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Expedited NEPA Review for Alternative Energy Projects

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Panelists:

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Horst Greczmiel, Council on Environmental Quality
Thomas C. Jensen, Sonnenschein Nath & Rosenthal LLP
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Scott Schang: Our conversation today is about expedited NEPA [National Environmental Policy Act[1]] review and what that really means. We'll see if our panelists can help us come up with a definition for that. This got started a couple of months ago when it became clear that siting new transmission lines to try to tie alternative energy sources into the grid was going to run up against NEPA and other environmental reviews. At the Environmental Law Institute, we were concerned that, once again, environmental law was being portrayed as standing in the way of progress. So, we started thinking about that and talking with folks; then events overtook us. Between Gov. Arnold Schwarzenegger's letter suggesting that NEPA be expedited and/or waived, and some amendments that were suggested to the stimulus bill, expedited NEPA review became very real.

We convened a conference call among 20 or 25 very knowledgeable NEPA experts to talk about what NEPA review meant to them and how to expedite review while remaining true to the core principles of NEPA. The call also discussed consideration of alternatives, involvement of the public, and doing environmental review in an intelligent way without looking at waivers in particular. That call was a very interesting discussion, and it led us to gather this panel here today.[2]

The purpose of the panel is to discuss with you what expedited NEPA review really means. Expedited review has been done before. It isn't something new or necessarily novel, so, we want to first walk through what has been happening in the past. What are past examples of NEPA expedited review? When has NEPA worked very quickly? What has worked and what hasn't? Can we derive any principles around expedited NEPA review from that discussion? For those who have been involved in NEPA for a very long time, this may not be anything particularly new, but for those of us who are newer to the area, we might learn from the past. Then we'll also discuss how this applies to utilities in siting new transmission lines to see if there are any lessons we can learn from that example in particular.

We're fortunate to have four very distinguished speakers with us here today. We have Sharon Buccino, who is a senior attorney and director of the Natural Resources Defense Council's (NRDC's) land program. Her work focuses on protecting America's public lands in the courts, before Congress, and at federal agencies. She has litigated cases under NEPA, the National Historic Preservation Act, and the Freedom of Information Act. Before joining NRDC in 1993, Sharon clerked for the Alaska Supreme Court and worked for a private law firm in Washington, D.C.

Next to me is Horst Greczmiel, who joined the Council on Environmental Quality (CEQ) in November 1999 as the Associate Director for NEPA oversight. He is responsible for overseeing and implementing NEPA and CEQ mandates to ensure that federal agencies integrate environmental values into decisionmaking. Prior to joining CEQ, Horst worked in the Office of Environmental Law at the Coast Guard Headquarters in Washington, D.C., served in the U.S. Army for 15 years, including tours with the Judge Advocate General's Environmental Law Division, and served as environmental adviser to the deputy assistant secretary of the Army for Environment Safety and Occupational Health.

We also are glad to have Tom Jensen with us. Tom serves as chair of Sonnenschein Nath & Rosenthal's firmwide committee on environmental sustainability. He's a nationally recognized expert in natural resources, energy, and environmental law and policy. He leads the firm's renewable energy and natural resources practices. Prior to joining Sonnenschein, he served in the CEQ as associate director for natural resources, as executive director of the Grand Canyon Trust, and as majority counsel for the U.S. Senate Committee on Energy and Natural Resources subcommittee on water and power.

And we are also very glad to have with us Jeff Wright, who is deputy director of the Federal Energy Regulatory Commission's (FERC's) Office of Energy Projects. His office is responsible for processing applications for the construction and operation of natural gas pipelines and storage facilities for interstate and foreign commerce, including liquefied natural gas, licenses for nonfederal hydroelectric projects, and the management of license compliance and dam safety programs. In addition, the office administers the supplemental siting authority for interstate electric transmission facilities granted by the Energy Policy Act of 2005. Previously, Jeff

1. 42 U.S.C. §§4321-4370f, ELR Stat. NEPA §§2-209.
2. Many of the materials referenced and discussed in this transcript are available for download at http://www.eli.org/Seminars/past_event.cfm?eventid=453.

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was the head of the Energy Infrastructure Policy Group in the Office of Energy Products.

Horst Greczmiel: Just to make it very clear, "expedited" means it's done well. It's implemented according to the law. There aren't any shortcuts taken, and you do it efficiently and effectively. So, that's where I'll be coming from, and we'll see what the discussion yields as we go through this process.

The examples I want to give from the past are given as examples of where the process worked to get us through the environmental review in a timely fashion.

The first example is the Healthy Forests Initiative. The reason I point out that example is because we extensively used what we call focused and timely environmental assessments. Importantly, one of the most litigated, if not the most litigated, federal agencies implemented NEPA through this schematic and was not, in any case, challenged in the courts, and there were several of those projects that took place in areas that were in litigation at the time. I think this indicates that a concise and focused environmental assessment that doesn't have the bulk and the depth of analysis that people come to expect from environmental impact statements is doable.

The next example is what we would call the "post to prenup environmental assessments," where several agencies work on not only replacement in kind, which is often covered under categorical exclusions or other processes that are very quickly accomplished, but under environmental assessments because it is worthwhile to expand capacity or modify the ree-existing project in some way. For example, new alignments for a bridge or roadway may be involved. And then there were cases (for example, in one bridge placement in Mississippi) where we extended capacity on the bridge, realigned the roads leading into the area, and went through bridge permitting and other processes. The Federal Highway Administration [FHWA] managed to go through the NEPA process with an environmental assessment in the course of a week. That was not because a lot of folks had been dislocated by the hurricanes and were not involved. That was because we took the time to bring in the elected officials to go out and talk to the communities in the areas where they had relocated so that they were engaged in the process and were successful in collaboratively developing alternatives that minimized environmental effects. And by going through that kind of an upfront process, the same scoping approach used in the Healthy Forests Initiative, the FHWA was able to have focused environmental assessments that did not exclude reasonable alternatives, but they focused and narrowed the amount of alternatives and the review that was necessary.

