

Wyoming Renewable Energy Siting Collaborative

Meeting #4: Information Gathering

Meeting Summary

March 5, 2021

10:00 am – 12:00 pm

Zoom Teleconference

Draft for Review

Approved

Working Group Members Present:

Tom Darin, American Wind Energy Association
Christine Mikell, Enyo Renewable Energy
Kara Choquette, Power Company of Wyoming
Chris Brown, Powering Up Wyoming
Rod Fisher, Rocky Mountain Power
Jen Lamb, The Nature Conservancy
Sue Jones, Wyoming County Commissioners Association

John Burrows, Wyoming Outdoor Council
Jim Magagna, Wyoming Stock Growers Association
Colin Mckee, Wyoming Industrial Siting Council
Bob Budd, Wyoming Wildlife and Natural Resource Trust

Others Present:

Steve Smutko, Ruckelshaus Institute (facilitator)
Ashley Babcock, Ruckelshaus Institute (project associate)

Agenda:

1. Welcome, Meeting Summary Approval, and Updates
2. Q&A with Bob Budd and Colin McKee
3. Summarize information with respect to next steps
4. Agenda for next meeting

Handouts:

(none provided)

Presentations Given:

1. ISC presentation (Colin McKee)

Action Items:

1. Everyone needs to fill out the When to Meet Poll

Summary Points:

1. Bob Budd of WWNRT shared his thoughts on species mitigation and private property rights
2. Colin McKee of the ISC shared an overview of the ISC process
3. The group prepared for next meeting where we will look at draft recommendations

Meeting Summary

Welcome

1. Not present:
 - a. Rob Godby (leaving the group)
 - c. Travis McNiven
2. Meeting summary approval
 - a. Approved
3. Updates & new information
 - a. None

Q&A with Bob Budd (WWNRT)

Asked to talk about the following: private landowner benefits and rights, mitigation plan

1. Approaches to mitigation for wildlife habitat losses
2. The issue of valid and existing rights to develop and parity between oil/gas and renewables
3. Other issues from your perspective

Mitigation

4. Structured mitigation rules for Sage grouse
 - a. Robust; you need to be able to walk into a federal court and make an assertion that mitigation met needs of species impacted by activity
 - b. Mitigation should take place before impact takes place (or at least identified with how you're going to do it)
 - i. It shouldn't be negotiated each time, but be meaningful for future projects
 - ii. Laws and rules allow for habitat improvement
 - c. If a company chooses to mitigate, there are more options
 - d. For private land projects
 - i. No regulations for private land, except for core area
 - ii. Only one permit required (storm water), most everything settled between company and private
5. All projects need to think about potential impact and strategic siting
 - a. With sage grouse, do it on already disturbed lands or move it out of core,
 - b. Follow the hierarchy: avoid, minimize, mitigate
6. Siting is the most critical element in anything we're talking about
 - a. Governor and others say they're not against renewables, but are against random renewables
7. Know your impacts on high concern species
 - a. Sage grouse
 - b. Migration (not seasonal movement)
 - c. Crucial habitat (winter range, etc.)
 - d. Species of highest concern per state plan
 - i. Trumpeter swans
 - ii. Midget-faded rattlesnakes
8. Tools for mitigation: Reducing carbon emissions is a good thing, renewables are helpful, but land intensity of renewables is huge... What can we think about? What tools can facilitate avoidance at the scale of these projects? What can we incorporate to build a toolset?
 - a. Avoidance with wind and solar isn't possible
 - b. Need to think about scale:
 - i. What have we done to protect future impact on these species?
 - ii. What is done or proposed to be done to ensure that these species have a place to live elsewhere?
 - c. Create a hierarchy of what works best, match the lifespan of your impact

- i. Solar and wind don't have a perpetual life, but impact is perpetual
- ii. Creates a wasteland for deer in that area, so are there sanctuary places for these displaced land?
- d. Conservation easements and Opportunity for landowners (Habitat business)
 - i. Mindset: what are impacts, how are we offsetting, how are we making this right for the state?
 - ii. Makes a stronger argument than raising taxes
- e. Think about how you are contributing to agriculture and tourism
 - i. No one has made a good argument for this

