ENVIRONMENTAL SUMMIT ON THE WEST II

{BREAKOUT SESSIONS RAW NOTES}

Sponsored by the
Western Governors' Association and
the White House Council on
Environmental Quality

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Table of Contents

COALBED METHANE
Host: Gov. Judy Martz, Montana and Kathleen Clarke, Director, Bureau of Land Management

Recommendations:

Property rights preserved – surface owners, control development, agreement

Public interests preserved – standards

Extend stakeholder groups

Balancing negotiating power – form real partnerships

Expectations – not everyone has the same expectations when coming into a collaborative process. Need good education as to why this needs to be done.

Conflict between what federal government says for fast track implementation and use of collaboration. Time issue here. Takes time to collaborate and develop trust between the different entities.

Water is not an isolated issue. Are there other uses for the CBM product water to the benefit of someone else. It's not wastewater, but a resource.

Not much coordination between companies. Coordinate infrastructure to avoid duplications. More centralization, maximization of infrastructure use.

Who should convene a multi-state collaboration? Who could be trusted?
WY has the most experience with collaboration and maybe Governor Geringer would be best to take the lead on this.
Start with the neighborhood solution. Start local as the convener.
MT and WY have come together already.
There will be trouble with one state telling another what to do.

How viable is centralization of infrastructure?
There are contractual, regulatory requirements to consider, but could be looked at.

Technology transfer so that everyone has access to new technology.

Need professional, neutral outcome.

Key Messages:
- The CBM situation is polarized.
- The participants in this session agree that cooperation is possible. Need to make collaboration

streamlined, balance power, understand time pressures, prioritize short and long term goals.
- Private/surface owner relationships are an issue for all parties.
    - There are some important best practices out there but there are inconsistencies in application of them. There is a need to share information and data.

Standards
Enforce and update existing laws
Innovative enforcement (self-certification)
Adequate inspections
Appropriate actions

Collaboration
Workshop on BMPs: Convened by WGA
Surface owner relations
Operational practices
Surface stewardship
Specifics on geographic areas
Split estate issues

Rewards
Surface property rights
Emphasize positive outcomes, success stories
Positive incentives

Science, process
Central database, technology transfer
Objective dependable research and baseline information
Produced water management

SITING OF ENERGY INFRASTRUCTURE
Hosts: Gov. Jim Geringer, Wyoming and Roger Hamilton, Energy Advisor, State of Oregon

Transmission Siting Protocol - www.westgov.org/wga/initiatives/energy/index.htm

Purpose is to reach consensus on whether Governors should move ahead with protocol and whether its feasible for agencies to implement it and what changes might be needed

Governor Geringer

Much discussion with energy bill in Senate. Should there be federal preemption with siting or should there be a regional approach?

Infrastructure slide shows the general areas of siting. Load centers are on the coasts and not in the West. Although, the West must connect to the supply, which is difficult, and that's the question.

If the energy supply centers are on the coast, then non-coastal places must be connected.

Current trends in fuel show that natural gas is growing as is wind. Other renewables are growing.

Land ownership also factors into the equation because the federal government and private landowners may have to cooperate to move the commodity of electricity. Siting, then, could be very complex. What can we do to help how the federal government provides energy, and what can we do to help the federal agencies provide power.

Ray Brady: Dir. Of Land and Realty for BLM

BLM has been talking with WGA, industry and utilities to address utility corridor needs in the West. BLM is trying to update its "load and demand" maps for the nation. We have identified at least 13 critical corridor areas that are regional and we are trying to work with Western governors on corridor issues – like management. We support a regional protocol effort.

There are problems with regional protocol effort. One concern is that one section of protocol deals with a determination of need. Is that an appropriate role for state and federal to assess? BLM thinks that state utility commissions should determine need. BLM doesn't want to be involved in determining need.

Second concern is that the protocol must have a clause dealing with conflict resolution.

Third, recognizing that federal agencies are subject to grievances, they don't want those grievances to get in the way of state processes. Federal protests shouldn't overlap to create

blockages in state processes.

Jack Craven: Director of Lands for the USDA, Forest Service

Forest Service fully supports this effort, and Department of Agriculture signed a memorandum of understanding with all the relevant agencies. USFS has worked with utilities to get this corridor study together and the only way this process can be sped up is to work cooperatively. It is difficult to work closely together because of the different processes, the confidentiality, lack of trust, etc. So, the protocol must reflect that each of the parties trusts each other.

USFS has its own regulatory constrictions, like NEPA, that are going to have to be considered. Maybe some regulatory changes, then, would be best.

Randy Karstaedt: Special Uses Group Leader, USDA, Forest Service

Protocol should be tweaked as follows. First, clarify formulation and composition of project teams. Second, under deadlines that are identified in section 5 of the protocol, the timelines should be improved by addressing a mutual agreement for establishment of deadlines for review by the various agencies. All parties should agree on the deadlines. Where joint decisions are not feasible, those timelines should include and protocol should say the sequence of the decisions should be mapped out. The sequence of decision-making does not seem to good because some decisions are made out of time, which makes everything more inefficient. Lastly, the protocol should include a provision allowing for periodic review of all the decisions that are made by the various agencies with jurisdiction over this issue.

John Neilson: Energy Project Director, Land & Water Fund of Rockies

We're in agreement that the interstate permitting system should be coupled with a regional permitting system. One concern is that the protocol should protect human and natural environment. Also the protocol should advocate public participation. Project teams should be expanded to help these goals. Mechanisms for measuring the environmental impacts should also be included.

William J. Keese: Chairman, California Energy Commission

Determination of need is a troublesome issue. Should it need to be required or should it just be that if you have money you can build a power plant? What should happen is that if there is a potential that a power plant is needed, then that should be enough.

BLM: Looking at planning on a broad basis makes the need issue difficult because of all the interests. Nevertheless, we look at a regional basis for the gaps that exist on a regional basis. BLM, though, has tough time doing that with private lands. What role can RTO's play? Where does NEPA factor in? Would the utilities help with the NEPA analysis? BLM is open to suggestions from everyone.

USFS: Protocols are set up for identifying procedures for case specific projects. Land use allocations for corridor proposals versus case specific projects creates problems with NEPA. You must do an analysis of need under NEPA. State agencies typically take account of need and so I think it should be included in the protocol, but traditionally the federal agencies don't normally assess need.

BLM: The BLM has no statutory obligation to take need into account. So it would be making a leap in procedures to make need come into place.

Q: Protocol suggestions: Need for some planning in the region is brief in the protocol. Linking the processes within the protocol needs to happen. Economic, environmental, and risk management needs to be included and be involved in planning. RTO isn't in place and doesn't do planning.

Comment:

If we're going to put together a regional consensus, you have to have transmissions and generation. Demand response must account for it. If you're going to build transmission, you must take demand responses into account. I represent wind power, and it can compete with gas, and it will enter the market. So, that should be taken into account. It should be taken into account in relation to the traditional sources of power, so that a net environmental impact analysis is done. We have some resources and money that we're willing to put toward this effort.

Midwest has history of transmission disputes. To avoid those disputes, we should allow private landowners to be partners in this. They should have an open season market, where WGA goes to private landowners are asks whether they want to sell lease land so as to facilitate transmission. This would help avoid eminent domain.

Comment:

Finding the institution for planning is problematic because there is no one institution. Where do you put this burden of planning? In Oregon, what we didn't do was to take into account transmission and generation integration. Recognizing the market failures, where, in what agencies or body, do we do this planning? And, will this planning take into account environmental justice?

Comment Response:

The non-profit sector is the area that should do the planning. It is creative, and it can get a lot of work done.

Governor Geringer

Who's in charge? We always assume someone's in charge of energy generation and

transmission, but no one is. The problem is that nothing is market driven, and the protocol may be able to solve this. A commodity system is a long way off.

If we don't aid transmission, we may be creating too much load. You've got to have some incentive to have wind and geothermal act as a base load. Formation of an RTO assumes that the transmission infrastructure is already in place. The greatest difficulty in getting connection with energy generation is that transmission takes so long to build. No one has built a significant transmission line in last 20 years, so the money is not heading there. So, you must incentivize putting money into transmission. Simultaneously, we must incentivize renewables, but we'll still need transmission. There is not a free flow of BTUs and electrons, and we need to move in that direction. Our goal is to have reliable, clean power and RTOs help with that. Discussion at national level is lets have a backstop so that we can preempt. That's not a good approach, and we should be trying to make case specific solutions so feds don't come in.

Q: FERC just approved out tarrif amendment for Intermittent Resources like wind. What this means is that renewables will have rights to ISO's grids and the right to participate in ISOs markets. Renewables will be able to enter into long-term contracts.

Responding to Gov: What we're seeing is the worse possible scenarios in that merchant plants are being built far from load centers to avoid NIMBYs. Comprehensive market redesign would stop this. What is your margin? Are you assuming what percent of operating reserve margin? Q: the reason for this question is that well-connected infrastructure can reduce these margins. That's why a finding of need may be good.

GOV: Supply sensitivity: if there's a shortage of natural gas, for instance, and we need to look to renewables, there may be a problem of connecting the western states to the renewables sources. They are mainly internal to California.