The final example is one that has been used in many areas, and that's where environmental impact statements are done in a very short time frame. The most recent example would be the CAFE [corporate average fuel economy] EIS [environmental impact statement]. The reason I point that out, again, is because the process that was involved indicated that if you have senior leadership support, i.e., you are getting the people and the resources needed to do the analysis, then you're going to be way ahead of the game. A lot of times, NEPA slows down because it doesn't have the attention of senior leadership to ensure that it stays on course, and consequently, the agency doesn't dedicate the resources to the NEPA analysis and documentation that are necessary.

So, those three general examples, with some rationale, are what I wanted to offer to start the dialogue. I now want to hear about other examples that you all may have.

Jeff Wright: "Expedited" is a word that's kind of old to FERC, and I'm going to speak toward our gas program because that is probably the quickest or most exciting turnaround that we've had. We saw a problem around the year 2000, where we had a critical path, which was our NEPA review, and that was not going to be reduced by any more than about 18 months. We approached the pipelines and told them of our concerns, and we said: "We know you think of these ideas not the day before you file with us, but we know it's far in advance and what we would like to do is to start our NEPA work when you have this germination of an idea to build a pipeline." So, we basically designed what we call our pre-filing program. This program actually allows us to start the NEPA work prior to a formal application being filed with the commission for authority to build a pipeline.

So, by the time an application is actually ready to be filed, maybe five or six months after these people have had the idea to build a pipeline and they're doing their preliminary work, we're working alongside of them. We're doing the scoping meetings. We're doing the basic work to get the resources reports necessary for an application at FERC. So, by the time the application for a pipeline comes to the door at FERC, we're looking at maybe a 10- to 12- month period when we're going to have not only the EIS done and out for comment, but also have our commission issue a final order on the proceeding.

I can cite numerous examples, but I know our first is what sticks with me, which was the Kern River Pipeline expansion. It was about a thousand miles of pipeline through four different states: Wyoming, Utah, Nevada and California. We're talking about a thousand miles, tens of thousands of horsepower compression. It came in at, I believe, nine to 10 months after filing, and it was approved. All of the environmental work was done. Everything stood up in court. It was a good example of our pre-filing process. We've taken that and we've actually used it for our Supplemental Transmission Siting Authority. It's modeled very closely to the gas program, and it also takes some of the best practices from the hydro program (where there are many similarities).

What that led to is what we call our "six principles of energy infrastructure siting," if you will. First, always have a pre-filing. Pre-filing, as I mentioned, gets it going, gets it going early. Second, have a lead agency that is not going to usurp other agencies' permitting powers, but is going to act as someone who can set the schedule and have those other agencies adhere to it.

And along with that principle of a lead agency, you also have a disciplined schedule. You're allowed to specify when

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activity is to be completed, and I'll give you another example. The Energy Policy Act of 2005 gave us the authority to make a schedule, and for the other agencies. So technically, what we do is we decide when our EIS is going to be done, and we set the limit for other agencies' permitting activities to be finished 90 days after our EIS is issued.

Another important tenet, we think, is having one federal record. We start a record at the commission when a case comes in. All the permitting agencies use that for subsequent appeals or whatever. You use that same record. You don't reinvent the wheel, which takes more time and doesn't get the necessary infrastructure in.

Another provision is expeditious judicial review. As another tenet of our program, this ensures that one court, where that facility is, will hear all appeals. You don't go court-shopping. You don't find the best venue for your position. It's held in one venue, and that court uses the record established by the commission.

And the final, controversial aspect is eminent domain. The reality is that we don't use it that much, but it can, in some cases, be very useful in getting what is deemed to be necessary infrastructure constructed.

Sharon Buccino: As an attorney for a national nonprofit environmental group, I come to these issues as a real fan of NEPA. I really see it as a fundamental tool for both the environmental review and the public participation that we rely on to produce both informed government decisions and decisions that are accepted by the people who are affected by them.

I also have to say that at this point in time, I come to these issues as a real fan of clean energy. We need clean energy and we need it to happen fast. That's critical to solving both the economic crisis that we face now and also the climate crisis. And I work on the public lands in the West. They are absolutely critical; they provide a critical piece to getting us to a clean energy future, and we have to find a way to shift our investment from dirty fuel, such as oil or coal, and move toward clean energy. Having an efficient and effective NEPA process is critical to that goal. I think we, NRDC and I, are really searching for ways to effectively use NEPA, so that it can fulfill its mission or idea of being a really powerful tool, a critical tool, as opposed to an obstacle for getting clean energy done and getting it done fast.

I wanted to just turn to an example, and this does come from the transmission utility context. This is a kind of real-time, real-world example of what's happening in terms of planning for transmission to serve renewable energy in California. A process has been initiated that goes by the acronym of RETI. It's the Renewable Energy Transmission Initiative in California. It is a collaborative process. The environmental community is fully participating along with a number of other stakeholders—utilities and some renewable solar and wind companies. What has been done is mapping sensitive environmental areas, so that people can see where the renewable energy potential exists outside of those areas, as well as the potential to site transmission to deliver that energy to the areas that need it.

Just to give you a couple of numbers, California is looking at their renewable portfolio standard. By 2020, they have a mandate to generate a certain amount of electricity from renewables. That translates to about 68,000 gigawatts per year. They have identified, through the RETI process, 29 California renewable energy zones that have the potential of 200,000 gigawatts per year.