Property Rights

- 9. Existing rights
 - a. Wyoming great about recognizing property rights
 - b. Potential for problem: there is a current, valid existing right (e.g., subsurface) and you want to obtain a right for surface
 - 1. I.e., don't put towers on top of a trona mine
 - ii. Subsurface conflicts: Leased coal, gas and liquids
 - iii. Surface conflicts: If you put in solar, for example, but it's leased for grazing, you're taking someone's grazing area
 - c. Know what other leases are out there (especially subsurface)
- 10. We have mechanisms in the state that allow us (when not dealing with sage grouse or existing species) to take funding and put toward purpose it's for
 - a. Don't normally do it, but mechanisms exist
 - b. Follow a structure for efficiency
 - c. Protocol necessary for negotiation
- 11. What are pitfalls for private landowners to avoid?
 - a. Landowner versus landowner disputes
 - b. Neighbors arguing over whether one person can develop renewables, other says no transmission, so people become islands
 - c. Need a mechanism where a landowner can be compensated for having habitat
- 12. How can we resolve these issues to make this work for the state, not just for one at a time?
 - a. Compensating a landowner for habitat
 - i. Doesn't necessarily need to be a financial dollar for dollar; there are other ways to compensate (it could be a package of incentives)
 - 1. Financial
 - 2. Assurances of ability to graze adjacent public lands
 - ii. Think about diverse and creative solutions
 - b. Efforts needed from state to define what we can do on our private lands with wind and solar, because some would say they can't have it due to impacts to neighbor
 - i. Only thing that defines rights of adjacent landowners is distance
 - ii. Opens door for opportunities to address some things while still respecting rights of landowner who's decided to develop renewable energy

Other questions

- 1. Research gaps with wildlife around renewables? Where are they? What species?
 - a. Science is expensive
 - b. Scale of wind (the vertical structure) has impacts that we may not understand
 - i. Physical activity as blades are turning?
 - ii. Ground temp, vegetation?
 - c. How can a company show (or not) their impacts?
 - i. Pseudo replicate
 - ii. Scale makes it hard to determine

- iii. Difficult to assess
- 2. Are there places that are off limits?
 - a. National parks, places with safety concerns (legally off limits)
 - b. Ethical question: Are there places that absolutely should not be developed? YES
 - i. But can they be developed? Yes
 - ii. E.g., A rancher can put solar panels all over their entire property if they want to
 - c. RMP has been able to site within the area recommended
- 3. Where is off limits and where are the most desired places to locate wind energy?
 - a. Private property and transmission is a challenge
 - b. Core areas are ethically off limits (Developing is unethical but legal)
- 4. Should we create maps for ideal wind development areas?
 - a. There are perils and pitfalls of creating a map
 - b. Developing mechanisms to provide benefit to landowners for creating habitat is gaining traction
 - c. Maps pit one value higher than another, pits winners and losers
 - i. First wind maps 15 years ago created a firestorm
 - d. Probably not the way to go
- 5. Do we need definitions for most important habitats to require mitigation where it's not required, or incentivize if voluntary, and decide when it's necessary to compensate landowners?
 - a. Ideally, this is done in a voluntary manner
 - b. Outside companies come to Wyoming and may not have ethics of the state initially, but afterward, they have a strong understanding of maintaining wildlife, clean air, etc.
 - c. We need a framework or system where that's a standard procedure in development
 - d. This is already happening
 - i. E.g., oil and gas avoiding core habitat; RMP staying in recommended development corridor
 - ii. The ethic exists

Q&A with Colin McKee (ISC)

Asked to talk about the following: Bottlenecks between processes? ISC permits? Opportunities for improvements?

1. A brief review of the ISC permitting process for renewable energy facilities
2. Is the ISC able to process applications in a timely manner? Are there any bottlenecks?
3. Are there redundancies or differences between county level, state ISC, and federal NEPA permitting and processes?
4. Do you see any opportunities for improvements in permitting processes?

Overview of industrial siting

1. Primary purpose of ISC
 - a. Process applications for industrial facilities
 - b. Also, once a permit is issued on application, ensures compliance with conditions set by council
 - c. There's a small budget to assist with compliance and monitoring and to request fees
2. Projects that are jurisdictional and require permits (unless they meet exemptions):
 - a. Over \$227 million
 - b. For wind: 20 or more turbines
 - c. For solar: 20 MW or disturbs more than 100 acres
3. Legislature: developers can't phase a project in order to come in under limits in individual pieces, so we look at all the project in totality
4. Exemptions: (don't apply to renewables or coal)
 - a. Oil and gas (because activities are permitted by a number of agencies)
 - i. They need approval from federal and state level (APD permit from oil and gas commission)

- ii. For full field, they need permits for stormwater, injections from water quality, air quality
 - b. Transmission
 - c. State and government activities
- 5. Oil and gas review
 - a. Industrial siting looks at
 - i. Economic impacts from construction force on a community
 - ii. Continual construction or operation workforce
 - iii. Environmental impacts

