



Virginia Stephens
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To: Andrea Sarzynski/WHO/EOP@EOP
cc:
Subject: Attn: Energy Streamlining Task Force

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To: Edward A. Boling Energy Task Force/CEQ/EOP@EOP
cc:
Subject: Attn: Energy Streamlining Task Force

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September 28, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets NW
Washington, DC 20503
Attention: Energy Streamlining Task Force

Dear Sirs and Mesdames:

The Western Organization of Resource Councils (WORC) is pleased to submit these comments in response to the Council on Environmental Quality's request for public comments regarding whether and how energy decision-making processes should be improved, streamlined or expedited.

WORC is a regional network of grassroots community organizations in six states – Idaho, Montana, Wyoming, Colorado and North and South Dakota – that includes 6,500 members and 44 local chapters. We will soon add a seventh organization in eastern Oregon.

Energy policy is not a new issue for WORC and its member groups. Our roots go back to the early 1970s when the Rocky Mountains and Great Plains were targeted as a "National Sacrifice Area" for energy production. Our members banded together to fight these extreme proposals and have been influencing decision-making processes ever since. Five of our six member groups have endorsed these comments: Dakota Resource Council, Dakota Rural Action, Northern Plains Resource Council, Powder River Basin Resource Council, and Western Colorado Congress.

1. Federal laws and regulations are being violated in the rush to develop coalbed methane, and environmental analysis is inadequate

The National Environmental Policy Act (NEPA) directs the Bureau of Land Management (BLM) to consider the impacts of leasing federal resources in a pre-leasing EIS before awarding leases to private parties. Despite this requirement, the BLM has leased over 600,000 acres of coalbed methane (cbm) in Montana without completing a single analysis of the impacts of methane development. This pre-leasing requirement is the only way the BLM can make sure local interests are protected because once a lease is awarded, the company has a right to develop.

In addition, we believe the BLM has violated the Federal Lands Policy and Management Act by leasing methane using out-dated guidelines that fail to account for cbm development. According to the Northern Plains Resource Council, BLM documents repeatedly acknowledge the inadequacy of the current Resource Management Plan (RMP) to account for coalbed methane, and specifically acknowledge the need to amend the RMP to include impacts from a booming coalbed methane industry.

Northern Plains Resource Council has also charged the BLM with violating the National Historic Preservation Act by leasing coalbed methane without consulting with the Federal Advisory Council on Historic Preservation, the State Preservation Office, as well as other relevant parties, and with violating the Clean Water Act by failing to require the necessary state certification before approving several applications for permits to drill for coalbed methane.

“These are not inconsequential laws,” said Mark Fix, a Tongue River rancher and NPRC member. “Together they provide a framework for making sure that federal decisions respect the interests of local communities, and for reining in bad corporate actors. If the BLM can’t even follow its own laws, then how can we expect the methane industry to observe them?”

One prime example of the need for better environmental analysis is framed by this question: What are the regional impacts to aquifers from coalbed methane development? Coalbed methane production involves withdrawing massive amounts of groundwater from underground coal seam aquifers. The BLM estimates that just one gas well could lower aquifer levels by 34 feet within ten feet of the well, and ten feet within a mile of the well. In Wyoming, 713,319,304 barrels (42 gallons in a barrel) of water have been pumped out of underground aquifers since 1989.

Tens of thousands of wells would result in an unprecedented lowering of aquifer levels. No one knows how long it might take to recharge underground coal aquifers with such massive withdrawals, but the most telling data, drawn from years of coal mine studies, suggest that it could take well over 1,000 years for aquifers to reach equilibrium. As underground water levels drop, landowners and rural communities can expect to see their precious wells, seeps, sub-irrigated fields, and natural springs go dry for the long term.

In addition to inadequate environmental analysis, the BLM is also taking too many shortcuts with the public involvement process. For example, the BLM has approved two Environmental Assessments in Montana – one for five cbm wells and the second for 56 cbm wells – without any public notice or comment. Further, during the scoping phase on the Montana EIS on cbm development currently underway, the state gave only two weeks notice before holding five meetings in five towns across the state. The meetings were held in January, a time when many families take time off to enjoy the holidays together. The public was also given a scant two weeks to submit written comments following the meetings. After several parties protested the short comment period, the agencies extended the deadline another two weeks.

We object to the fact that permits and projects are already being streamlined and expedited (see point 4 of this letter) even though federal agencies are seemingly unable to meet their existing obligations under the law for environmental analysis and public involvement.