So, I think what this demonstrates, in my mind, is what we can do. First is the critical importance of planning. We have to have a vision of what works, in terms of getting the renewable energy we need as well as the transmission. Then, we also need a mechanism to get that vision, and planning is the absolutely essential piece of that. Having the vision as to where you can get to deliver these solutions and getting that before the agencies that are making the decisions. That way, they can make decisions according to a plan and vision as opposed to just making decisions on the solar project that happens to come in their door first.

And these, the red on these maps (of the Los Angeles area) are the actual existing transmission capacities. But they have, through this process, identified concrete solutions, and I think it's something similar that we really can take to the federal level in terms of getting the clean energy and getting it to happen fast.

Thomas C. Jensen: I spent a lot of years trying to make NEPA work better. But let me offer a couple of observations that I think are hopeful ones, with respect to transmission. The people who have the greatest difficulty with NEPA have tended to be the impatient extractive industries, not comfortable with fully disclosing environmental effects of their actions. We're not dealing with an extractive industry here. We're dealing with entities that are relatively patient in terms of their capital. They are relatively sophisticated in terms of their experience with government in governance. And at the end of the day, utilities, like the gas utilities that FERC works with, and others who are investing in transmission are creatures of government. They are not private capital, though they are financed with private capital for the most part, but they exist with government, day in and day out. They're comfortable with government, and they understand and have a functional relationship with government in a way that a hard rock miner usually does not.

The interesting dynamic we have with transmission is that the impatient capital, the people who are in a hurry, the people who would rather not turn square corners, are on the generation side. The good guys, the green guys, the folks who are eager to get the panels up or the rotors or turbine spinning, many of them are more on that impatient side of the scale. So, the transmission developers may find themselves culturally in a somewhat different spot relative to NEPA than the proponents of new generation. There will be an interesting tension there.

I think one of the interesting and maybe indicative problems we're going to have making this work out for transmis-

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sion is that the first consequences, the first news stories, and the first headlines about environmental impacts or stimulus-driven projects are coming out of the front-loaded shovel-ready transportation projects. And if you're following the trade press, not every project that is coming or that is getting funded first looks really good in daylight. Some of them do. Some of them look smart. Some of them look green. But others look like things that couldn't get money for a lot of years for a lot of good reasons and are finally on their way.

I think we have a challenge, those of us who develop transmission or develop green energy, to demonstrate early and persuasively that we're going to look at this long-term investment in civil infrastructure, which is going to be standing for 50, 75, 100 years, and that we're going to do it right. In that regard, doing it right is fairly well-scripted.

Everyone has suggested that there are resources available today that weren't available five years ago. Resources that offer the best thinking from some very good people, who come from very different perspectives about what makes NEPA work efficiently, which is different from saying it makes hard problems go away. Hard problems are hard problems. But good NEPA is a good governance process. The NEPA Task Force has, of course, shepherded and produced a very useful report.[3] A lot of nuts and bolts that you need, that developers and regulators need to understand. The CEQ Citizen's Guide has a great deal of strategic and tactical advice in it. The Collaboration in NEPA Handbook[4] that CEQ has produced, FERC's own experience, FERC's own lessons, and the empirical evidence of how FERC has managed its procedures are a great object lesson on how to do it right most of the time. The Federal Highway Administration has a long track record of thinking hard about how to do it right. Anyone who, at this point, suggests that somehow NEPA is a roadblock and that we don't know how to make it work fast hasn't been paying attention.

Scott Schang: Thank you all very much. Why don't we start and move a little bit now more toward general principles of what makes expedited NEPA review actually work? I think we've actually heard some of them already enunciated within.

So, these are things that helped expedite NEPA review:

- identify all relevant issues at the beginning;
- pre-application review;
- build consensus on alternatives upfront;
- coordinate amongst state and federal agencies, potentially with a lead agency;
- coordinate with other reviews and permitting processes;
- have sufficient data;
- allocate sufficient resources or make sure that sufficient resources have been given to the agency;
- have leadership from senior management; and
- preempt at your own risk.

So, those are some principles. I'd be curious to hear the panel's reaction on anything they agree with, disagree with, or would add caveats to or emphasize.

Jeff Wright: Well, for "preempt at your own risk," I don't think FERC ever really got the ability to preempt anybody. I'll speak in terms of liquefied natural gas siting. It was clarified that we were the siting agency, but then the Energy Policy Act of 2005 (EPAct 2005) went to great lengths to make sure that the states have a large role in it. And, in fact, states still have their delegated authority, and acting on those principles, they can still find a project may not be in their interest, and effectively veto a project that's approved at the federal level.

So, I don't want you to think that FERC has these wide-ranging powers that are going to stomp on individual permitting agencies. It doesn't. But it does have, and has gotten, the authority to kind of corral those. For years, we had problems with, I guess you could call it sequential permitting, "we're going to wait until FERC finishes then we're going to start our review." We're moving to where it's more everyone is working in parallel. We're setting a time schedule. You don't need a FERC decision to go out there and do your work. Go do it now. Go for it, and here is your schedule.

I want people to realize we are working in concert with the states and other agencies. I would note this fact: that there'd be a lot more of our hydro decisions issued more quickly if the states would get to issuing their water quality certificates and things like that.

Thomas C. Jensen: While I endorse all those principles, I think that a lot of those boil down, to me, to just a simple phrase: of taking government seriously, taking governance seriously, and not assuming a priority. And that smart NEPA is smart governance. Smart is political science. NEPA is on the compliance step. It's a negotiating strategy with stakeholders. I've never understood the tendency of business to compartmentalize public affairs and strategic communications over on one side of their operation, and regulatory compliance on another because they really boil down to the same chore of deciding who you have to pay attention to about what. The transmission world is going to raise this to a new level. We're going to learn new art, I think, as we try to expand a lot of hard things simultaneously, do a lot of hard things simultaneously in different parts of the country. We haven't done anything like this before, and the people who plan strategically, that commit resources on time, will come out okay. It won't be easy, but they'll come out okay, I think.