Permits

1. Two types allowed under the Act (similar to EA vs. EIS)
2. 90 days to review then 45 days to issue permits
 - a. No bottlenecks because process is tight
 - b. Bottlenecks happen on front and back end due to stipulations of permit
 - i. Sometimes things aren't done by council
 - ii. E.g., wildlife mitigation plans (done by Game and Fish)
3. Lots of analysis to go into it

ISC

1. Has jurisdiction over anything that doesn't have regulatory body
 - a. When authority exists, ISC has no jurisdiction
2. Looks at socio-economic impacts
 - a. Can put things into permit conditionally in order to address concerns from Game and Fish, agriculture, etc.
3. 19 state agencies participate in applications and have an opportunity to review and comment, if they see necessary

Purpose

1. Require wind and solar to develop a decommission and reclamation plan
2. If they walk away, state needs to be able to clean up property

Function

1. Involves local government
2. Individuals affected can be part of process
 - a. Make concerns known to council
3. Common for citizens to participate when facility will be sited close to them
 - a. Usually, the council doesn't have authority to mitigate things like noise, light pollution, etc.

Impact assistance

1. Offsets unmitigated impacts to local governments (specifically, infrastructure)
 - a. E.g., Roads, emergency, hospitals
2. Part of process

Provisions/topics

1. Renewable project not jurisdictional, needs county permit, county can refer to ISC for review
2. 20 turbines and 30 MW
 - a. Below this threshold, county can come to council for provisions to be put on project, if county wants to
3. Council can
 - a. Reject application if it will interfere with mineral resource
 - b. Modify location of portion or entire project

- i. Never used it, big use of power, would need big reasons
 - ii. Usually, they will deny application rather than move a project
- 4. RMP experienced landowners coming to Council to address concerns
 - a. RMP works with landowners and groups with concerns and make modifications to project layouts and designs
 - b. The right set of ethics leads to success so that burden doesn't get placed on Council

Provision in statute

- 1. ISC is last step in permitting process at local and state level (the end of the road)
 - a. Most details already taken care of
- 2. Council can put conditions on permits and ask applicants to do certain things before construction
- 3. Through industrial siting, state has ability to address concerns in places where there isn't a regulatory hook
 - a. This is used cautiously to respect private property rights

Redundancy

- 4. There is some redundancy between ISC process and NEPA
 - a. ISC focuses on economic, only a little on environmental
 - b. NEPA focuses on environment and mitigation
 - i. If going through NEPA, pretty easy for a developer to adapt to ISC application
 - c. County level permit processes: not sure
 - i. A number have incorporated things ISC requires into their applications
 - ii. They're now asking for the same information before issuing a permit
 - iii. Need ISC presentations to counties because local governments do not understand or know how it works

WYGF recommendations aren't always followed by developers

- 1. Wind has to agree to adopt their recommendations
- 2. How does ISC incorporate and use WYGF rules?
 - a. WYGF active in process, needed, they include requirements (regulatory hook)
 - b. Recommendations not always included into a permit (due to lack of relevance)
 - c. ISC relies on expertise of agencies; sometimes just use judgement
 - d. Leave it to the company to incorporate
 - e. Opportunities to abut what is recommended
- 3. RMP has had active engagement with WYGF
 - a. Tendency for WYGF to suggest requirements for long-term monitoring not included in regulation
 - b. Needs to be a balance there; just because someone proposes a requirement, it doesn't mean that it's a reasonable requirement

Cost of application

- 1. Just to apply: \$95,000
 - a. Price gone up a lot (Costs used to be \$45,000 ten years ago)
- 2. Cost to prepare application (hundreds of thousands)
 - a. Especially for NEPA/BLM projects
 - b. Vast application, costs a small fortune
 - c. Not required for other industries
- 3. Reclamation costs
 - a. Blanket bonding for oil and gas
 - b. For wind and solar, they pay whole cost of reclamation and decommissioning
 - i. If number goes up, need to post new bonds
- 4. Provisions of process hold wind to a higher standard in terms of permitting, reclamation, socio-economic impact, etc.

- a. Underscores how wind is regulated
- 5. Amount of work and effort required drives cost and time
 - a. Minimum 9 months to a year for a straightforward project
 - b. Industrial siting division rules prior to accepting application:
 - i. Public outreach, meeting before application submitted
 - ii. Gives developers opportunity to hear from locals

107 vs 109 Permits: Why are people choosing longer process?