Q: It's not clear to me how you envision the interconnection and load balancing idea. I would urge the FERC to do a Notice of Proposed Rulemaking

Q: We want a siting process that works and if it takes federal preemption, then fine. We do however think that the governors' approach has to be good. The concern is that your system may not be reliable and it's too amorphous for the average applicant within the process. We hope the protocol would address how regional need is determined regionally. Will the protocol move the states toward agreeing to evaluate need on a regional level although certain federal controls prevent it?

Comment
We need "need" or else we'll be subject to NIMBY-ism.

Q: PG&E affiliate
Not a company policy, but it seems like you're talking about two sets of documents. One, a siting protocol and two, the element of need. Absent FERC as an example of a federal siting

council, don't you need some sort of regional siting council?
A: We talked about that, but didn't know what form it would take. Would it be an interstate compact? Or will we continue to act in a piecemeal fashion? Something short of an interstate compact has been proposed, but that's a work in progress.

GOV: we don't have anyone assessing growth and the demand that will put on regional power. That effects siting of a pipeline. There's a presumption that these protocols assume need. So should we draft this protocol assuming there's an identified need? I think we might have to because there's nobody that's overseeing need regionally.

One fear is that we'll never see the bigger picture until after the protocol has been passed. We may overlook the biggest regional concerns.

Q: Consumer demand will dictate where the need is, and the market will react to that by building in places with the most demand. Protocol is conceptually good, but I'm not certain that it's going to address the practicalities of transmission. There has to be a mechanism whereby all the parties see a benefit. And what price will the consumer have to pay for all of this? Who's going to, build, own, and maintain these power plants? WGA says we should without federal jurisdiction. The need will be based on where market is.

Q: Is the protocol addressing maintenance, or upgrade of existing facilities? The document that came out in 1992 was overlooked, and we need to make sure that the protocol is not overlooked. Everyone must know about his and comply with it.

A: This is the time to satisfy that concern. The timing is right in line.

A: Digitizing the maps and documents will also help a lot. That will make them more accessible. It will also increase their shelf life. USFS is trying to do that right now.

GOV: If you digitize and standardize the info, then people can cooperate better because they're not retracing someone else steps. Also, this will allow you to have data interchangeability.

Also, as for maintenance and upgrade of existing facilities, the protocol doesn't address it and it should. The protocol should also incentivize the use of existing corridors.

Comment: Protocol should streamline permitting process, and digitizing would help do that.

Comment: PLATS.com is a great resource, and they have a transmission study coming out.

Q: Who pays for all this? This is an interesting topic, because it is huge in the private sector. The people that come onto a given system and overloads it should have to pay for any upgrades. The other issue is that when we talk about need, you have to look at the competition in the area—the need may just be because there's not enough competition in the area or that the price is too high.

Even if you're in a constrained area, there are a lot of upgrades that people will say a certain private electric company is responsible for. There have been amendments to the Senate Energy Bill that require new builders to pay for upgrades.

Q: The amount of water that's needed, the decisions that were made 40-50 years ago are all things that factor into siting decisions. This makes a balancing approach as to where you can site a new plant and how close to load it will be. It may be nice to say put the plant close to the load, but that may be impossible in light of other factors.

A: We're stuck in the past because we're building around, in many cases, an antiquated system. So we should adapt and have a dynamic system.

GOV: As to the who will pay for this question, can we operate from the premise that there will be a new load and source and that there is some way to connect them? That's a good direction that this discussion should take.

Comment: What amendments need to be in the current draft along the governor's questions.

Comment: Indian tribes would have to separately sign any protocol.

Gov: That's true with private landowners too. Each would have to sign. At least then, though, we'd have some known corridors.

Gov: The sooner the federal gets its work done on this, the better. The first week of May is a necessity. Anyone who has comments should submit them by early in May

Q: Is this protocol a bad idea?

A: No, provided some detailed changes are made. The project teams should have more diversity and the public comment should be increased.

Q: Part of our problem is that we are not the body that determines need, but we have to have some type of institution that determines need on a regional basis. These kinds of determinations must be done on a regional basis. In the meantime, we need to carry on with drafting the protocol.

Comment: RTOs could be a vehicle for determining need.

Comment: RTO process is up and running in the Midwest, and people are more comfortable with them being in charge. So maybe we have an RTO decide need and then have some sort of review process whereby state officials look at the RTOs need determination.

Q: Are the governors bound by any protocol they sign? They would not be legally bound, though, because this is not an interstate compact.

Gov: The penalty for non-compliance is confusion and uncertainty.

Gov: If we look at all the different jurisdictions through which a corridor will pass, each of the different jurisdictions would have different regulations and that's inefficient. The solution is to have this protocol that streamlines these regulations. It would also lend predictability to an applicant looking to build a corridor.

Gov: We need an overarching body to identify need.

PERMITTING INTERSTATE TRANSMISSION
Host: V.A. Stephens, Director, White House Task Force on Energy Project Streamlining

Bill Keese: Chairman, California Energy Commission

Curt Hildebrand: VP, Business Development for Calpine, Western Region Office

Ethan Brown: National Governors' Association.

V.A.: Goal is to have some results, suggestions to present to governors

Keese: Permitting process: We're supposed to balance all the Enlibra principles in our permitting process. We site power lines, power plants etc., but we don't do anything with the grid. CEC permit process is split among a 12 and 6 month process: It results in a public permit and public involvement. We can override any state agency or local law in our siting process. Between 1975 and 1995 we sited 45 power plants and none were subject to a legal challenge. Since 1998 we have approved 32 power plants and have had no successful legal challenges.

Curt: I'd like to cover what Calpine is up to in the West and what we've learned through case study. I'll conclude with some suggestions for streamlining. For overview, we are in California and we are focused in the West. We are focused on geothermal power and we are the largest geothermal provider in world. We're also looking at new clean natural gas. We are active in 29 states presently, and we have of 40,000 mega watts in capacity. We are fastest growing, and we are the second cleanest generator in the nation.

Moving into the case studies, deregulation was first contemplated in California in 1994. Our CEO noticed that there had not been any power plant facilities for many years, so we came in with a power plant proposal in 1997 and filed an application in December of that year. 2 months later we triggered the 12-month CEC review of our project. There are two projects I'll talk about. One is rural and provides power to Sacramento. 550-megawatt capability. One of the issues that we had to deal with was the level of community opposition – they contended that we didn't need any new power and that the public was generally fine with what power it had. After a thorough review, there were four main issues: groundwater for cooling, local drainage for effluent, air quality, and transmission lines (the most difficult). We announced a mitigation program to reduce the environmental concerns, but we still needed local approval from the local board of supervisors.

The energy commission then issued their final license to construct and that took 4 months. After we got the CEC license, we needed to deal with the federal government, and we needed a PSD permit from the EPA. We filed our application for this a year before, but they did not collaborate with the CEC so they had to do an independent review. The federal review only got one public comment from some guy who lived 100 miles from the plant. On the last day of the PSD appeal period, this guy filed another complaint, which was considered a formal appeal, and it caused us to freeze construction. Despite our high level lobbying, it still took 4 months for the EPA to deny this guy's appeal. This cost us several million dollars in lost revenue and it

caused the citizens to lack power. We view the fact this one guy can forestall a project like this to be a problem with the federal system.

The second project is the Metcalf Energy center, and the official 12-month CEC clock started on this in June 1999. This is a project that is near a load center – San Jose. Usually these are more expensive although the cost of transmission lines can make this not so. This plant invoked a lot of NIMBY. This is an ideal site. On February 14 we got a letter that said CYSCO was going to oppose our project. About 4 months later they convinced the mayor that ours was not a good idea. Divinely, there was a heat wave that year, and people suffered blackouts, which exacerbated the need for power. This made our project more appealing. The following month, the heat got worse and the blackouts got much worse, so the project became a poster child of solution. The CEC had the ability to override local jurisdiction, but had to create a solid evidentiary foundation for doing so. Because CEC was about to override, the project drew even more scrutiny. Fortunately, we drew support from the Sierra Club and the American Lung Association, NAACP, the state assembly, the board of supervisors, and the manufacturing groups. We did a public pole and 6 out of 7 San Jose residents supported us. We then renewed discussions with the city, but the CEC overrode them anyway.

Touching on the Federal aspects of the Metcalf project, we had to have a biological opinion on this project and that took several months. U.S. Fish and Wildlife really dragged out our schedule and there was nothing we could do. We found that their delays were the norm and not the exception.

The lessons we learned were that the local community needs to be educated as to the positive environmental aspects of these plants. Another lesson is that NIMBY movements are alive, well, and growing in sophistication. Another lesson is that the permit process gives the public numerous bites at the apple – we have an issue when public is given too many opportunities to kill a project. What we would also like to see is some enforceable deadlines on agencies. This should be a use it or lose it deal where if the agencies don't act within a certain time frame, the project gets approved.

Keese: We expect work with over 30 state, federal and local agencies. These need to be coordinated. Our biggest problems with these agencies is that they give no guidance, don't meet commitments, and disregard the community. We see several possible solutions: a joint environmental document, state document as basis for the FONS, no relationship with agencies, and separate documents. On cooperation, we believe that regulatory certainty is even more important than it was 10 years ago. It's important on schedules, public events and everything. We should agree on the process up front. Also we need a process for conflict resolution.