I have a challenge to my colleague from CEQ. My nightmare, as someone who's helping develop transmission, is the uncertainty around what NEPA requires in terms of analysis of climate impacts from the project as well as climate

3. House Task Force on Improving the National Environmental Policy Act, Recommendations to Improve and Update the National Environmental Policy Act (July 31, 2006).
4. CEQ, Collaboration in NEPA A Handbook for NEPA Practitioners (2007), *available at* http://www.nepa.gov/nepa/nepapubs/Collaboration_in_NEPA_Oct2007.pdf.

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impacts on the project. We have muddy case law. The Center for Biological Diversity case[5] is probably the best law at this point, but understanding what an applicant proposing to do something that's going to move a lot of electrons around for a long time has to demonstrate in terms of climate, is a big unknown.

We have people who are doing this, who develop strategies to thread the needle of potential judicial review, but we're all whistling past the graveyard, I think, to be fair. And nothing is going to trigger more NEPA-based attacks on projects than this untested hypothesis about what NEPA demands in terms of climate analysis. It is the principal strategic vulnerability. We've figured out archaeology. We know how to do those reports in that analysis, but this is tough. I think CEQ has an obligation to give us some guidance on that soon. There are places to look. California, as usual, has a lot of ideas, a lot of paper, a lot of things up on the Web that suggest where we might find ourselves in time. And there are Californians all over the executive branch at this point in Colorado—Californians in Colorado. But that's an important thing to clarify soon.

Horst Greczmiel: That was a great understatement. I agree with what you said Tom, this is one of the issues that we're actively pursuing at this point. And, yes, we're going to be addressing climate change in the near term. It's something that I think everyone is clear on. That, as you mentioned, you have to look at the effects of the project on the environment. So, for a simple example of greenhouse gas emissions, some people will say, "well, considering the total volume of those emissions, what my little project is emitting is really irrelevant." That misses the opportunity under NEPA to say, "well, if you know and can compare the relative emissions of various alternatives, that might actually help you figure out what alternatives make sense from a good governance perspective," even though that individual proposal or project is not going to change the overall aggregate impact of what is occurring in the climate change arena.

So, I think that we are going to be looking at climate change and NEPA, and it's going to be, as all of NEPA is, laden with the rule of reason. We need to get over the idea that some folks still have that because climate change is a global issue and it's considered to be important or "significant," in NEPA terms, that consequently any project that contributes to climate change has to be analyzed in an EIS. Well, we know that it's the incremental effect of the project that is judged on whether or not it triggers that significance threshold. Putting that into perspective is what the guidance, obviously, is going to have to address.

The other very important aspect of that guidance was also mentioned by Tom, and that is that you need to consider what the future is going to bring with regards to the effects of climate change on that project or proposal. If you take a look at the coastal areas in the United States and the roadway, pipeline, and transmission line systems in those areas, you suddenly begin to realize, if not from a business perspective then at least from an engineering perspective, that somehow the materials being used to construct those projects are going to have to be reinforced over time because the waters are rising. The foundations aren't going to be the same. And so, that has to be taken into account as well if we're talking about developing infrastructure that is going to stimulate the future as well as the current development of the economy.

Sharon Buccino: I endorse all those principles listed up there. I just focused on the pre-application review because I think that what happens a lot of times is that there is not the investment upfront that could really pay off later on. I think it's an issue of where you can save the time later on down the road in terms of avoiding controversy or litigation by putting more time and resources right at the beginning.

Jeff Wright: Let me just mention, with regard to pre-filing. I don't think, at least from the FERC perspective where we're decreasing our NEPA review or decreasing the time, that we're just merely shifting it.

Horst Greczmiel: Yes, let me just make one final point. I was talking about climate change around the principles. But one point that I want to drive home is scoping, scoping, scoping. FERC has pre-filing. Other agencies may not. But that doesn't mean that they cannot advance, move upstream, think about and start addressing those types of concerns—identifying what the issues are, figuring out what methodologies there are out there to measure changes that take place in the environment, figuring out whether or not there is consensus within the community of interested parties as to what the valid reasonable alternatives might be.

So, a lot of agencies call me and a lot of consultants call me and say, "well, when does scoping begin and when does it officially end?" And my answer to them is, "scoping can be as long as it is helpful to the agencies and to the participants in the NEPA process." And having that dialogue going on as early as possible to help focus and shape the analysis and the documentation that is produced is critical, and I think a lot of those principles speak just to that.

Thomas C. Jensen: This is on the government's plate, not the private sector. The willingness of the decisionmaking agencies to commit federal dollars to support stakeholder engagements and support the NEPA process for more than their own staff is essential. The stimulus legislation includes reprogramming authorization for a number of things, but not everything. And you have the NEPA language in the bill itself.[6] I'd be interested in how other lawyers interpret it, but it does say that NEPA is about preventing litigation, which is a surgical procedure. It's a form of birth control. I assume it's a typo, so, let's skip over that. But it does say that adequate resources within this bill must be devoted to ensuring that applicable environmental reviews are completed on an expe-

5. *Center for Biological Diversity v. NHTSA*, No. 06-71891, 38 ELR 20214 (9th Cir. Aug. 18, 2008).

6. American Reinvestment and Recovery Act of 2009, Pub L. No. 111-5, 123 Stat. 115, §1609.

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ditious pace, as some of the shortest existing applicable process, blah, blah, blah.

