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Guardians of the Range

Dedicated to the Multiple Use of Public Lands & the American Way of Life

Newsletter No. 85

May 2011

Petitions for Solutions

~ by **Karen Budd-Falen**
Budd-Falen Law Offices, LLC

There is no doubt that American businesses, private property owners, rural tax bases and federal/public lands users are under attack by small, vocal and radical environmental groups and by a federal bureaucracy who uses its power to write rules, regulations, policy memorandums, handbooks and manuals to control every aspect of our lives. To survive, we have to not only complain about these abuses but we have to affirmatively work for solutions to save our homes, jobs, property rights, communities and families. While landowners, businesses and local governments have not been as rambunctious at filing petitions and litigation (or getting paid to file petitions and litigation against the federal government), we have to change that mind set to survive. Some of our concern is over financial expenses; some of our concern is that businesses, landowners and local governments are already strapped and simply working to survive; and some of our concern is that we do not understand the process to make our voices heard. But we have to be heard. Regardless of who is elected and "in charge" in Washington D.C., we have to be heard. We are fighting for our livelihoods, families, communities, counties and homes.

One of the ways to be heard, and force the federal agencies to respond to our voices, is to "petition" the federal agencies to adopt, modify or repeal rules and regulations which stymie our businesses, local tax bases and property rights. Although Congress passes laws, federal agencies supply the definition and implementation for those laws. Importantly once Congress delegates the ability to write regulations to an agency, Congress does not review those regulations. Thus bureaucrats we don't elect and can't fire govern our lives with rules, regulations, memos, policies, hand books and manuals.

*Please see **Solutions** on page 2*

Wonderful Wyoming
May 13th
Let's Grow the Guardians
Details Inside

Welcome New Members

Farm Bureau
Hot Springs County

Padlock Ranch
Sheridan County

Y-Tex Corporation
Park County

T E Ranch
Park County

Elaine Moncur
Park County

GUARDIANS AT WORK

Washington, D.C.
USFS – National Forum on
Planning Rule

Thermopolis
Farm Bureau

Thermopolis
Secure Rural Schools

"Nobody can go back and start a new beginning, but anyone can start today and make a new ending." ~ Maria Robinson
(The above quote applies to land stewardship, as well as to all of life - thinking and acting with a positive attitude.)

Solutions continued from page 1

Both the federal statutes and agency rules and regulations have exponentially exploded in size and scope. In 1925, there was one single volume which contained all federal statutes governing this Nation; in 2010 there are 50 titles. As for agency regulations, in 1970 there were only 54,834 pages in the Code of Federal Regulations; in 1998, the regulations adopted by federal agencies numbered 134,723 pages; and in 2009, the number of pages exponentially expanded to 163,333 pages of regulations with which each American has to comply. See [About.com/US government info](http://About.com/US_government_info). And these pages do not even count the number of pages of memos, Executive Orders, handbooks, policy guidance and other red tape. Make no mistake, it is details of implementation of the laws passed by Congress which govern our lives and we have to change those regulations to survive.

The Administrative Procedure Act ("APA") sets forth the requirement allowing local governments, profit and nonprofit organizations and individuals to petition any federal agency for rulemaking on any subject regulated by federal statutes. 5 U.S.C. § 553(e). Importantly, the federal agencies are MANDATED to respond to such petitions. Are you guaranteed that the response will be the action you want the federal agencies to take? No. But, you are guaranteed that your position will be considered and a response will be issued. If the agency refuses to respond, you have the opportunity to force a response by proceeding to federal district court.