As for Sutter and Metcalf, the appeal that stopped Sutter was a general letter to the government. It wasn't formatted like an appeal – it was just a letter. We asked that this little letter be put on an expedited review but it was denied. This put us and California's consumers in bad position. You saw the view of the power project; there was some hampering because the previous owner had said he wouldn't expand the plant. More hampering too because people complained that the power lines would block their view of the mountains

With Metcalf, this was truly an idea site. Again, we absolutely have to have power plants in the Bay Area for voltage support. Metcalf was it. The permitting system did not need to take

as long as it did, and coordination would help this.

As for the California blackout situation, we decided to get production and conservation efforts increased. We brought on several megawatts of power, imported and produced. We allowed our plants to operate 24 hours a day. And we did produce more as a result. The biggest number was on the conservation side. We got a lot of people to conserve. This reduced demand by 10%.

Recommendations: The federal government must work with other agencies; get a joint permitting process, joint hearing process: coordinate on data production, coordinate on document requests.

Curt: Remove that automatic stay of appeal loophole in the federal system. Set standards and define deadlines that are adhered to. We have to meet deadlines, and so should they. Put the use it or loose it provisions to enforce this. Again, we need to reduce the number of bites in the apple the public has. Also, we should be able to, at least, help the government financially consider out project. Our resources could help them, but they never ask. These solutions are not just for California – power plants like ours are going up around the country.

V.A.: We have a federal task force on permit streamlining. The CEQ is the chair because the agencies don't really listen to each other, unless the White House butts in. The mission of the Task Force is to coordinate and integrate federal decision-making. It sounds easy, but it's not that easy. We are looking for clarification on whether something is state permitting issue, federal permitting issue, federal lands issue etc – Sometimes we're unsure where the issue falls. We think the permitting process should be understandable. If this were so, no environmental attorneys would be needed. The administration's view is that newer power plants are safer, cleaner better. (CURT: by using newer plants we are putting out far less emissions. By making these plants more efficient too, we can put the other dirtier plants out of business) (KEESE: our forecast is that less natural gas will be used each year because these new power plants can provide cheaper, cleaner power)

V.A.: We have five seasoned experts that are working together to help us. There is a chain of command among these people as well. These people also answer to local stakeholder groups for internal input. We're basically opened up to any energy related project. We did a 2-month federal notice for comment. There were some people that wanted to take all of our time, and we cut them off. Others were really good.

We also wanted frustrated parties like Calpine to come in to help us come up with a solution. The problem we saw was that these peopled feared agency reciprocity where the agency would deny permits because of their complaints. There was nothing we could do to allay these people's fears. We tried to list some of the regular problems that were coming up. Some of those we have heard today like the appeals process. Some of these are under litigation and others we can do nothing about. Whatever new problems we identify we will consider. Our doors are not closed. We are looking to make general systemic changes, and most of these can be done without statutory change. That makes things faster.

Q: How often does the CEC override local government?
A: Not that often. The Metcalf plant was extraordinary. We overrode the city council on everything they did. I would have overridden on the Sutter plant too, but the city eventually made that unnecessary. There have been a couple other overrides, but that's it.

V.A.: Feds shouldn't have override capability. It's not appropriate.

Keese: The other override problem is that we don't get the input from the state agencies until it almost too late. These agencies have to become accountable to deadlines. Even when the governor put pressure on them, they didn't stick with the deadline. That has to change. I think this is workable. We'll notify every agency the day of the filing to make it easier for them

Comment: Permitting process should be expanded to include those plants that are doing upgrades.

A: (V.A) There are safety issues on that too. I agree.

Comment: We have trouble maintaining our facilities in Arizona because there are national monuments close by which require specific permitting. The question I wanted to ask was where are the results from the federals?

A: (V.A.): It's a lot harder than it seems. Also how do you measure success? Is it the number of permits issued? Maybe. But I think we are chipping away at things. Right now, as soon as an applicant contacts us, we get things going. I think from that standpoint, we are making some progress. We also know what we are working toward, which helps us be more efficient. We want to be helpful.

Q: How do you make people cooperate? Would deadlines do the job? You have to infuse a culture of getting the job done
A: (V.A.) There is a real demand growth, but the infrastructure is not there so that slows us down and there's no way around that. We couldn't be made to cooperate. Coming from Texas, I didn't understand the hindrance that federal lands put on things.

Q: Have you talked to the people in the federal highway commission? Because I know they have had some success in streamlining. Things like memos of understandings can really help.
A: (V.A.): Yes, and they are good.

Keese: The applicant often funds the experts that inform the local government.

Q: Is there anything going on as far as siting between the U.S. and Canada?
A: (V.A.) Yes, the western governors are heading up a north American energy task force that is looking into that. That effort is just getting started. Give them your input

Comment: I'm from Wyoming and we are dealing with Alberta.

V.A.: We want to have the federals involved in that

Comment: We like that you (VA) look at systemic problems. One of the things is to have a project team concept that can make one comprehensive document that controls.

RENEWABLE ENERGY SESSION II
Hosts: Gov. Jim Geringer, Wyoming and Kathleen Clarke, Director, BLM

- Support for resource assessment (need better resolution maps)
-
- Programmatic EIS for generic issues – characterize geothermal issues in advance
-
- Zoning
-
- Task Force on Renewable Energy (Cooperative Work Group) – permitting or BLM division
-
- Focus on demand side purchases by federal government
-
- Need better mapping of wind and geothermal resources
-
- Lack of staff support in BLM offices (put burden on developers)
-
- Production tax credit is essential to expand geothermal/ enable tribes to use
-
- Environmental studies take too long
-
- Need rules that give renewables priority within agencies
-
- Modify required avian studies
-
- Implement "rule of reason"
-
- Improve timing in processing or lease/permit applications (time limits are needed i.e. EA – 4 months; EIS 12 months; NEPA decision 90 days; appeals 45 days) Resource issue
-
- Geothermal equivalent to NWCC
-
- Open military lands to geothermal development
-
- Geothermal resource assessment needed, including medium temperature resources
-
- Need parks with pv-powered lights
-
- Need communications systems powered by pv's
-
- Eliminate sales tax on pv's
-
- Need life cycle analysis in purchasing practices

- Need pv advocate in agencies
-
- Extend government fossil fuel assessment to wind/geothermal
- BIA has renewable assessment responsibilities on tribal lands. BLM/BIA collaboration needed
-
- Forest Service needs to act on geothermal leases (like BLM)
-
- What's feasibility of categorical exclusion?
    - Beware of flags raised
    - Deal with in a collaborative effort or programmatic EIS

- Identify lead agency among federal agencies

- Planning to implement WRAP goal- e.g. transmission/open access and interconnection

- State RPS (regional rps may be difficult)

- Renewable credit trading

- Clearinghouse among NGO's

- Potential of state lands including school trust lands

- National policy to BLM offices on wind leases

- BLM wind point person in state BLM offices

SPECIES CONSERVATION
Host: Ray Ledgerwood, Director of Leadership Services, National Association of Conservation Districts

Initial Questions to be Answered:

1) What enabled these cases to succeed?

2) What obstacles did/do they face/overcome?

3) What are key lessons learned?

4) Are there potential new/innovative changes in policy?

Nevada's Sage Grouse Conservation Strategy

Questions:

1) Are there more sage grouse on grazed lands than non-grazed lands?
   a. In Nevada it is hard to find areas without grazing. The entire spectrum is run; there are grazed areas with large populations, and there are grazed areas with very small populations. One cannot make good comparisons between these two areas, and we are currently trying to ascertain the answer to this question. However, when the group developed, it was very important to involve the ranchers in this process.

2) Are you getting far enough along in the study that you can begin to make any conclusions?
   a. Currently we are looking at different solutions that seem to fit the local area, and it needs (the "neighborhood" solution). When going through this process, you also have to understand what you have out there, and where you want to go.

3) How do you know when the process is working?
   a. It is going to take monitoring from the local level as well as their input. The group worked very hard to come up with outcomes, and ideas about what they wanted from the process. One of the charges made was to meet the PECE policy; establish goals, monitor them and then have adaptive management. The strategy is to have local conservation groups come up with the plan, and then implement it through the governing process.

4) What did they do to keep the ranchers/stakeholders involved in a long-term

process?

a. The ranching community is recognizing that there are some habitat issues on their ranches, and they would like to move in that direction. It is important to emphasize that this process is not including absolutely everyone, but trying to get the word out, even though not all parties are interested.

5) Do you have blessing from the federal government or the Department of Fish and Wildlife, etc?

a. All agencies have been collaborative and have helped guide the process. The real question is how do you get the agencies to buy off in the end?

6) How big a factor have noxious weeds been?

a. No doubt the fire policy has been catastrophic to the decline of the sage grouse. We don't have correlative data to support some of these types of assessments. Is this issue dealt with in the plan? Yes. We are trying to protect the good stuff first.

7) Are people hunting sage grouse less than historical averages?

a. Hunting is definitely declining; fewer hunters are being less successful.

8) Was there any conflict with mitigation measures and mitigation of other endangered species?

a. This has not been a problem so far. We focus on the habitat and approach it from a much broader scale.