I'm not sure that every lawyer would agree that this is a blanket authorization to reprogram funds to support public involvement, but maybe it is, and maybe it should be. And there is no substitute at this point for the kind of expedition that can be brought to the decisionmaking process by the agencies themselves, bringing people in rather than waiting for people to chuck stuff over the transom at the 11th hour.

Scott Schang: Well, let's discuss transmission lines for alternative energy. How can we bring those principles to siting transmission lines that are going to carry predominantly alternative energy resources or renewable energy resources?

Thomas C. Jensen: I don't think there is any magic to it. "Scoping, scoping, scoping," to quote Horst's eloquent plea. The agency should be engaging. My hypothesis is that on complex linear infrastructure, with dozens of jurisdictions and dozens of different stakeholder cultures involved, there is no substitute for a very well-led, neutral process led by talented mediators, facilitators, neutrals—whatever it is—to elicit that scope of issues that merit attention. People that are engaged in doing that to make sure that you reduce to the smallest possible number—which may not be a zerothe stakeholders and interest groups who feel alienated and oppositional from day one, and who become adamant in that position regardless of the merits of facts or certain changed circumstances. It's that upfront investment in paying attention.

Sharon Buccino: I do think the California process offers a good, concrete example. The idea is to bring the parties together, deal with it on a statewide basis, so that then it is an investment that serves and limits the amount of analysis that has to happen when each project then comes along. And I think—and just in terms of the resource issue—what's happened in that process is the time that the individual stakeholders have put in and have been on their dime. But the California Energy Commission has put in resources to help, like the maps produced by consulting sides, so there were funds that generated the tools that were necessary for that group of stakeholders to collaborate effectively.

Scott Schang: How do you scale up the California example for the issue we're facing on this national scale? Is there a need to educate nationally on both the need for alternative energy and the need for transmission lines?

Sharon Buccino: Well, I have a couple of thoughts on that. One is that there is going to be some kind of federal legislation that is necessary and that is moving very quickly forward. Both Senator Harry Reid (D-Nev.) and now Senator Jeff Bingaman (D-N.M.) are engaged very actively on that. I think it's Thursday this week that there is a hearing by the committee. And because there is a legislative frame that's needed to scale up and allow it to happen on the federal level.

One other thing and one other very useful tool, I think, to getting to the national solution is the use of programmatic EISs and using them effectively. And just one example there, the Bureau of Land Management (BLM) is, right now, in the middle of developing a programmatic EIS for solar resources on their lands, and I think that provides the mechanism to start the process that California has engaged in. And one critical piece there is that they do try to clear some areas for energy development.

So, this really is using the NEPA mechanism and tool to do the planning that's necessary. You brought the stakeholders together. Let's look at the map and figure out where exactly are the areas that this is going to work with minimal environmental impact. We're going to get much better results if they look at it comprehensively and aren't forced into a process of just approving the first permit that came in the door first.

Thomas C. Jensen: There has been a similar round of thinking done by the stakeholders involved in ocean renewable energy—wave, tidal, and current energy. NRDC, along with Environmental Defense Fund, the Surfrider Foundation, a number of the leading development developers, lawyers, and the state of Hawaii, among others, put together a set of principles for creating a regulatory framework for offshore ocean renewable energy. And included in that is a coordinated NEPA review, a coordinated planning process, scope out, safety approach to the EIS, getting the zoning issues—there is the "Z" word—the zoning issues out of the way early through a coordinated process. Ocean renewable energy is really all of it. It boils down to use of the sea surface in getting transmission lines to shore. Transmission is a huge part of it because there is none out there but there is a lot of energy. And so you've seen different players coming to really the same set of recommendations for government. There are other issues involved, but the core pieces on how to think it through are the same.

Horst Greczmiel: One good point that's coming out of all of this, with the different studies that have gone on, and also the Western Governors' Association study on the energy zones and the like, they point out the fact that we can no longer think in the stovepipes. It's not just production. It's not just transmission. We need to get out of those stovepipes, or what some are now calling the cylinders of excellence, and recognize what ties them together. There has to be a camshaft that connects it all and makes the engine run.

And so when you start looking at what areas are available for development of solar and wind, and then you look at how those would connect to the grid, that kind of broader scale thinking is beginning to take place. And I think that speaks very well for the future of the potential NEPA processes because we can have the national education, as you put it, Scott, and the recognition that we have to start bringing together these different systems, and then a regional approach on a programmatic level that starts looking on the ground where the areas are that might be affected, where the

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zones of exclusion might be—if we want to call them that—or where the zones of opportunity might be, with regards to those transmission lines. Starting to approach it from that aspect, I think, bodes well for future NEPA processes.

Jeff Wright: I think that probably we're all smart people here when you realize you can't have more generation and not have wires. I think my former chairman probably said it best: "If you're for renewable energy, you're for transmission. There are no two ways about it." And I think you come down and you go out there to the grassroots, and I get these phone calls about projects that aren't even in my jurisdiction, and these people are just railing about how can they build wires here? There does need to be some kind of national education. There needs to be, and I know we do it a lot with the pipes and hydro outreach. We go out to areas where we foresee projects coming.

And while we may not eliminate opposition, we at least let them know why this energy is needed, why these pipes or wires and what have you will cross your land and you will not get a direct benefit out of it. There is a long run. There is a public benefit to it. Sometimes, I tell these people, "well, you're turning on your lights. You're heating your house. Someone upstream somewhere was impacted by the energy project that was built that serves you." And with a growing population, we're going to have to realize that more energy demand means more wires. I mean, you can build stuff underground, to a certain extent, but it's very expensive and people are not going to want to see that either. But I think we understand that wires need to be had, but I don't think the country really grasps that out in the heartland, so to speak.