2. Strong federal regulation and oversight of coalbed methane and other fossil fuel development is needed to counter balance state governments that are either unable or unwilling to prevent environmental degradation and protect surface owners

We encourage the Task Force as part of its deliberations to take a hard look at what state laws and regulations are in place, to what extent they’re being enforced, and what additional laws and regulations are needed to prevent environmental degradation and protect surface owners. In many cases the states are simply falling all over themselves to facilitate, expedite and streamline energy permits and projects, as evidenced by the following examples:

In Colorado, the Oil and Gas Conservation Commission approved a 20 acre density for gas wells in a portion of Garfield County over local objections and extensive evidence of the adverse impacts of gas development on the area’s deer herd. Current state policy also allows wells as near as 150 feet to a person’s home. In the past ten years this has resulted in contaminated water wells and people being driven from their homes. Now the industry has requested permission to drill a well every 10 acres between Rifle and Parachute.

The Colorado Oil and Gas Conservation Commission has also proposed a series of rules that will make it extremely difficult for the public to participate at the local level in the gas well permit approval process. For example, under the proposed rules state issued permits to drill will “be binding with respect to any inconsistent local government permit or land approval process,” and the burden of proof to demonstrate that an aquifer is not suitable for underground injection will be shifted away from the applicant to concerned parties.

In Montana, just one inspection of a coalbed methane field by representatives of Northern Plains Resource Council revealed two blatantly illegal discharges of coalbed methane wastewater with toxic levels of sodium and dissolved salts into a tributary of the Tongue River. The methane company admitted that one of the discharge pipes had been illegally discharging for over six months. Without the inspection (which was initiated by a local grassroots group), the illegal discharges could have continued indefinitely.

Under the guise of “streamlining,” “modernizing” and promoting economic growth, the Montana Legislature took a meat-ax to the Montana Environmental Policy Act, more commonly known as MEPA. Now MEPA cannot be used to attach conditions to environmental permits unless the mitigation is specifically backed up by other state laws. In other words, the legislature has made MEPA a toothless tiger that is mostly procedure and no action. The legislature also significantly weakened Montana’s Major Facility Siting Act by exempting nearly all power generating facilities from review, and by tightening timelines for related environmental and economic reviews.

In Wyoming, Governor Geringer appointed nine members to the State’s Energy Commission which was created to develop a comprehensive energy policy. According to the Casper Star Tribune, “four of the nine appointees are from out of state and all nine come from industry trades. None of Geringer’s appointees is from a consumer advocacy group or environmental group.” Similarly, Colorado’s Oil and Gas Conservation Commission consists of seven members, five of whom have ties to the oil and gas industry.

From March 1999 to March 2001, the State of Wyoming permitted venting of produced gas from coalbed methane wells in the Powder River Basin while waiting for pipeline connections. Over 4 billion cubic feet of methane was vented into the atmosphere. Estimates are that nearly 500,000 trees would need to be planted to mitigate the atmospheric damage.

In many ways, the oil and gas industry today is in the same place as the coal mining industry in the 1960s and early 1970s. New methods of extraction such as coalbed methane development are devastating landscapes, polluting water, destroying family homes, and threatening fragile ecosystems. State governments are ill-equipped to prevent the environmental degradation that is taking place, and mostly incapable of protecting surface owners directly impacted by energy development.

We encourage the Task Force to consider the need for a comprehensive federal law, similar to the Surface Mining Coal and Reclamation Act, for natural gas. Such a federal law would ensure that natural gas is extracted under stringent public safety and environmental protection standards, that all disturbed lands are fully reclaimed to their pre-mining productivity, and that citizens are granted specific rights to participate at every level of the development process.

Industry will of course claim that such a law would put them out of business. However, we note that the Surface Mining Control and Reclamation Act has insured surface owner protection and

environmental reclamation, while still allowing coal mining production to set records in the United States.

3. Safety, public health and environmental protections must be maintained

It is important for the Task Force to remember as it considers the scope and nature of its activities that a number of laws establish the mission, substantive requirements and decision-making procedures for federal agencies. President Bush's Executive Order cannot supersede or interfere with these statutory duties. In addition, as the Executive Order makes clear, permits can only be expedited and projects accelerated if "safety, public health, and environmental protections" are maintained. We refer you to the comments submitted by Defenders of Wildlife, the Oil and Gas Accountability Project and Wyoming Outdoor Council for more detail on this point.

4. Energy permits and projects are already on a fast track

Finally, we question what appears to be an underlying assumption of President Bush's Executive Order 13212 that energy-related permits and projects are being bogged down by unnecessary delays and bureaucratic red tape. From our point of view as landowners and rural residents in the West, fossil-fuel based energy development is already proceeding much too fast. For example, recent newspaper accounts report that:

- big oil companies plan to invest about \$41 billion to expand natural gas supplies this year, while new drilling rigs in operation have hit an all time high,
- power companies, reacting to high electricity prices in California and elsewhere, plan to add 90,000 megawatts of electricity capacity in the next 18 months (nearly 25 percent of what the U.S. Department of Energy says is needed to meet growth in demand through 2020), and
- the federal Energy Information Administration says 1,895 miles of new pipelines were built last year, and it expects companies to complete 4,300 miles this year and 4,650 miles next year (these figures represent record increases in pipeline capacity).

