

# *TWA Position Paper*

Texas Wildlife Association 2800 NE Loop 410 • Suite 105 • San Antonio, TX 78218  
Phone (210)826-2904 Fax (210)826-4933 Web Site [www.texas-wildlife.org](http://www.texas-wildlife.org)

## **Wind Energy**

*A Position Paper of the Texas Wildlife Association*

**TWA favors reasonable wind industry regulation that protects Texas' natural resources and provides permanent bonding authority for remediation, as well as voluntary efforts to develop wind farm standards.**

Increased energy demand (energy independence goals, fossil fuel scarcity, etc.) will compel the United States to develop a wide array of energy sources to meet the nation's needs. Texas has surpassed California as the nation's leading producer of installed wind energy capacity, changing Texas' rural landscape in the process. Extensive federal, state and local tax incentives and/or abatement, combined with locally mandated "green" power requirements, are driving the industry forward. There are no regulations established to govern the wind industry. Commercial wind turbine clusters occur largely on private lands in rural areas, making wind energy of particular interest and/or concern to Texas' private landowners and land managers.

**TWA recommends:**

- **Using sound science to develop an incentive-based process and a reasonable regulatory framework that minimizes and mitigates impacts to susceptible wildlife, wildlife habitats and Texas natural resources, incorporating sound science and evolving mitigation and avoidance technology.**
- **Enact permanent, mandatory bonding now for eventual remediation and clean-up procedures and provide a back stop similar to the bonding requirements in the oil and gas industry.**
- **Provide a portion of the sale of Renewable Energy Credits to a dedicated fund for wildlife and habitat research in Texas with respect to impacts from wind energy industry development.**
- **Provide a portion of the sale of renewable energy electricity to a dedicated fund that maintains open space and wild places through Purchase of Development Rights, providing landowners additional options to conserve wildlife habitats.**
- **Develop wind farm standards to reduce/eliminate harm to neighbors and adjacent property values.**
- **TWA supports Eminent Domain reform that specifies if eminent domain is used, condemning authorities must use fair and just offers and fair and just compensation; and defines fair and just compensation as meaning that landowners must be left in the same relative position as before the condemnation.**

**TWA is a strong advocate of wildlife stewardship on our private lands and habitat in rural areas. We believe this is best accomplished through a combination of regulatory certainty and secure private property rights.**

*Working for Tomorrow's Wildlife... Today!*

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TWA supports a goal of energy independence for the United States and joint development of wind energy policy to ensure a responsible wind energy industry that: 1) actively, openly and cooperatively studies the short and long-term impacts on wildlife and habitat using peer-reviewed science and applies the information on a practical basis; 2) develops mandatory permanent bonding for potential remediation; 3) creates dedicated funding from government-mandated policies that enhance and expand wind energy development for research on wildlife and habitat impacts and provides open space options for impacted habitats and species; and 4) develops wind farm standards to reduce/eliminate harm to neighbors and adjacent property values.

Increased energy demand (energy independence goals, fossil fuel scarcity, etc.) will compel the United States to develop a wide array of energy sources to meet the nation's needs. Texas has surpassed California as the nation's leading producer of installed wind energy capacity, changing Texas' rural landscape in the process. Extensive federal, state and local tax incentives and/or abatement, combined with locally mandated "green" power requirements are driving the industry forward although there are no regulations established to govern the wind industry. Commercial wind turbine clusters occur largely on private lands in rural areas, making wind energy of particular interest and/or concern to Texas' private landowners and land managers.

*"Conservation means development as much as it does protection. I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us."*

