Recommendations			CCSM Project Implementation
		Survey Type	Survey Objective and Use	WGFD Post-Construction Survey Duration Recommendation	
Big Game	App. B, pp. 49	Telemetry Study	Collect post-development data in support of multi-state industry supported research programs that will help identify any associated impacts	Three years	PCW will continue to coordinate with WGFD on on-going mule deer monitoring for three years post-construction.
Amphibians	App. B, pp. 49 - 51	Incidental Observations ²	Incidental observations while performing other wildlife surveys will allow for trend data, which could elucidate possible shifts in species assemblages resulting from energy development.	Three years	Incidental observations will be recorded by wildlife biologists during other wildlife surveys
Reptiles	App. B, pp. 52 - 56	Incidental Observations ²	Incidental observations while performing other wildlife surveys will allow for trend data, which could elucidate possible shifts in species assemblages resulting from energy development.	Three years	Incidental observations will be recorded by wildlife biologists during other wildlife surveys
Aquatics	App B, pp. 57 - 66	Monitor culverts and roads with 5% or greater slopes	The purpose of monitoring culverts and roads with 5% or greater slope is to determine the presence, absence and/or extent of cumulative impacts resulting from changes to the upland surface hydrology, erosion and deposition, to ensure that culverts are functioning as designed and are being maintained and to ensure that the long-term BMPs that were installed are still functioning and are being maintained.	Two years post SWPPP release	PCW will monitor the CCSM Project Site in accordance with the SWPPP, Erosion Control Plan and the Reclamation Plan. The monitoring provisions of the Erosion Control Plan and Reclamation Plan extend at least two years post SWPPP release.
		Geomorphological Monitoring	The purpose of geomorphological monitoring activities is to determine the presence, absence and/or extent of cumulative impacts resulting from changes to upland surface hydrology, erosion and deposition and the potential for impacting habitats important to fish, macroinvertebrates, reptiles and amphibians.	Three years from preconstruction survey	PCW will continue watershed monitoring until three years post-construction, in accordance with the Watershed Monitoring Plan for the CCSM Project.

1. Wyoming Game and Fish Commission. 2010. "Wildlife Protection Recommendations for Wind Energy Development in Wyoming." November 17, 2010. http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/WINDENERGY_WILDLIFEPROTECTION0000703.pdf .
2. No occupied or important habitat for Species of the Greatest Conservation Need (SGCN), as identified by the Wyoming Game and Fish Department in the 2010 State Wildlife Action Plan was identified on the CCSM Project Site.
3. The Technical Advisory Committee includes the USFWS, BLM, WGFD, interested tribes, and PCW (BLM 2012; Appendix G). (Bureau of Land Management. 2012. "Record of Decision for the Chokecherry and Sierra Madre Wind Energy Project." October 2012.)
4. USFWS = United States Fish and Wildlife Service
5. U.S. Fish and Wildlife Service. 2012. "U.S. Fish and Wildlife Service Land-based wind Energy Guidelines" March 23, 2012
6. BBCS = Bird and Bat conservation Strategy
7. U.S. Fish and Wildlife Service. 2013. "Eagle Conservation Plan Guidance, Module 1 – Land-based Wind Energy, Version 2" April 2013.