- 1. 107 (like EA) mostly used in the past
 - a. Waives portions of application; less analysis
 - b. Used when not expecting impacts (easy projects)
 - c. If two local governments request 109, or council requires 109, developer needs to start over and rework everything
- 2. World more litigious, companies decide to go to 109 (like EIS) to avoid starting over
 - a. Risk analysis: just do the big analysis from the beginning
- 3. 107 has foundational information that's helpful, but 109 requires a deep analysis
 - a. Current state of a community or environment (what it looks like without project, what it looks like with project)
 - b. Recreational, social services, housing availability, hospital, etc.

ISC and local/county government permitting

- 1. Provides a huge amount of data
 - a. On local level, counties are incapable of getting this info and rely on ISC for their data
 - b. Works well from local perspective
- 2. Repetitive if federal processes are included
- 3. ISC Process is complicated
 - a. Suggested to attend a hearing to learn more
 - b. Run like a court proceeding, complicated and thorough

Is Wyoming unique to have a hugely comprehensive state permitting process (including county)? Do any other states have this same process?

- 1. Not unique for a state to have a process like this
 - a. Oregon has a similar process (for review)
 - b. There are a number of states that have their own NEPA processes (MT, CA)
- 2. State NEPA different than ISC
 - a. More environmental
- 3. ISC is more focused on socio-economic impacts
- 4. Not sure of other states that have the process WITH county permits
 - a. Provision and statute says ISC is the last permit
 - b. If ISC permit is issued and county hasn't issued, ISC overrides
 - Typically a county issues a permit before ISC
- 5. ISC can be issued with condition to get county permit
- 6. Counties don't have regulations to handle this scale
 - a. Go by planning and zoning under state statutes
 - b. Light-weight (not much there)
 - c. Riding on expertise of ISC to get through process
 - d. Involved through impact process

Are there provisions within the ISC permitting process to prioritize local workers / WY employees?

- 1. Condition that council puts in every permit: require company to post job opportunities at local workforce center and local newspaper to make known
 - a. Want them to let local areas know

- b. Can't compel them to hire the workforce (Contractor preference)
 - ISC can encourage but can't require
- 2. Making it a requirement would hinder process
 - a. Mismatch of skills: specialized skills aren't available in Wyoming
 - b. Burden of a heavy duty ask
- 3. ISC permits → quarterly reports from RMP for each project
 - a. Detailing workforce (where they came from, percentage of local versus out of state, job posting with local offices)
 - b. Reporting required throughout construction and post-construction as well
- 4. On average, about 20% comes from Wyoming
 - a. RMP puts expectation on applications
 - b. Varies widely by trade or skill set
- 5. Workers in community increases spending on local community
 - a. Economic benefits via sales tax, housing taxes, etc.
 - b. Communities want them to come stay

Summarize information with respect to next steps

1. What do we do with this info? How is it useful for us moving forward?
 - a. Needs more discussion: mitigation and component of payment for landowners for providing habitat
 - i. Lot of opportunity there
 - ii. Complex, lots of work been done over the years for habitat incentives
 - iii. Could be a broad recommendation
 - b. Underscore the significant amount of comprehensive regulation that already exists under state law, then county, and BLM
 - i. How can this group reinforce improvements in regulation?
 - ii. Can we require visual simulation as part of the permitting process?
 - iii. Wind is not escaping regulation
 1. Wind has lots of regulation, state and county employees,
 2. People are making sure projects are done right
 - c. Gaps in what counties understand and need
 - i. What can support their process?
 - ii. Opportunity to streamline? Are there ways to improve process at jurisdictional levels
 1. Lighten load on developer side
 - iii. In NV: if NEPA done, state accepts that as sufficient for permit
 1. Could WY say a full EIS is sufficient for state regulation?
 - iv. Could we combine data from EIS to streamline for ISC application?
 1. Add in socio-economic pieces
 - v. Challenge: usually projects happen on private property
 1. Most projects nationwide are on private land
 - vi. ISC mirrors federal process in many areas
 1. There is probably room for streamlining
 - vii. EIS is complicated for local government
 1. Slideshow for municipalities of ISC processes
 2. Revisit unmitigated impacts (back off and have a road use agreement to reduce costs)
 - viii. This process makes us think and keeps us clean
 1. Waiver: formats to encapsulate what it looks like when using federal process and non-federal process
 - d. Does Wyoming want some of the investment from Federal level for future renewable development?