9) How are you monitoring predators?

a. Doing selective control measures, to achieve positive outputs in "pilot" or selected areas. But no correlative studies have been done.

Resolving Conflicts Between Large Predators and Livestock in the Northern Rockies

Major points from the presentation

Hank Fischer: Environmental Consultant for Fischer Outdoor Discoveries

- Regarding the wolf and grizzly compensation fund, it is economics that make people hate the wolves, hence the need for compensation.
- There is a collaborative group still working on the program, and continuing to improve the system.
- This is a "Proactive" compensation fund. The major question posed was: What could we do to prevent predation in the first place? The operating concept is really "fairness." From the ranchers the big issue is why we do "we" the ranchers have to pay the economic cost and responsibility of wolf lovers from across the country when it doesn't cost them anything.

Margaret Soulen Hinson: owner of a large family sheep operation near Weiser, Idaho

- How do we make this happen process/project work?
    - Create the climate for these programs to flourish, where people feel comfortable interacting with each other. This is done through strong leadership from the Governor.

Questions:

1) What should I tell ranchers about the difference between "experimental population designation" (this allows a local solution to be crafted, but must lead to recovery of the species) vs. an "endangered species designation."
    a. There really isn't much difference between the designations with respect to the wolves, because of their vast habitat requirements. The only difference is that private landowners can kill the wolf under the experimental population designation, where they can't under ESA. Gov. Kempthorne is very interested in amending the ESA. However, with respect to "experimental populations" it is still up to administrative politics as to whether local solutions actually go through.

2) Are institutions fostering an atmosphere of "extremism"?
    a. It is important to remember that the conservation population is as diverse as all the landowners.

3) Is the compensation extended to states where wolves cross over the border?
    a. The question is how do we devise a plan based on political borders and the answer is that it just doesn't work. It is important to have the process laid out for the landowners so they know what it is and what to do when this happens.

4) If grizzlies are reintroduced, is there any evidence on what happens to visitation rates in the area?
    a. To this point they have never been reintroduced so there are no examples. My guess is that it will have a negative effect on visitation numbers.

5) How effective has education been about depredation and alleviating the fear factor?
    a. In our area of the country, these issues are in the forefront of the media because humans are so intensely interested in these species. People are learning, and learning how to respond to the wolves, the ESA and depredation. Above education we need to find ways to minimize and mitigate. Someone who is afraid needs understanding, not educating, and we need to try to include him or her in this program. These are the people who actually educate the policy makers what it is like to live with wolves.

6) How does an "experimental population" become an endangered species when it

crosses the state line?

a. The Oregon approach is to manage them as they behave, once they have crossed state lines. One of the first steps in being able to do that is to get the information, training and education to the people that are actually managing the wolves.

7) Are there lessons that can be learned from studying other predators (mountain lions) that are not listed?

a. The issue here is how people react to listed vs. non-listed species. At some level listed species do create more of an obligation, because you are asking people to modify their operation, and it makes sense to compensate for this. Over time we may see some attitudinal changes, as far as managing for these species. The main difference is that we have had mountain lions everywhere for our whole lifetime. We have already had to adapt to them.

8) In Idaho, are we dealing with a decision to put wolves where they might not have historically been represented. Was this the right environment to put them in?

a. This might be a data issue, and at best this is a questionable argument. However, this is probably not the same wilderness as it was 100 years ago.

MEETING GROWING AND COMPETING DEMANDS FOR WATER
Host: Ben Grumbles, Deputy Assistant Administrator, U.S. EPA, Office of Water

Objective: Consider how Enlibra Principles have or can be applied to water conflicts

Introduction

Ben Grumbles: EPA Perspective…
EPA Priority = Watershed-Based Approach (Process)

To combine various perspectives
To bring water quality and water quantity experts to the table
"Interesting and Challenging Connection between quality and quantity"
Water issues present the "greatest environmental challenge of the 21st century"
"Promote stronger science to diffuse disagreements"
New **Watershed Initiative** ($21,000,000) – EPA is currently devising guidelines

TMDL Rule:
1. TMDL process to be considered an information gathering tool
2. Promote problem solving through means other than litigation
3. Gain buy-in from East and West

Summary

1. Enlibra Principle: Collaboration, Not Polarization

"Successful environmental policy implementation is best accomplished through balanced, open and **inclusive** [emphasis added] approaches at the ground level, where interested stakeholders work together to formulate critical issue statements and develop locally based solutions to those issues."

All of the case studies presented demonstrated the benefits of watershed approaches and the conflicts, some of which can be severe, that result when watershed approaches are not employed. To improve the application of all Enlibra Principals, it is recommended that the WGA encourage the expansion of watershed-based approaches. Specifically, the following are suggested:

a) Request federal funding, including from EPA's watershed program, to support linking federal and state agencies with local constituencies to help promote watershed planning to gain the resulting benefits. The Governors could provide this link.
b) Request dedicated funding from federal sources, with some form of appropriate local match to implement watershed improvements based on watershed plans and

increase utilization of Conservation Districts.

c) Redirect some portion of existing federal funding for regulation and enforcement into watershed planning/implementation efforts.

d) Continue support for the Domenici amendment to fund Indian water right settlements, which have largely resulted from collaboration, and request that Director of the Indian Water Rights Office in the Department of the Interior be filled expeditiously.

e) As a measure of the success of the Enlibra principles, challenge tribes and federal and state governments to complete two Indian Water Right settlements per session of Congress.

f) Support pending National Drought Preparedness Act, which furthers collaboration and cooperation among federal, state, and local entities preparing for and responding to drought emergencies.

2. Enlibra Principle: Science for Facts

To improve science and further reduce conflict and disagreement, collaboration needs to extend to the science.

a) Scientific investigations need to be framed with the involvement of affected governmental entities and interested stakeholders to ensure the investigations address the right questions.

b) Scientific investigations need to be performed with the involvement of scientists representing affected governmental entities and interested stakeholders, not just peer reviewed at the end, to build incremental buy-in and minimize disagreement over the facts.

c) Early implementation action should be employed in advance of final scientific investigations when and where needed and appropriate, and adaptive management should be used to further guide associated scientific investigations.

Notes

"Water as a Key Element for Endangered Species"

Karl Dreher: Director of the Idaho Department. of Water Resource
Lemhi River Basin – tributary to the Salmon River in Northern Idaho

Prime spawning habitat for Salmon
Redds (nests) observed in 99 and 00 = "extremely low"
National Marine Fisheries Service blamed irrigation diversions
River goes dry 10% of the time
Exacerbated in drought (River was dry all year in `94
Enlibra principals: "Science for Facts" – little incentive to agree on facts
"Collaboration not Polarization" – solutions must come from "local base"

"Markets before Mandates"

- Water Right Owners wanted to provide water for in stream flow but needed compensation
- Bureau of Reclamation provided funding for 20cfs (2001 = drought year – similar to 94, but 20cfs maintained
- Redds observed in 2001 were 10x `99 and 4x `00

<u>Dave Mastin</u>: Deputy Republican Leader, Washington State House of Representatives
The Walla Walla Way – Washington/Oregon

Early Action Programs:

-Focus on actions that can be implemented during collaborative process
-First year results
-Buffers: 50mi of 150ft width
-In stream flows: 32cfs
-Screened Diversions: 95 pumps installed + 190 awaiting approval
-In stream structures:
-Fish passage barriers: Removed
-Upland practices:

How?

-Not about the laws
-Not about science

Keys:

1. Local Resource Managers
-Respect landowners and citizens (collaboration)
-Committed to scientific rigor (scientific fact)
-Creative solutions (cost-benefit, collaboration, neighborhood solutions)
2. Landowners
-Respected and listened to (collaboration, neighborhood solutions)
-Economically viable solutions (markets over mandates)
-Fear of the unknown (fear of Mandates over Markets)
-Ownership & Pride (change of heart / peer pressure)
3. Bi-State Watershed Planning
4. Federal Government and Environmentalists
-Support incremental, constant improvements
-Support steps that lead to long-term solutions
-Limited "saber rattling"

Group Focus:

-Keep it on habitat
-Keep it on long-term solutions
-Keep it forward thinking

Future Success:

-Funding for implementation

-Effective management systems (protect in stream flow and senior water rights)
-Agency and environmental support (consistent, long-term, flexible)

- **<u>Suggestions to Governors</u>:**

Lemhi:

1. Involvement of Federal Scientists needs to be changed – Development of science must be collaborative.
    -Amend ESA?
2. Need financial resources versus regulation alone

3. Focus on collaborative, incentive-based approaches
    -To promote progress during and in spite of disagreements
4. Involve local conservation districts
    -To achieve buy-in of local landowners
5. Act when possible, not when mandated

6. Support extension service's role in developing science

7. Team approach for continuity vs. change of mind with change of personnel

<u>"Settling Indian Water Right Claims"</u>

<u>John Echohawk</u>: Executive Director , Native American Rights Fund
Tribal Water Rights – Establishment of Reservations implies establishment of accompanying water rights