Here are a few of the many state specific examples which support our conviction that energy-related permits and projects are already on the fast track.

Powder River Basin: Coalbed methane development in the Powder River Basin is exploding, with 80,000 to 139,000 gas wells predicted to be drilled there in the next ten to twenty years (14,000 cbm wells are currently permitted, and about 6,000 are producing). For comparison, there are only about 1 million operating oil and gas wells in the entire United States. The BLM is preparing an environmental impact statement (EIS) for the Wyoming portion of the Basin and a draft is expected in November 2001. In Montana, an EIS is being jointly prepared by the BLM and Montana Department of Environmental Quality with a draft expected in December 2001.

Considering that these EISs cover the largest natural gas play in the history of the United States, it's our opinion based on the time line for their completion that cbm development is already being expedited. We encourage the Task Force to pay close attention to the EIS process to ensure that a full range of reasonable alternatives are explored, all reasonable mitigation measures are analyzed, and cbm development is not allowed to dominate the Basin at the expense of other multiple uses and surface owners.

We would also like to see the BLM prepare one basin-wide EIS with the support and cooperation and of all affected agencies and stakeholders, especially considering the fact that cbm development in Wyoming directly impacts downstream water users in Montana (the Powder and Little Powder Rivers flow north from Wyoming into Montana), and in South Dakota (the Bell Fourche and Cheyenne Rivers flow east from Wyoming into South Dakota).

Rangely, Colorado: In Rangely, Colorado the Deseret Generation and Transmission Corporation wants to build an 80-megawatt coal-fired power plant (a total of 36 coal-fired power plants are on the drawing board west of the Mississippi River). According to the Denver Post, “the Colorado Department of Public Health and Environment and the U.S. Environmental Protection Agency can put the plant on the fast track by allowing them to begin construction before the permitting process is complete if power companies can show they will meet all environmental guidelines.”

Limon, Colorado: In Limon, Colorado, about 200 workers are putting in 11-hour shifts, six days a week to complete Colorado’s newest gas-fired power plant in a mere nine months. According to the Denver Post, the unusual speed is facilitated by, among other factors, expedited permitting by Lincoln County.

Nevada: In Nevada, construction workers are scrambling to erect nearly a dozen new power plants as part of what Governor Kenny Guinn describes as a “strategy to overbuild.” According to the San Francisco Chronicle, Nevada “is looking to position itself as the battery pack of the West – a regional energy hub that will be to electricity what Texas is to oil.”

Middleton, Idaho: In Middleton, Idaho, Ida-West Energy Corporation wants to build a 535 megawatt gas-fired power plant about one mile from the city on an accelerated schedule. Neighbors have organized a local grassroots group, which now numbers over 400 people, to oppose the plant. The group says that the plant would be unsightly and noisy, pollute the Treasure Valley’s air, threaten wildlife, and depress property values.

What seems clear after considering the above examples is that energy projects are already being expedited and streamlined in a big way. Therefore, we are skeptical of the need for any further fast tracking for the following reasons.

1. Federal agencies are seemingly unable to meet their existing obligations under the law for environmental analysis and public involvement.
2. State governments are ill-equipped to prevent the environmental degradation that is taking place, and mostly incapable of protecting surface owners directly impacted by energy development.
3. In the case of cbm development it’s not the permitting process that is slowing down development, but the lack of adequate infrastructure – primarily pipeline capacity. As we mentioned earlier, however, this problem is in the process of being solved as record increases in pipeline capacity are coming on line.
4. Public participation in energy decision-making processes is often too little, too late. What ought to matter most is the education and full participation of individual citizens, not how quickly an energy project comes on line.

If additional fast tracking of energy permits and projects will improve any of these situations, we are willing to listen to reasoned solutions.

In conclusion, WORC and its member groups support responsible energy development. Responsible development isn't rocket science: at its heart is respect for the private property and water rights of average citizens, compliance with existing environmental laws, a belief that we must leave things better off for our children and grandchildren, and a willingness to go the extra mile and enforce the laws we've got. It requires discipline, foresight and true leadership on the part of local, state and federal elected officials and agency personnel. Unfortunately, that leadership is sorely lacking.

We retain an open mind regarding proposals to streamline and/or expedite energy permits and projects as long as the end result is better environmental protections, more opportunities for meaningful public involvement, and greater safeguards for surface owners and citizens. We are hopeful that the Task Force can provide some real leadership and innovative solutions toward these ends. Please keep us informed of the Task Force's activities.

Sincerely,

Linda Rauser
WORC Chairperson