*President Theodore Roosevelt*

*Osawatomie, Kansas*

*August 31, 1910*

#### TWA Recommendations:

- **Create reasonable regulatory frameworks to protect susceptible wildlife and wildlife habitats through the application of sound science.**
  - **Currently, data indicate there is no significant strike impact to birds or bats in areas with existing wind energy facilities in west Texas. However, long-term habitat impacts or areas of concentrated wildlife have not been studied and require more extensive review and consideration through a reasonable permitting process.**
  - **Develop Texas-based science to determine the short and long-term impacts of wind development on wildlife and habitat.** TWA is concerned about the insufficient science and unknown impacts to wildlife resources in Texas with the rapid expansion and development of wind energy in the state.
  - **Initiate studies on cumulative impacts of wind energy development and resulting fragmentation affects in Texas on wildlife and wildlife habitat.** Studies from other states suggest problems for bats and grassland birds that, if not remedied, could threaten entire species by cumulative impacts to habitats at the landscape scale. This creates a potential to impact landowners under future regulatory actions. Research may answer questions and address habitat/large scale fragmentation-related impacts resulting from wind farms, associated roads, power stations, support facilities and/or transmission lines.
  - **Avoid (in an interim) certain areas of concentrated wildlife in wind energy development.** Companies should not locate in wildlife corridors. For example, the Gulf Coast with its extensive migratory bird corridors for waterfowl, raptors, neotropicals, and other birds. Similarly, companies should avoid the Texas Hill Country with its nursery bat colonies. Avoidance of these key wildlife density areas is prudent, until scientists can document threats and develop potential solutions to protect vulnerable species. Most other Texas industries are mandated by law and regulation to avoid or mitigate impacts.
  - **Avoid (in an interim) rangeland areas with existing Lesser Prairie-Chicken populations,** pending recently initiated research on impacts. Currently, this species has not been listed under the Endangered Species Act, but the emergence of any additional risk could change the threat level, triggering a listing as "endangered," creating a series of regulations potentially affecting almost every farmer, rancher and landowner in the Texas Panhandle.
- **Develop and enact regulation requiring permanent bonding.** Texas law requires oil and gas producers to submit a bond to remediate damages. Whether or not a wind lease has a bond (and how good it is) depends on the lawyer negotiating for the landowner. Permanent, guaranteed removal bonds through the life of the contract for abandoned, vacated, bankrupt or terminated projects are needed to protect the landscape for future generations.

- **Provide a portion of the sale of Renewable Energy Credits to a dedicated fund for wildlife and habitat research in Texas with respect to impacts from wind energy industry development.**
  - Renewable Energy Credits are developed as a function of local, state and federal mandates for percentage requirements of green energy in the entity’s portfolio, driving the need to buy available credits. ERCOT and Texas producers provide a valuable source for these renewable energy credits.
  - **TWA recommends directing a portion of the sale of RECs driven by government mandated portfolios towards a dedicated fund for wildlife and habitat research** directed by Texas Parks and Wildlife Department in areas of impact or potential impact.
- **Provide a portion of the sale of renewable energy electricity to a dedicated fund that maintains open space and wild places through Purchase of Development Rights, providing landowners an additional option to conserve wildlife habitats.**
  - **Government policy and favorable tax benefits at the federal, state and local levels have driven the development and value of the wind energy industry** as the nation provides opportunities to create and expand green energy sources. This will likely continue to accelerate with the probable implementation of a “cap and trade” carbon credit system being considered in Congress. Impacts are likely to occur to critical Texas habitats in coastal areas, off-shore, the Panhandle, Hill Country and mountain areas of west Texas.
  - **TWA recommends** that since government tax policy is the driver for much of the profit in wind energy electricity production, that **a portion of the sale of renewable electricity (wind, solar) should be directed into a dedicated fund for purchase of development rights** to provide open space and habitat for wildlife.
- **Encourage the industry to work with private landowner and conservation groups to develop wind farm recommendations.**
  - **Wind farms** should implement set-backs from houses and boundaries, reduce and mitigate impacts to neighboring viewsheds and property values, participate in research on impacts to wildlife and habitat, and address the overall footprint and cumulative impacts of fragmentation caused by wind energy development.
- **Other Elements.**
  - **Proposed legislation that enacts meaningful eminent domain reform is critical** to providing fair treatment of landowners impacted by required wind energy industry associated facilities and infrastructure (roads, transmission lines, power stations, etc.)
  - **Encourage and respect land use activities and hunting agreements** in wind contracts.
  - **Industry should publicize the need for each landowner to contact and retain a competent and experienced attorney** to address remediation, bonding, better than comparable agreements, all levels of revenue distribution, etc.
  - **TWA supports Eminent Domain reform** that (1) does not allow government authority to use eminent domain to create private enrichment (*Kelo* case); (2) clearly tightens the definition of public use; (3) specifies that if eminent domain is used condemning authorities must use fair and just offers and fair and just compensation; and (4) defines fair and just compensation as meaning that landowners must be left in the same relative position as before the condemnation.

**ABOUT US:** *The Texas Wildlife Association is a non-profit organization established in 1985 to represent private land stewards, land managers, hunters and anglers from across the state of Texas. Our members care for and control almost 40 million acres of rangeland and wildlife habitat that are key components of Texas’ upstream watersheds. Because the majority of land in Texas is privately owned, the involvement of private land stewards is critical in establishing Texas’ long-term conservation policies.*

**Contacts:**

<b>Kirby Brown</b> Vice President of Public Policy (210) 826-2904 kbrown@texas-wildlife.org	<b>Joey Park</b> Lobbyist (512) 293-4136 joeypark@austin.rr.com	<b>Honorable Gib Lewis</b> Former Speaker (512) 478-1881 glewis@lewislabel.com	<b>Gary Joiner</b> CEO (210) 826-2904 gjoiner@texas-wildlife.org
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