Began with historical review (available at www.westgov.org)
Several dozen cases filed to establish Indian Water Rights under Winters Doctrine
-Tribes opposed federal court settlement option
-Tribes & collaborators pursued alternatives to litigation
-Tribes & collaborators pursued support in settling Indian Water Rights cases out of court
Greatest obstacle = "finding a funding mechanism"
-Tribes & collaborators proposed that appropriations be separate from Interior appropriations
-Governors should continue support of Domenici Bill

<u>Jim Morsette</u>: Water Resources Director, Chippewa Cree Tribe
Tribal Water Rights – Negotiation versus Litigation

Final hearing pending in Montana Water Court

-"We've quantified our water"
-"Hopefully we'll have our decree"

Continuity of Tribal Message has been the most significant issue to overcome
Tribes were traditional adversaries of the State of Montana
Tribes have established "Partnership" relations with the State of Montana
Covered many Enlibra principles during negotiations with Montana
Funding is still our most significant obstacle
Had appropriate scientific and legal expertise
Benefited from continuity of scientific and legal expertise
"Environment and nature are about balance – about 'Enlibra'"
Enlibra is a learning and evolving process

<u>Susan Cottingham</u>: Program Manager, State of Montana, Reserved Water Rights Compact Commission
Tribal Water Rights – Creation of new "Neighbors / Collaborators / Partners"

Enlibra principles seem straightforward and recognizable – had been common practice in MT
Montana Commission's only job is to "negotiate" settlement of water rights
-Appointed Commission (9-member)
-Initially established for 3 years
State has contributed 30 million to tribal settlements
State does not stake out legal positions
State tries to pursue joint legal and technological solutions

Key Points:

-Respect all parties involved
-Obtain public buy-in
-Be patient
-Work hard to promote Federal Partnership
-Be patient

<u>Michael Jackson</u>: Government Relations Consultant, Jackson & Associates
Tribal Water Rights – Congressional Committees regarding Federal / Tribal relations

Science for Facts is the most essential element of Enlibra
-Settlements/Agreements cannot be reached without agreement upon facts
Settlement Network: those people whose involvement is <u>essential</u> to settlement
Continuity/Tenure of staff is essential
Changes from Democratic to Republican control causes instability through staff turnover
Every interested party should carry the burden of providing continuing education to novice parties

Every interested party has ongoing responsibility to promote networking and dialogue among old and new

<u>David Hayes</u>: Partner & Global Environmental Department Chair, Latham & Watkins Law Firm
Tribal Water Rights –

Changes in water conflicts over time:
-Early years… Just get more water
-Last 10 years… Institutional Challenges
-Last 10 years continued… New players (Watershed Interests)
New legislation to contend with
Greater variation in interests and priorities
-Tribal interest = in-stream flow
-Southern context = diversion from in-stream flow

Only solution to complexity of issues is to address entire watersheds simultaneously and avoid shortcuts

Lessons and Recommendations:
-Deal-in all the right stakeholders or you won't get a solution
-Any one stakeholder can kill a deal
-Feds will only work well if all appropriate federal agencies are involved in the proceedings
-Science is critically important
-WATCH THE MONEY (Emphasized)
-Need access to a fund that is dedicated to the settlement of Indian Water Rights alone

- **<u>During Q&A</u>**:

Montana & federal government have appropriated $ as result of settlements
-(Montana = 15 mil + Federal match of 15 mil = $30 mil)

Hearsay regarding slowdown in settlements is partially true
-Due to lack of budget surplus
-Due to September 11's effect on administration staffing (lesser priority to "new threat")

- **<u>Recommendations</u>**

<u>GOVERNORS NEED TO APPOINT A DIRECTOR OF WATER RIGHTS OFFICE</u>
Find a way to develop good federal partnerships & achieve high level Federal attention
-Issues of science → joint development of science
Challenge states and federals to 2-3 settlements per Congress

-If this target is missed, determine How, When, Where, and Why

Need more science at the beginning of the collaborative process to ensure valid results

-Collaborators must also agree upon where strong science is needed and where its not

Ensure that scientific methods remain flexible enough to accommodate learning and change

-Include non-scientists when necessary to validate problem definitions

- **Governor of MT re: Drought Committee as LT Governor**

Restricted irrigation when necessary

Assembled Web page

-To track soil moisture, El Nino and La Nina

Need to create drought benchmarks & devices to measure current conditions in relation to them

-We don't have enough devices to measure conditions

-We need to create plans for Emergency Declarations in the event of serious droughts

Re: audience comment that plans contend that climate and drought are cyclical when in reality climate is changing and drought will be a constant as demand increases and availability decreases:

-"You need to join our committee"

"Planning For Drought"

Paul Cleary: Director, Oregon Water Resources Department
Klamath Basin In Oregon and California – "A case study in what not to do"

Began with a history and inventory of the area
Drought affects economy as well as endangered species
Most recent drought declared a State of Emergency in `01

-Irrigation was restricted to ensure in-stream flows

-"Share the Shortage" approach maintained

-Restrictions were disputed

Sustainable groundwater options pursued
Last year's drought management efforts created only losers – and no winners

-Resultant crisis (and litigation) was preceded by decades of bad blood ("acrimony")

Oregon believes that success requires biological sustainability and business certainty
Oregon believes that all interests should share the burden

Oregon recognizes that adjudication will solve allocation problems but not "acrimony"

-Mediation exercises did help the acrimonious to understand the breadth of the problem

Overarching goal = balance and sustainability for long-term environmental and economic health

A DEMAND REDUCTION AND COMPENSATION PROGRAM WOULD HAVE BEEN USEFUL

Jack Stults: Administrator, Water Resources Division, Department of Natural Resources & Conservation
Dealing with Drought at Local, State and Federal Levels

Potential ESA species dealt with at State and Local levels versus "being listed" – per agreement with Federals.
Watershed Group formed to deal with issues in Big Hole River Basin – including Drought Planning.
-Federal and State agencies are participating in support roles versus decision making roles
Phone tree used to implement short-term restriction in fishing, irrigation, etc – when necessary
-Phone tree achieved significant percentage increases in flows
-City of Butte on phone tree because they remove water from the basin altogether
-Jefferson Basin is adopting this technique and enjoying similar success

Keys to Successful Drought Planning in the Jefferson Basin

-Water Measurement
-Information Dispersal
-Broad Based Cooperation
-Help From Neighbors
-Setting Realistic and Obtainable Goals

Overview of Montana Drought Monitoring Web site and drought committee
-Extensive site
-25,000 hits last year
-Drought committee trying to coordinate interaction at the Federal level
-Federal interaction is still lacking
-National Drought Policy that enables consistency at the Federal level would help
-See final bullet of "Settling Indian Water Right Claims"

Phil Pasteris – Natural Resources Conservation Service
Representing the National Drought Monitor

In an unprecedented situation regarding drought conditions throughout the U.S.
-Drought is not occurring on the West Coast where it usually does
-Drought is occurring throughout the Rockies and East Coast where it usually doesn't

Drought Categories:
-D3 = Highest (Klamath)
-D2 = Medium

-D1 = Lowest

Each state has its own unique approach to drought problems

See: www.drought.unl.edu/dm/index.html
Also: USGS Web site provides stream flow information

"General Discussion and Recommendations Regarding Drought Planning"

Use "Hydrologic Cycle Approach" in Drought Planning
-City Planners need to be aware of the affects of Hydrologic Cycles
Agricultural producers need more alternatives – financial or otherwise
Put renewed emphasis on preemptive actions – Drought-Proofing
Request financial support for training, pilots and projects from the federal government
Apply national standards to Drought Bill wherein Federal methods and support are available at local level
Need to apply more appropriate financial values to water consumption
Don't expect immediate results from Watershed Partnerships
-Greater input is needed for short-term results
-Watershed Partnerships are useful in the long term
EPA needs to do more research regarding appropriate methods and funding for watershed partnerships
-Should also consider potential enabling mechanisms at the federal level
-319 Grants for capacity building?
Match scale of response to scale of the problem
Improved soil moisture monitoring techniques could become triggers for assistance
Study water reuse and wastewater treatment as means of reducing drought

SUCCESSFUL PARNTERSHIPS AND NEW TOOLS TO CONSERVE OPEN LANDS IN THE WEST: NEW SUCCESS STORIES AND TOOLS IN LAND CONSERVATION
Host: Lynn Scarlett, Asst. Secretary for Policy, Mgmt & Budget, Department of the Interior & Cynthia Lummis, State Treasurer, State of Wyoming

1. Partnerships work.
2. Funding is necessary for success.
3. Creative approaches are critical.

Partnerships:
Reward and support ($) community level partnerships.
Use coalitions (like WGA) to support land conservation legislation (e.g. Forest Legacy, Farm Bill).
Use land trades, pooling agreements – government should pursue both land purchases and land sales for land conservation.

Funding Recommendations:
Fund conservation easements, land acquisition, including operating costs.

Fund statewide measures, including public funding.

Pass state tax credits.

Value creative approaches.
Find better ways to value aesthetics, environmental benefits, etc.
Explore concepts like conditional or short-term conservation easements.
Continue to expand toolbox.

Slide two
Decision Support Systems:
- Use the technology in land use planning for private and public lands.
- Secure funding for comprehensive baseline data and acquire it.
- Use DSS in budgeting for land conservation.
- Provide access to tools and training for rural America.
- Incorporate community values in DSS (e.g. scenic values, community/cultural heritage, working landscapes, recreating).
- Include local expertise in DSS tools.