In other words, for every radical, job-killing, property-taking, petition that is filed to increase bureaucratic power, American citizens, businesses, organizations and local governments can file petitions with a request to eliminate needless and idiotic red tape or to make rules that support businesses, communities and Constitutional freedoms. Consider the types of rulemaking petitions filed by radical environmental groups in the past. These include petitions to list the Giant Palloose earth-spitting worm as a threatened or endangered species under the Endangered Species Act ("ESA"); petitions to eliminate lead in ammunition under the Toxic Substance Control Act; petitions to change water quality criteria under the Clean Water Act to something that does not exist in nature regardless of the uses that are eliminated; petitions to repeal turtle collections laws in individual states; petitions to eliminate dust in the air even if the dust exists naturally; petitions to regulate cows from "passing gas" under the Clean Air Act; petitions to require permits if animals urinate in streams under the Clean Water Act; and any other petition under any federal act you can imagine. Based upon past analysis of the attorneys fees payments to radical environmental groups, one of the biggest "contributors" to their coffers are fees from the federal government when the government does not timely respond to petitions for rulemaking.

To respond to this regulatory onslaught, I believe that we need to start filing petitions to bring reality, common sense and science into federal agency decisions, petitions to stop the government from requiring that nature cannot "take its course," and petitions to stop the government from elevating reptiles, invertebrates and other species above human beings. Once these petitions are filed, the federal government is mandated to consider and respond to them. If the government does not respond in a timely matter, we can litigate and request attorneys fees.

Please see **Solutions** on page 3

Wonderful Wyoming

**Guardians of the Range
1st Annual Banquet & Auction**

**Friday, May 13th
Historic Sheridan Inn
856 North Broadway, Sheridan, Wyo**

5pm ~ No-Host Social Hour

6pm ~ Auction, Dinner

& Inspirational Speakers

***Krayton Kerns, DVM & MT State Legislator**

author & regular columnist in

**Western Ag Reporter ~ Ramblings of a Conservative
Cow Doctor**

and

***Frank Mitloehner, Professor of Air Quality at UC Davis**

**~ special perspectives on green house gases and
livestock**

TICKETS: \$75/person or \$140/couple

*****Please RSVP before May 6**

by sending your check or money order to

Guardians of the Range

P.O. Box 472, Worland, WY 82401

Block of rooms at Holiday Inn

\$99 until April 28th

307.672.8931

Information:

Dana Kerns 307.655.9463

Bill Greer 307.272.2352

Sample Auction Items Include:

- ~ Fly fishing trip 2d2n Folded Hills Guest Ranch & Dave Fraley
- ~ Airfare, 2n stay in Vegas w/ helicopter tour of Grand Canyon
- ~ Handmade western placemats & napkins by Virgie Rhodes
- ~ 4 tires for car or light duty truck, Tire O'Rama Sheridan
- ~ One-of-a-kind antler / cedar lamp by Cody artisan
- ~ John Deere GATOR, Sheridan Co Implement
- ~ Grey's River 6d g black bear hunt #7 w/o license S&S Outfitters
- ~ Hand-tied fishing flies by Wyoming Water Rights
- ~ Painting of Scarlett Gillio by Meg Mulchy of England
- ~ Mule Deer hunt, 4n3d w/o license by Triple 3 Outfitters & Johnson Rogers Cattle Company, Buffalo
- ~ Quilted wall hanging by Tori Dietz of Worland

Many more items listed on:

www.GuardiansoftheRange.org

All items will be available to bid on line at

www.proxibid.com

Solutions continued from page 2

Once a local government, group or citizen selects an issue, the question is, "what is included in a petition for rulemaking?" While there is no form for a rulemaking petition under the APA, there are some guidelines. These are:

1. The petition should specify that it is being filed under the rulemaking provisions in the APA, 5 U.S.C. § 553(e).
2. The petition cannot specifically request a rulemaking that directly violates a Congressional statute. For example, a local government could not petition for a rulemaking to eliminate a previously Congressionally-designated wilderness, although a petition could request rulemaking regarding how a wilderness is managed; an individual could not petition for a rulemaking to require grazing be eliminated on BLM lands, although a petition could request repeal of the regulatory requirement that allows radical environmentalists to have standing to challenge the simplest of BLM authorizations; a nonprofit organization could not petition for rulemaking to stop all listing of species under the Endangered Species Act ("ESA"), although a petition could request that an individual species be delisted because it does not meet the criteria set forth in the ESA.
3. The petition for rulemaking should include a justification or reason (including any scientific, economic, or cultural data) for the requested action. While a petition would not be rejected if it simply requested a result and did not include a rationale for the request, clearly a petition with scientific, economic, legal or other rationale is more likely to be favorably considered.