Horst Greczmiel: And just to be clear, that heartland is everywhere. When we talk about energy transmission, we tend to automatically think about the West, where there is the development of wind and solar on a scale that we haven't previously anticipated. But when you talk about providing transmission capability to new communities, take a look at the eastern part of the United States. How few federal lands there are, and we're talking about wires that are going to be within sight of the places that are now open, which in many cases are the Civil War battlefields, the Revolutionary War sites. You're talking about land that isn't developed in the East and where you might have a right of way, and you're going to have some cultural resource issues as well as natural resource issues arise.

And so I think that type of a dialogue has to be had, and people have to start recognizing that there are going to be trade offs, i.e., under NEPA, what are the alternatives? What are the pros and the cons of those alternatives and how do we best move forward?

Thomas C. Jensen: It's a huge, huge messaging problem. And until transmission—how many of you have seen the murals at the U.S. Department of the Interior? There is sort of the WPA-era mural showing brawny men driving spikes and tawny pillars of the soil behind the plow. And until there's a vision of transmission in renewable energy that integrates them into a compelling vision of the future of the country, each one of those things is going to look like wires and steel instead of a pathway to a better world. And right now, there is not that kind of message.

Thomas C. Jensen: We're going to have to make that jump to a level of communication that is effective in engaging the American people in the belief, in the truth, of that change that we need here. And that is a huge leadership challenge if the industry is going to have to be a big part of that. It can't all come from government, and it certainly can't come from Capitol Hill a lot. It's a strong coordinated message. And that will expedite NEPA.

Jeff Wright: I was just going to point out an interesting point. You're talking about the two bills—the Reid and the Bingaman Bill—and the Reid Bill is quite upfront about renewables and how many electrons should come from renewable sources. That sounds like a nightmare to me. Maybe if you look at the Bingaman Bill, it helps renewables but it has absolutely no requirement. It would like to have renewable energy on wires but no requirement for those wires to carry renewables.

Scott Schang: Finally, we'll open it up for questions from the floor.

Audience Member: Going back to this mundane level, you're talking about coordinating with other reviews and permits on how to issue data. What is the process, for example, on the liquefied natural gas (LNG) lines out of Sparrows Point, where the Corps didn't have the information in the permit, a certification was given and then they rejected it again, saying we need the information. What happens next? How does agency coordination work here?

Jeff Wright: As I understand that, and very peripherally, I mean, I wasn't on the project itself, it was a project sponsor that wasn't supplying the Corps with the needed information.

Audience Member: Yes, AES.

Jeff Wright: AES, and in that sense, while we do issue letters and tell the Corps to hurry up, we do recognize that to complete their mission, to complete their permitting, they need the full amount of data from the project proponent as well. On the gas side, LNG or pipelines or underground storage, for that matter, we will certify, if we got to a point, we'll go ahead and certify, with the condition that you get your permits. You can't break ground until those permits are in hand.

Thomas C. Jensen: You do it on hydro too.

Jeff Wright: And we do it on hydro.

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Audience Member: So, the certification, we still have to forward data on an agency. . . .

Jeff Wright: Oh, yes. Yes. That was a major. . . .

Audience Member: To stay objective in the EIS.

Jeff Wright: Yes. As a major part for gas in the Energy Policy Act of 2005 is that agency coordination. And in fact, unlike the pipelines on the LNG side, it was mandated that you have pre-filing. It was the first time we've ever seen that in a statute that you have to spend at least six months in pre-filing.

Audience Member: Number one, I'm wondering if CEQ plans guidance under an expedited review process from the stimulus law. And number two, EPA [the U.S. Environmental Protection Agency] has a NEPA-like process for loans for wastewater in terms of water facilities, and now, they have grant authority. And you see NEPA-like EISs, the same as expedited EISs. Are these similar or the same thing as expedited review?

Horst Greczmiel: Taking the first piece with regards to the Recovery Act, yes, we're developing that guidance. We've already met with the agencies to make it clear that, under the Recovery Act, we do expect shovel-ready projects to be compliant with environmental requirements. The fact that Congress has asked that the most expeditious means be used does not mean that we take shortcuts. We take the appropriate, most expeditious approach, and we apply it properly.

We also talk about, or we will be talking about in the guidance, these different tools that are available to the agencies across the board, some of which you've already heard here today. In addition to programmatic approaches, and the effective use of adoption, we're also working with agencies to address whether or not the agency has in place the necessary NEPA implementing procedures, and whether they need to be revised. For example, all agencies have to comply with the statute (NEPA), the CEQ regulations, and also their own agency-implementing NEPA procedures. So, we want to make sure there are no roadblocks created inadvertently in those procedures that might stand in the way of moving forward with projects in a way that is still compliant with NEPA.

On the other side of the house, those EPA NEPA-like—or voluntary EIS or voluntary NEPA—programs were put into place where there are statutory exemptions under the Clean Water Act[7] and the Clean Air Act[8] for EPA. So, we're not talking about an expeditious NEPA process. There, we're talking about something that was waived by statute. And the agency, recognizing the value of NEPA, is trying to use something that is similar to NEPA in order to inform its decisionmaking. So, I see that as being very different.

It's very important to note that, under the Recovery Act, Congress had several opportunities to address the question of the advisability of waiving or setting aside NEPA requirements. And Congress decided not to do that, but rather to reaffirm in §1609, as you heard Tom read it, the importance of complying with NEPA. Congress also decided to impose on the agencies and the executive branch of the government—on the president—the requirement to report to Congress on how well we're doing, as well as on the status and the progress of those NEPA analyses associated with Recovery Act-funded projects and activities.