- i. Let's think about what this will look like on public lands
 - ii. People may not want to streamline further
 - iii. Nevada has thought this through
- e. ISC has a quicker application process (107)
 - i. Are there projects that meet certain criteria? Could wind be eligible for 107?
 - ii. Can the state help shield the liability component?
 - iii. Infrastructure and industry has evolved to where everyone requires the intensive process
 - 1. Easier to do the comprehensive application
 - 2. Developers don't want to be accused of short cutting
 - a. People want to see developers jumping through all the hoops
 - 3. Too much risk for a developer to not do a full process
 - a. Increased time frame, no big deal
 - b. ISC always performs within time frame
 - c. Well known and well charted path for 109
 - i. Requires more work than necessary
 - ii. Engages wildlife entities
 - iv. Counties can punt anything to state, state doesn't usually take it
 - 1. There are standards and statutes about why they're punting
 - v. Full 109 Process: Expensive and involved process, but helps keep foreign companies accountable
 - 1. Foreign investment wanted to skirt BLM issues, phase inappropriately (using old data from BLM)
 - 2. Local companies are good neighbors
 - 3. Complicated state regulations keep bad apples away
 - vi. Local governments can't keep up with knowing
 - 1. 109 helps counties
 - 2. Counties regulated as much as developer
 - vii. ISC process is complicated, check it out in July
 - 1. It will be the most interesting hearing of the decade
 - viii. Despite all the problems, the system does work
 - 1. Projects are getting built
 - 2. Ability to work with bad apples
 - 3. Challenging projects will get tossed out by one of the permitting processes
 - 4. Process allows for sorting out of complex issues
 - 5. County governments leading the way and making hard decisions
 - 6. Friction isn't bad, but through process, the bad projects work out the difficult components
 - ix. Hard and expensive, but streamlined and it works
 - 1. The real hold is the economics, conversation from legislature
- f. What's going on in Wyoming
 - i. Carbon versus wind: historically about money
 - ii. Carbon energy: Never been, from local government perspective, better money paid to state of Wyoming
 - 1. Severance, property tax, etc.
 - 2. It's going away, won't be replaced by wind or solar
 - iii. Struggle: wait for people who don't remember severance tax money
 - 1. Thousands of people working on coal
 - 2. Renewables require less personnel
 - iv. Things are changing, it's hard, we fight it, but it's happening
 - 1. We have to work through these things
 - 2. In our heads, want to keep things the way it always used to be

- g. Maps
 - i. Don't create a map
 - ii. Programmatic EIS for renewables in NV
 - 1. Paid some dividends
 - iii. Picks winners and losers
 - 1. Caution us against developing maps
 - iv. Risky, challenging, can't get it right
 - v. If state lands can identify places where wind and solar are desirable, to say here are some places
 - 1. Can't do it on private lands
 - 2. Opportunity for places for high level wind on public land
 - 3. Brown field maps
- h. House Bill
 - i. What is the latest?
- i. Governor: can't bring manufacturing to the state as a stipulation for wind
 - i. Sets us up for unrealistic and unachievable
 - ii. Drumbeat of negativity
 - iii. Called for clear and consistent policy for renewable
- j. Government leaders need to figure out how to serve small population
 - i. Tourism
 - ii. Energy
 - iii. Development
- k. Wide open spaces is the reason we live here
 - i. No industry will be our savior, never was
 - ii. Economic diversity conversation is spinning its wheels

Agenda for next meeting

1. Angi Bruce
 - a. A very broad-brush summary of the new G&F siting guidelines
 - b. What information is missing or research needed regarding renewable siting and wildlife?
 - c. What/where are the best opportunities for wind and solar from the Department's point of view?
 - d. What have been your experiences with landowners related to siting renewable energy facilities (good and bad)?
 - e. What incentives and/or guidelines are provided to landowners to maintain wildlife habitat while also siting energy facilities on their property? For example, are there guidelines for siting facilities in order to protect habitat and landscapes?
 - f. What permits or requirements are there for landowners to follow?
 - g. What wind development projects are on the horizon that G&F has been made aware of?
2. John and Jen put together draft recommendations
 - a. Preliminary conversation about recommendations
 - b. How much further can we go on recommendations?
 - c. Others to add to mix?
3. All need to fill out When to Meet Poll

Next Meeting

Date: April 8, 2021

Time: 10:00 – 12:00

Location: Zoom link will be emailed separately

Draft Agenda:

1. Welcome, meeting summary approval, updates
2. Angi Bruce
2. Review Draft Recommendations