Create incentives to include science in planning.

The goals of this session included identifying:

- opportunities for greater land conservation from the examples;
- challenges to successful conservation initiatives; and
- implications and lessons learned from the examples.

SUCCESSFUL PARNTERSHIPS AND NEW TOOLS TO CONSERVE OPEN LANDS IN THE WEST: (continued) SCIENCE-BASED OPEN SPACE PLANNING: NEW TOOLS FOR PLANNERS AND CITIZENS

Lynn Scarlett, Assistant Secretary of Policy, Management and Budget at the U.S. Department of the Interior and Cynthia Lummis, Wyoming State Treasurer led the discussion, which included presentations on four land conservation case studies and two computer-based land use planning tools. The case studies varied in scale, in the kinds of financial instruments used, and in the institutional arrangements employed, ranging from privately financed individual acquisitions and easements to publicly funded, community and tribal programs. A new financial tool was proposed by US Forest Capital L.P. and Evergreen Forest Trust: *Community Forestry Bonds.*

The *Trust for Public Land* highlighted two successful partnerships between public and private entities that protected important cultural and historic sites as well as crucial habitat. The community of Prescott, Arizona has also preserved key tracts of land using public revenues from a "voter approved" sales tax. Finally, the Desert Research Institute and NatureServe, Inc., two nonprofit research institutions, demonstrated how sophisticated computer models and visualization techniques help public and private planners evaluate lands and allocate scarce resources to the most important conservation goals.

The participants concluded that partnerships work well in land conservation, expanding resources, expertise and acceptance by the public. Participants also pointed out that funding is necessary for success, and the public is willing to allocate tax revenues to carefully developed land conservation projects. Creative approaches that combine cultural and historic sites with environmental benefits and employ innovative financial tools, such as easements and tax credits, are important to ongoing success at conserving open space.

On June 25, 2002 Western Governors adopted policy resolution 02-12, Open Spaces, which incorporates these recommendations.

INDUSTRIAL ENVIRONMENTAL INNOVATION - VALUE FOR THE COMMUNITY, GLOBE AND BOTTOM LINE: ASSESSING WESTERN PERSPECTIVES ON MULTI-POLLUTANT PROPOSAL FOR UTILITIES AND CARBON DIOXIDE STRATEGIES
Host: Gov. Michael Leavitt, Utah

DON SHANDY - (McKinney & Stringer, Oklahoma City Law Firm) - welcomed all to meeting.
- appreciation to Gov. Leavitt and Utah for hosting
- recognized staff efforts
- comment on Gov. Whitman's address on the Clear Skies
- WRAP annex sets forth certain provisions - one is backstops to ensure that the milestones are achieved.
- Kudos to WGA for their efforts

Purpose of the discussion is to have a forum for creating ideas, and to develop our top 3 to 5 main points.

ELIZABETH STOLPE, Associate Director, White House Council on Environmental Quality-
White house is committed to Clear Skies as one of legacies of this administration.

All of you are critical in selling this idea to your congressman, I look forward to working with you all.

JOHN PEMBERTON, Chief of Staff, U.S. Environmental Protection Agency-
I had planned to fill in the gaps [of Whitman=s address], but she did a thorough job.

Looking forward to putting the meat on the bones of the initiative.

West is a big player in the process

DIANNE NIELSON, Executive Director, Utah Department of Environmental Quality and Co-chair WRAP-
WRAP and annex in context, realizing that these are founded in the CWA, but realizing that we had to find a way to accelerate progress.

WRAP - regional haze cannot be handled on a local, or national level. We must take a look from a regional level.

Grand Canyon Commission, and in WRAP, the importance of stakeholder participation is paramount.

Many other stakeholders wanted to join the discussions.

Equal partnership, keeping the responsibility at the government level, but an open process is critical.
How can the annex operate, and how can the West contribute?
Essentially, we are dealing with market-based initiatives, backed by caps.

Set caps and milestones for 2003, 2008, 2013, and 2018 for a reduction in SO2 - if we reach those milestones, and the review in 2013, triggering them, there is a training program

We have established a processor for states to come into the program.

We included all pollution sources above (amount?)

We recognized copper smelters that are a vital component of economy, there is flexibility for them to enter also.

WRAP's initiative committee is going to accomplish the goals that we have

Initiative oversight committee proposed 2 options for discussion: 1) take the annex and put it in place as the western proposal or plan for reducing SO2 emissions; 2) maintain the annex as a voluntary program.

For states that select the 309 option must select 6 by the Dec 31, 2003 deadline - the deadline has not changed.

NOX is next on the list. We plan on doing with NOX what we have done with SO2.

JERRY PARDILLA, Executive Director, National Tribal Environmental Council-
It is important to realize that tribal interests in the West are diverse. It is difficult to get equal as well as full representation.

We want to act as co-staffs

I am not here to represent the 300+ tribes, but I am here to give perspective
We stand for maintaining the integrity of the WRAP process.

Annex contains precedent setting provisions which we would like to see come to reality.

We must assure that SO2 emissions are actually reduced.

VICKIE PATTON, Senior Attorney, Environmental Defense-
On NOX, the clear skies program has several errors. Western zone does not make much sense.

Comparing the NOX numbers, the initiative does not make sense.

Should we mimic the East, or should the West take the steps to have a unique approach? How do we manage the compliance obligations?

On mercury, a neurotoxin, report that 60,000 children suffer learning disabilities. Power plants are the largest unregulated source - we need to do something about this.

There are two monitors in the West one in CO, one in NM. The CO monitor indicates levels equal to East levels. The NM site indicates the highest level of mercury in the country.

Need a policy framework for reducing greenhouse gases. I would argue that it is coming.

ED FOX, Vice President, Pinnacle West Capital Corp.-
Industry is not monolithic; we do not have the same set of values.

We applaud the administration for clear skies.

There are a lot of details with CSI, which need to be fleshed out.

We hope that the Enlibra principles are applied in the negotiation

SO2 - we think that it should be as proposed

NOX - I do not think that it is the loom and doom that Vicki says that it is. We do not have the increases that exist in the East

Western utilities have not been calcitrated to NOX.

Mercury - 2004 date - what does that do to a market place? There need to be some very detailed calculations done.

JOHN PEMBERTON, Chief of Staff, U.S. Environmental Protection Agency-
NOX - There is a minimal ozone problem in the West as compared to the East (with exception of CA). Solution to the problems in the West are not same as in the east.

VICKIE PATTON, Senior Attorney, Environmental Defense-
The end goal is to have NOX levels at 2018 at the same level as 1970. We need to de better than that.

Q: Under CSI, how does the administration allocate?

A: Still working that out.

Q: How do we reconcile mercury max with CSI?
A: CSI is meant to comply with merc max, in an attempt to replace it

Mercury issue - looking at a MAC, you don't cap the emissions
we hope that the technologies come out

Allocation process -
- In process through a working group
- The administration and the Congress will be addressing this

Hg Mact relationship to Clear Skies
- Intention is to match up, CSI is meant to comply with merc max, in an attempt to replace it

How do we recognize the differences between the East and the West?

Phase II for Nox in clear skies? Is it aggressive enough under the administrative proposal?

Tribal relationship with the federal government and states going forward - tribal authority rule.

Overall Market based approach

What about the Cap and Trade strategy for Hg?

Process will take care of itself. Everything that has been put on the market has become cheaper - this also goes to cleaning the air.

When do you think that the bill will be dropped? ELISABETH - we are working on it. The need to modernize the CAA is not a red herring.

Timing of Clear Skies - the harder we push and the louder we yell, the quicker it will come to be.

The lack of details is a chief concern. Until we link up Clear Skies to NSR, this will be a difficult negotiation.

Administration is absolutely committed to formulating the approach for all.

There is no role in CS for NSR

What happens with the non-utility industries in WRAP? CS does not address their need for certainty.
ELISABETH - we would welcome your contribution to discussions.
- non-utility sector is still subject to bar

DIANNE - 100-ton threshold is actual

topic: ELISABETH - CO2 strategies not included in CS.
VICKI - Senate bill 556 does deal with CO2. If you are ...

JERRY - CO2 regulation would be favored by tribes. Under cap and trade, not sure it is good to include Hg.

topic: NOX as an issue in the West. It will happen.

What will the baseline year be under CS? - not sure
What about credits for early reductions? - no standard yet

What are the cap and trade parameters

On all elements - legislators and congress are going to take a hard look at the details.

Reopened provision for the phase II target - one of issues being discussed. The idea behind CS is to early-on reductions for credits useful for when others get close to cap level.

Certainty: from what perspective?

The Industrial Environmental Innovations session provided an opportunity for industry to share creative approaches to promote increased environmental performance, better public health and worker safety, while contributing to a profitable bottom line. A new commitment to waste reuse and the adaptation of environmentally sensitive processes is propelling industry to a higher level of environmental stewardship. Presentations focused on:

- Creating and capturing value through matching producers of under-valued waste streams with users, and working with regulators: By-Product Synergy (CH2MHILL and the New Jersey Department of Environmental Protection);
- Integrated planning for organics management – biosolids, animal wastes, and green wastes in the Chino Basin, California (Inland Empire Utilities Agency); and
- Making high quality cement by utilizing mineral components as well as alternative fuels and raw materials (Holcim US).