So, in addition to having a NEPA work force that now needs to gear up for a lot of work under the Recovery Act—assuming that we are going to get to the point where we have to address projects that are not shovel-ready. I would point out that even Governor Schwarzenegger's January 5 letter to the president-elect at that time said: "I've got $44 billion and 800,000 jobs ready to go. And by the way, if you want me to do more, then I'll have to start asking for waivers." And what he meant by that was: "If you want me to start today." I think that once you implement that first tranche of projects that are shovel ready (environmentally compliant), you're going to have time, using the NEPA tools that are available, to bring other projects online and have them ready to go and be ready to implement in compliance with NEPA as well as other environmental requirements.

So, that reporting requirement, I think, is going to be something that will be very interesting to see how it highlights the fact that there are situations where the funding agency may not be the only agency that has a NEPA responsibility, where there may be a permitting agency that has a NEPA obligation as well. So, we need to emphasize doing things concurrently—rather than consecutively—in being able to move them forward. So, a lot of those principles we've been discussing here today are going to really be highlighted in the next couple of months and years, as we implement the Recovery Act.

Scott Schang: Should grants versus loans be treated differently. . . .

Horst Greczmiel: Well, if they're exempt, then obviously, they're going to be treated differently. But in general, when dealing with grants and loans, the focus is going to be back on the general concept of "what is the federal agency's role in all of this? What's their decisionmaking authority? What's the scope of the analysis that they should be conducting?" For example, if Congress says, "We're going to give you X dollars, and it will be allocated in this fashion, and you will send it out the door," then there's not a whole lot of decisionmaking to be made, and there may not be much of, or any, NEPA responsibility. Whereas under other programs, where there are competitive grants or grants that require eligibility critereia yet to be defined by the agencies, then that's a great opportunity for programmatic analysis. For example, there is going to be more NEPA work that needs to be done because there is more planning that needs to be done. There's

7. 33 U.S.C. §§1251-1387, ELR Stat. FWPCA §§101-607.
8. 42 U.S.C. §§7401-7671q, ELR Stat. CAA §§101-618.

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more decisionmaking that needs to be done, and that decisionmaking—I think we should all agree—needs to be well-informed, especially considering the amount of dollars that are going to be spent and what that means to the budget and the economy and the environment, not only today, but also in the future.

Scott Schang: There's a question from the phone that, actually, I think we've mostly answered, but maybe you have something to add. The caller asks: "Are there any provisions in the stimulus bill for expediting NEPA for FERC as well as other agencies? How do you think such provisions will be implemented?" And as Horst just said, Section 1609 of the American Reinvention and Recovery Act does talk about expediting NEPA and reporting on those efforts. Is there anything anybody wants to add about. . . .

Thomas C. Jensen: Shovel-ready is kind of an interesting concept for a regulatory siting agency. If it's shovel-ready, they've had our door. But like Horst said, if you have that first tranche—have your own projects that have passed through the regulatory review—and for whatever reason, they need some stimulus, fine, but that just means what is coming in the door at a regulatory agency needs to be worked on and worked on in an expedited fashion to keep it going.

Sharon Buccino: I'll just add the basic answer to that question, I think, is no, that there aren't any explicit statutory provisions expediting or changing the fundamental NEPA process in any way. In fact, that issue came to a head because there was an amendment that was considered by Senator Barrasso to waive statutorily or change the NEPA process, and that was rejected by a voice vote. And then followed the Boxer Amendment, which is the section in the bill we've been talking about, which talks about getting the resources there and making sure that the processes in place under the NEPA statute were sufficiently an effective link.

Thomas C. Jensen: Right. Scott, I have a question for Sharon and Horst. Could you imagine—are you willing to conceive of a categorical exclusion for transmission lines meeting certain criteria? Forget big/small, long/short. But if, for example, there was no ESA jurisdictional species or habitat, no extraordinary wetland-related Clean Water Act concerns; in the certain amount of the capacity—what we committed solely to renewables—can you imagine categorically excluding those projects from further NEPA review?

Horst Greczmiel: I'll start since I've taken a lot of popular comment on my "affection" for categorical exclusions. The reason I like—or have "an affection" for—categorical exclusions is that if they're used right, that means we can take the resources we have and apply them to the projects that really matter, the ones that merit an environmental assessment or EIS. But doing them right is not always that easy. As you mentioned, Tom, the sidebars or the parameters that you want to construct around that will lead a lot of folks to say: "So, what value is this? Where do we get from Point A to Point B and really not have any of those issues arise?"

In theory, I can see something like that being constructed. In practice, the value of it and how it fits into the big picture . . . because remember, to be categorically excluded, it's not only the individual but also the cumulative environmental effect that has to not be signficant. So when we're talking transmission systems, you do have individual transmission projects from time to time that could benefit from this kind of an approach. But by and large, what we're talking about today—and especially what we're talking about under the Recovery Act—is the system at-large and its collective or cumulative development and effect. And so in that context, I find it difficult to endorse a categorical exclusion. But in theory, yes, we can construct a tailored categorical exclusion that does set sidebars and parameters. The question is the utility. At the end of the day, after developing that to be able to actually use it on a broad scale, the concern is that the utility of such a categorical exclusion is rather limited.

Sharon Buccino: Well, there's definitely a part of me that recognizes the value of collaboration. I don't want to reject your point here out of hand. But I do. . . .

Thomas C. Jensen: Let the record reflect she picked me.