What happens after a petition is filed? Again, the federal agencies have to respond to petitions for rulemaking. Next, if a petition is rejected, the federal government has to give a reason. If the petition is ignored or if the petitioner disagrees with the reason given by the federal agency, litigation in the federal district court can be filed.

The right to "petition for the redress of grievances" is guaranteed by the Bill of Rights to the U.S. Constitution which states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

For too long, this right to petition has only been used by those who would add regulations and requirements that are destroying rural America, our way of life, our economies, our local governments and our property rights. We can no longer hope that regulatory agencies and the federal government simply protect our businesses and property. We have been silent too long. We have to fight back and acting on our right to petition the government for a redress of grievances is one way to fight back. ★

*****For Immediate Release***
DIRECTOR JOB ANNOUNCEMENT**

Wyoming Livestock Board
1934 Wyoott Drive, Cheyenne, WY 82002

Contact Information:
Wyoming Livestock Board Human Resources
Anne Iske 307.777.6443

The Wyoming Livestock Board would like to announce the job opening for the Director of the Wyoming Livestock Board is on the A&I Web site <http://statejobs.state.wy.us/lookup.aspx> or <http://wlsb.state.wy.us>. The Wyoming Livestock Board is a gubernatorial-appointed seven-member board of livestock producers responsible for protecting Wyoming's livestock interests from theft and disease, and other such duties enumerated by statute. The Director serves as Chief Executive Officer, whose duties include ensuring that agency responsibilities are effectively and efficiently performed in accordance with Board and State of Wyoming policies, rules and statutes. Please contact the Wyoming Livestock Board if you have any questions.

CRAIG THOMAS GUARDIANS OF THE RANGE ENDOWMENT

Supporting this endowment is a wonderful tax exempt way to show your support for the Guardians' effort, or to honor a family member or friend. We want to have a sustainable financial resource base to achieve our goals and objectives.

For more details, please contact a board member or Kathleen Jachowski (307)587-3723 or guardians@hughes.net.

Join Guardians of the Range

LIVESTOCK OPERATORS:

\$100 for up to 50 head of cattle
\$2.00 a head from 51 to 1,500 cattle
40 cents a head for sheep

BUSINESSES, INDIVIDUALS & ASSOCIATIONS

without federal grazing permits:

\$25 up to \$100 WRANGLER
\$250 RANGE RIDER
\$500 TOP HAND

\$1,000 GUARDIAN of the RANGE

Please make checks payable to:
Guardians of the Range, P.O. Box 472, Worland, WY 82401

DUES AND DONATIONS ARE TAX DEDUCTIBLE

You can now join on line
www.GuardiansoftheRange.org

Guardians of the Range

P.O. Box 472
Worland, Wyoming
82401

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Guardian Members Seek Good Help

Immediate openings for experienced ranch hands!

Seeking experienced help with three work references.

Temporary and permanent positions.

Calving on the range; everything done on horseback.

Full ranching position including calving, fencing, irrigation.

Some with housing.

Hyattville area of Wyoming

Contact: Kathleen Jachowski at 307.587.3723
guardians@hughes.net

Save Time & Money

Save time and money by receiving this newsletter monthly via email. It's easy to sign up; simply send your name and email address to: www.guardiansoftherange.org, and ask to be added to the newsletter email list.

No more hunting around on your desk, or in the stack of mail for your Guardians newsletter. Receiving the newsletter by email makes it simple to share this information with others.

You can request to receive it by email, and remain on the mailing list, if you like. You'll be glad you did!

Wonderful Wyoming

Guardians of the Range
1st Annual Banquet & Auction

Friday, May 13th

Historic Sheridan Inn
856 North Broadway,
Sheridan, Wyoming

See page 2
for details



A list of auction items
available at: www.guardiansoftherange.org

If you are unable to attend, you can still support the Guardians of the Range by bidding on auction items at: www.proxibid.com.

Information:

Dana 307.655.9463 or Bill 307.272.2352