The sharing of innovations within the session generated significant discussion and a series of recommendations delivered to policy-makers. These recommendations focused on strengthening collaboration among industry and government to promote creative, environmentally sound processes as a standard way of doing business. Partnerships between industry and government are keys to incentivizing innovative environmental initiatives and to identifying and reducing potential regulatory and policy barriers to implementation.

Flexibility: how much revision, will states lose their existing flexibility? What flexibility is preserved? - JOHN - we are not preempting state processes here. We fully expect states to take

steps in this regard. In no way are we preempting state actions.

WRAP committee on oversight's 2 options:... are we offering to you an appropriate choice? We are not comfortable in having WRAP report what the West thinks, each state should respond for itself. WRAP is establishing a process ...

Perhaps there should be more than 2 options, but we need to review the details of CS before we are in a position to say.

We need to make sure that compliance with the annex will continue to generate credits.

SUMMARY:

1- Allocation process should contain...
2- what is the Western involvement in this? In re: MAC, NSR
3- Non-utility sector in WRAP
4- Current options for incorporating NOX - decisions should remain at the state level.
5- Outside the existing 2 options, the annex might be handled by even a third (must look at details first).

Additional main points:

6- WRAP needs to start grappling with NOX issue.

INDUSTRIAL INNOVATION II: INNOVATIVE INDUSTRY STRATEGIES
Host: Bob Wilkinson, Senior Fellow, Rocky Mountain Institute

Bob Wilkinson - moderator
going to talk with a goal of 3 or 4 bits of feedback for the governors tomorrow.

At the end of the hour - lets come up with 3 or 4 clear bullets

one of the panelists already has a list of 5 bullets.

Andrew Mangan, Consultant, CH2M Hill-
Creating and Capturing Value from Industrial Wastes: By-Product Synergy

Waste is typically thought of as that which goes to landfills, etc. But the definition is much broader, including wasted travel, etc. Example: rebar is max of weight, but not volume. The idea is to consolidate to prevent waste. Why is this not happening, and what can we do to make this happen?

Silver-Gold performance track to award companies for achieving a goal set by administration. The program is aimed at capturing the companies that are doing the ISO work... what we found out is that we are covering only a portion of the pollution, there is much of fugitive waste.

12 companies, then 20 signed up. A lot of the momentum was to focus on having multi-national policies for reducing pollution.

When we think of the whole scenario, there is a great Co2 reduction in recycling.

Bob Shinn, Former Commissioner, New Jersey Department of Environmental Protection (1994-2002)-
The program is a reward system to give an incentive to private companies to reduce emissions. New Jersey was one of the first states to come up with this type of a program.

Verification of innovative technologies - if you can get your technology verified, rules can be promulgated on that technology.

Deferral Track - if a company does not qualify for silver track, you can use the deferral track to get into the silver track. For example, if you cannot meet the 5-year compliance requirement, by going through the byproduct synergy process, they are able to overcome the 5-year compliance violation.

Modernize Regulations - there are many old conceptions as to what is waste, but many of these ideas can be modernized to better dispose of or use waste. We need to apply science to waste in order to better use it.

Tax incentive for reusables as well as renewables - with just a little push, this is a great incentive.

Martha Davis, Manager of Strategic Policy Development, Inland Empire Utilities Agency- Integrated Planning for Organics Management in the Chino Basin, California

What we are doing at a local level to close the "loop."

We started with a water supply and quality problem, tracked it back to a waste management problem.

Maps and photos

IEUA is a wastewater utility in southern California's Chino basin.

Explanation of Chino groundwater basin. Problems with salts and nitrates from the dairy industry. Basin has been adjudicated within last 10 years. Developed a clean-up plan to clean up water supplies.

Largest CAFOs in nation, world perhaps. Problem is complicated - growth has complicated the problem of waste. Landscape has been holding the water, which was recharging groundwater, but due to urbanization, losing water due to run-off.

We took a look, and made a strategy with goals of comprehensive management of waste.

5 key factors: 1) rapid urbanization of the area, 2) air pollution emissions from the Chino dairies, 3) availability and cost of energy supplies, 4) increasingly more restrictive regulations, 5) protecting groundwater quality (the biggest concern).

70% of water supply comes from groundwater - so learning to clean water up enables California to better reach goal of 4.4 maf under the Colorado River Compact of 1921.

Investment strategy and business plan to prevent a price hike.

There are numerous methods being employed to clean up the groundwater. These include using wetlands to clean Santa Ana river, de-salinization of groundwater, reusing dairy water for irrigation, etc.

Looking at organic waste, manure, etc, ...

Taking dairy manure, treating it, generating gas, sending gas to de-salter, and then releasing.

Processing 220 tons per day.

Financial support has come from state, and federal sources.

Mike Mullin, Manager, Gov't Affairs & Communications, Holcim (US) Inc. and Chester Goodson, Plant Manager, Holcim
Manufacturing Of Cement

Holcim - one of three largest cement companies in the world. Global volume is 100 million tons.

There are many steps in the cement industry - there are many opportunities to take advantage of a waste stream.

Video overview of cement manufacturing process

Manufacturing process uses diapers and tires to add to fuel for the blast furnace

Performance specifications are 60 years old. We need ASTM flexibility.

As industry, compared to European counterparts, we do not use enough by-products.

Cement industry contributes 1.5% of total Co2 emissions in U.S.

Since 1991, Holcim has reduced Co2 emissions by 14%.

We need to educate agencies about what we can reuse.

We need a greater speed to introduce products

Holcim embraces the Enlibra principles for both the public and private industries.

Q&A:
What did Chino project cost? - engines, etc. Total = $10 million from several sources local, state, and federal.

What is groundwater depth for Chino basin? Upper = about a mile down, and lower basin, it is not very deep.

How much water are you moving? 8 mgd, and going to expand to 25 mgd through de-salters.

RCRA concerns about waste from cement production. Locations depend on transportation veins.

Has Holcim looked into other slag besides steel slag? Yes, we have looked at numerous sources.

What about tax incentives?

Clean air issues... pilot project concept is to bring companies together... conference calls discussing possibilities for the byproducts.

It sounds like there are considerable greenhouse gas reductions.

We need to get WGA to re-look at RCRA - we are out of our adolescence - there is no need for it.

What about bio-fuels. During the energy crisis, BTU from burning corn was about half of that of natural gas.

Q for Martha: Are you able to use the wash water? - We are testing several locations to see if we can blend it in. We are also considering using vegetation to process some of the wastewater.

How much difficulty in getting state or local permits (for both dairy and cement operations)? Yes, there are several fuel opportunities, which we cannot utilize.

Are there drastic differences in difficulties between the public operation (dairy), and private (cement)? More permits needed for public entity, but there was considerable cooperation.

Enlibra process is good, but costly in some instances.

We have been given great amounts of information, but we need to have more of a focus to capitalize on application to Enlibra principles.

Education in the Enlibra process will streamline over time.

The entire regulatory structure often deters the vision of the issues that are the foundation of Enlibra. In these case studies, seeing the big picture allows others to get a greater understanding. This is a big problem in many agencies. Whole systems analysis has been quite helpful.

How much sharing is happening across state lines?
This conversation about barriers is same type of conversation that led to creation of Develop On-site Innovative Technologies. Process is hastened by having the correct tools.

Flip Charts:
Silver-Gold performance track

Verification of innovative environmental technologies

Deferral track

Modernize regulations

e.g., RCRA definition of hazardous waste

Tax incentives for reusables and renewables

Material specifications
Prescriptive to performance-based

Enforce procurement practices
e.g., RCRA requirement to use recycled materials

Regulatory flexibility
e.g. permit flexibility/ speed

Disincentives to process and product improvement

Unintended consequences of regulatory requirements

End-user / infrastructure support for products produced with innovative technology

Risk of abuse of flexibility
Quantify benefits of each process

Revisit RCRA based on lessons learned, with focus on innovation possibilities

Sharing of information develops trust

Good learning to be had regarding what works in stakeholder engagement process and what doesn't
Suggestion for another session

Agencies need more FTEs to focus on Enlibra concepts, rather than on regulations

Need conversations about these issues across state lines

Information transfer to companies regarding innovative technology opportunities

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Provide incentives at all levels of government to encourage industrial innovation that reduces pollution or otherwise benefits the environment ("industrial innovation")
As addition to existing regulatory framework
Economic incentives are most powerful
More trading programs

Create flexibility and allow creativity in regulatory programs, with accountability, to allow for industrial innovation

- View across regulatory programs using whole systems analysis approach
- Focus on performance results in evaluating industrial innovation
- Pilot projects at scale

Encourage the use of products created using industrial innovation

WGA should focus on lessons learned in stakeholder processes

- Information transfer/education for all stakeholders

Continue to support collaboration between states on innovative environmental technologies

Bullets for PowerPoint slide for:
Industrial Environmental Innovations: Value for Community, Globe and Bottom Line
Breakout II: Strategies for Industrial Production

- ✓ Provide incentives to encourage innovation at all levels of government
- ✓ Create flexibility and allow creativity with accountability in regulatory programs to allow for innovation
- ✓ Encourage the use of innovative technologies and processes that turn waste into product
- ✓ Provide a forum for information sharing between stakeholders on lessons learned in collaborative processes (WGA)
- ✓ Support collaboration across state lines on innovative environmental technologies (WGA)

WILDLAND FIRES
Hosts: Gov. John Kitzhaber, Oregon & Sally Collins, Associate Chief, USDA Forest Service

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Governor Kitzhaber

- View this in larger context. To succeed, need much broader set of stakeholders than urban / rural interface.
- How to improve on Enlibra principles e.g., markets before mandates, like mill capacity.
- What kind of infrastructure / local relationships do we need to enable people to find common ground.

Sally Collins -- Associate Chief of Forest Service

- This issue lends itself well to Enlibra – universal problem, affects all political constituencies.
- Drought, endangered species lend complexity.
- Can't protect communities without looking at landscapes – larger perspective.
- Committed to working on 10-year national fire plan.

Brian Waidmann -- chief of staff for Secretary Norton

- Working closely with Forest Service.
- Interior has four bureaus with fire management and fire fighting capacity (FWS, NPS, BIA, BLM) – as with Enlibra, care about results.

First Panel – Blue Mountain Demonstration Area, Northeastern Oregon

Diane Snyder – Wallowa Resources

- Coming together was crisis motivated, as with many other collaborations. Huge conflict and fear.
- Fortunate to have progressive Forest Service to work with, and support from the State.
- Takes a lot of time to move from interest-based conversations to value-based conversations.
- Did socioeconomic assessment, evolved program dealing with forest, range and wetland stewardship, monitoring.
- Reviewed recent projects.
- Policy issues – need to have place to facilitate dialogue (they used non-profit in local community). Wallowa Resources helps bridge move from timber emphasis to forest restoration and health emphasis.
- NEPA is misaligned with restoration work – assumes perfect knowledge in the beginning – it is not adaptive management.
- Need review of ESA to help create review process that is less cumbersome.

Bob Rainville – USFS

- Demonstration Area – shows collaboration can achieve more.
- Goals = watershed restoration, community jobs, integrated actions (collaboration), new approaches that could benefit others.
- Organization = watershed councils, economic partners, restoration partners, state and

federal agencies in coordination council, coordination team in the middle of all this.

- Strategy for restoration – took a year to develop. Includes resource assessment, prioritization of watersheds, quantified what was needed (e.g., miles of stream that needed restoration).
- Reviewed accomplishments in the two years of operation.
- Coordination teams = multi-agency (federal, state, local), integrated vertically and horizontally.
- What is different about this effort? Integrated efforts, outcome focused, process refinements (including shortening NEPA), timber assessment, contracting tools, providing employment.
- Critical needs for any group that is looking at this:
  - ✓ Collaboration = a lot of work, takes time, but required for enduring success
  - ✓ Incentives to bring people to the table (e.g., state provided some funding)
  - ✓ Community alignment – respect local cultures
  - ✓ Process refinements (to reduce focus on process technicalities)
  - ✓ Contracting tools
  - ✓ Support – financial, and from agency personnel to be at the table
  - ✓ Accountability

Rick Brown – Defenders of Wildlife

- One main thing that distinguishes this project – size (over two million acres). Benefits = rising expectations, drew in added funding. But this can also lead to disappointment and frustration. Forest Service staff trying to do more with less and less time as staffs numbers continue to decrease.
- Evolution of project hasn't held up other activities.
- Unrealistic to think that forest will pay for its own restoration.
- Concerned about role of salvage, livestock grazing management, and monitoring in forest restoration.

Questions / comments

- Largely because of this demonstration area, a bio-energy facility will be located in eastern Oregon, using wood waste. Adds another tool.
- Pilot projects need certainty.
- CEQ working on review of NEPA regulations, agencies are helping. Does not change the law, but trying to make regulations more contemporary and learn from the last 30 years.

Second panel – Mill Project Forest Restoration, Gila National Forest, NM

Todd Schulke – Southwest Center for Biological Diversity

- Reviewed history.
- What has worked – collaboration (start with what everyone can agree to = zone of agreement; build strong partnerships such as jobs and Biodiversity Coalition, National Fire Plan Implementation Team, Boulder Principles – national restoration guideline principles).
- Decided consciously not to open it up to a broad community dialogue. Meetings are open

to public but targeted on players.

- Project design
  - ✓ use best available science
  - ✓ choose non-controversial areas to begin with
  - ✓ broad focus and balance of issues
  - ✓ have clear parameters
  - ✓ proper scale
  - ✓ incremental approach
  - ✓ monitoring
- Funded by a forest restoration grant.
- Reviewed forest restoration program purposes and objectives.

Gordon West – Gila WoodNet

- Reviewed how he uses small diameter timber and chips = innovative value-added projects.
- Developing equipment specifically for small diameter timber harvesting -- lower cost to make and less impact on the ground.

Questions / comments

- Incorporate indigenous / local knowledge? No tribes directly involved, and little previous local timber culture in Silver City.
- How to ramp up to landscape scale? Group is moving toward such a plan, but still lots of work to do at smaller scale. Focusing on moving forward at a scale that builds and maintains trust. Scale is important because have to start building trust by working on areas you can agree on.
- Conservation Districts involved? Yes, in National Fire Implementation Plan.
- Biodiversity groups usually tend more toward litigation, not collaboration, why the change? Recognized that it is the right tool for this situation. True that there has been litigation but it can also help lead to more dialogue.
- Use of Secure Rural Schools Act? Yes (Blue Mountain). Grant County did not choose to participate.
- How to balance watershed restoration with immediate needs at wildland interface? Dealing with that as a separate issue. Cost of treatment per acre can be very high. Need clearer guidelines on what the urban interface is, could move toward streamlining to get urban interface projects agreed to much quicker. Make the defensible space a higher priority.

WILDLAND FIRE SESSION (continued)
Hosts: Oregon Gov. John Kitzhaber & Sally Collins, Associate Chief, USDA Forest Service

Lessons Learned

- Collaboration is key -- arises from need or crisis.
- Start small, in zone of agreement, to build trust. It takes time.
- Incentives are necessary.
- Leadership helps get parties to the table.
- Apply good science.
- Coordinate at community level between supply, capacity and investment.
- Align with community culture and context – identify needs and capacities.
- To date, projects usually require incentives, investment and subsidies.

Policy Recommendation

We want to send clear message to decision makers that we want to use collaborative, place-based processes and retain the opportunity to both reduce wildland/urban interface hazards and restore fire-prone forest ecosystems. We don't want to lose capacity to make prudent, rational decisions at the local level.

Top three issues for discussion:

1. Interface
2. Funding issues
3. Process refinements

Issues (those lined out were combined with others)

1. Process refinements
    - NEPA
    - ESA review
2. Contracting / procurements / stewardship contracting / grants and agreements
3. ~~Monitoring~~
4. ~~Opportunity for streamlining in interface projects~~
5. Scale and replication and time
6. Consistent program of work (get away from boom-bust) – how to achieve
7. Incentives
8. Need for structures and relationships for collaboration
9. How to sustain efforts over time
10. What direction / flexibility is needed to get results
11. What monitoring and accountability measures
12. What is needed (science, technical assistance, adaptive management) to make well informed decisions
13. Tension between urban interface and forest ecosystem health / opportunity for streamlining in interface projects

14. Whether / how much projects should pay for themselves or be offset / goods for services – funding issues
15. Mechanism for determining priority uses of land
16. ~~Goods for services / stewardship contracting~~
17. Communicating to wider public
18. Mechanism for prioritizing projects at local, regional and federal level
19. Mechanism for getting issues before U.S. Congress
20. Do costs and benefits need to be developed?
21. Role of salvage / fuel reduction after a fire

Using dots to decide what issues to discuss:

4. Interface tension
    - Built into the fire plan to look at both together
    - Not all interface areas are alike (sometimes priority forest health areas match up with interface, sometimes not).
    - Issues of shared responsibility. Federals required to manage the buffer but also need to have private landowners take responsibility.
    - Interface focus treats the symptoms of unhealthy ecosystems rather than the causes.
    - Role of Udall bill (which would be a top down decision to put dollars at the interface).
    - Decreasing threat to life and limb is why additional money available. Using that to build agreement around forest restoration and health work (for which there isn't near that agreement in Congress). Wildland interface has lots of agreement.
    - Trying to combine high-risk issue and ecological issue – set up triage system, overlap with talking about communities and standard fire protection protocol (people first, then structures, then wildlands).
    - Need separate policy for wildland protection.
    - Fear that Forest Service has been so constrained for so long, tendency is to use the dollars to get other work done.
    - Need to keep site specifics in mind – interface is different in different places.
    - There isn't broad agreement on restoration right now, and linkage between protection of life and property and restoration is creating problems.
    - Under drought conditions, fire will restore forest health all by itself.
    - If this is about protecting communities, has to be place-based and has to be combination of interface protection and wildland restoration.

Other discussion on above

- Note that discussion / case studies may not have been framed quite right to get at our breakout group topic.
- How do we determine what good science is? Use interdisciplinary panel (that also has political diversity if possible).