Sharon Buccino: I mean I do want to give you an honest, gut reaction, which is: I don't think the categorical exclusion mechanism is probably workable in that context. I don't see a scenario where transmission, given that it is going to have impacts on the ground, is the most efficient mechanism to use. And I think maybe through the scoping and getting a lot of issues off the table, because of certain standards that the project meets, this could really save a lot of time. But just as I sit here and think about it, it doesn't seem to be the kind of project that falls within the appropriate use of categorical exclusion.

I do want to mention, though, on the categorical exclusions, that this goes to the issue of the loans and grants earlier. A lot of the funding that came through the U.S. Department of Energy was for loans and grant programs. They do have to apply NEPA. Though I haven't had a chance to look at the first rounds of reports under the Stimulus Act that were due on March 3, I know within the Department of Energy's web page, they have a separate page for implementing the Recovery Act. And they were planning to post their report, which was due March 3, on their website. And a number of them, I do know, feel like they can appropriately use categorical exclusions.

Horst Greczmiel: Let me just make one follow-up comment, and that is that whenever we talk about the concept of a categorical exclusion that has a lot of sidebars or parameters wrapped into it, we really start bleeding over into the environmental assessment arena because—what are we talking about? We're talking about. . . .

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Thomas C. Jensen: Mitigated progress.

Horst Greczmiel: Screening. We're talking about scoping and finding out, "do we really meet all of those parameters, all of those criteria, all of those best management practices, and all of those limitations that we've written into the categorical exclusion." So, at the end of the day, rather than limiting yourself to hard and fast parameters, you spend maybe an hour more—or maybe a day more—and have a little bit of dialogue, and it's an environmental assessment that goes through the same process, looks at the same kinds of issues, and comes up with something that is much more sustainable and much more defensible, and also "a better decision," at the end of the day.

Audience Member: Horst, in your opening comments, you mentioned that with EISs, the two things that you thought were really relevant were senior management leadership and knowledgeable NEPA folks at the staff level. And it seems, at least in your statement, that this applies to pre-filing, and to gas and EISs. Is CEQ going to push that in some way?

Horst Greczmiel: One of the first memos that was sent out to the federal agencies by our new Chair, Nancy Sutley, was a request to the agencies to provide a description of their senior environmental advisers as well as their NEPA capacity, and to outline and describe the capacity that they currently have on board. For those of you who would like to see that note, if you go to nepa.gov and go down to the CEQ guidance piece, click on that and you'll see that memo at the very top of the page.

So, we're basically taking an "inventory" of what capacity there is out there and what linkage there is between that capacity and senior leadership, so that we can start a more robust dialogue about the very fact that you've raised. And that fact is that senior leadership needs to be more cognizant of what's necessary and more supportive of the staffs that are doing that kind of work.

At the same time, it goes the other way as well. It's a two-way street. The staffs have to continue their efforts to keep senior leadership informed as to what's happening. You don't take the NEPA project, go into the backroom, work it, and then come back out and expect everyone to understand how you got there and what it all means. If leadership and the decisionmakers are aware of the hard trade offs that are being made and the issues that are being advanced, they're going to be in a much better position to then take action at the end of the day, as well.

Audience Member: A question for Jeff and Sharon on the subject of a lead agency, with FERC as the example for some cases. That authority under EPAC 2005, has that been challenged and successfully defended in court? And if not, do groups like NRDC find it reasonably acceptable?

Jeff Wright: I'm not aware of any challenge that was made. If there was, it wasn't successful. I know very little to that area, but we use it. The interesting part about the lead agency authority, maybe something that's never been exercised, is what happens when you set a schedule and an agency doesn't meet the timelines? I'm thinking right now of the Supplemental Electric Transmission Authority—if they don't meet the schedule, you're allowed to make an appeal to the president. Now, I imagine that might go to CEQ instead of the president, but that raises a big question if you're a project sponsor and all of a sudden, an agency you've worked with a lot isn't coming forth with a permit. Do you really want to tangle with them in another venue? It's kind of cutting off your nose to spite your face. I think there could be a little more elegant solution. I don't have one at hand for this idea of an agency that doesn't meet the schedule—what do you do? What recourse do you have?

Sharon Buccino: I think there are a couple of concerns, from the environmental group perspective, that have surfaced and been expressed in the past around the issue of either FERC or the Department of Energy, for example, as the lead agency. Will that allow and preserve a meaningful and effective role for other agencies, the land management agencies, for example, BLM, and the Forest Service's and National Park Service's roles as environmental protection agencies? The agency's mission is more centrally defined around environmental protection.

Now, that said, I think you and I know that in the debate around Senator Reed's legislation, I think there is a willingness and a recognition of the importance of having FERC—citing the transmission context—be the lead agency. And that recognition comes from the fact that there needs to be some centralization and some coordinator. So, I think there would be acceptance of FERC as a lead agency, as long as it's in the context of a process that includes the state, the state regulators, and the state wildlife agencies, and not just the land managers and other federal agencies, as a true and meaningful voice in the process. So, you have FERC leading an effective collaboration, but not FERC as a dictator or autocrat, which I don't think it is.

Jeff Wright: And I think if you read the Reed legislation, it does have the lead agency. And I'll say the Bingaman legislation also has a lead agency concept as well, but the Reed legislation definitely bends over backwards to want to have the state be an active and participating partner in the environmental review.

Audience Member: I wanted to ask about siting, which is likely to require lots of mitigation. Does NEPA supply some of that mitigation language or ability? Or should we rely on the Endangered Species Act and wetlands legislation to provide the mitigation needed? Or is there a need for the legislation to be supplemented with new legislation mitigation ability or definitions?

Thomas C. Jensen: I'm going to give you a somewhat serious, somewhat facetious answer. I don't think there's a need

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for a new statutory mitigation authority or mandate on those things that we typically consider to be sort of core environmental issues and attributes. In so much transmission siting, the victim—the howling voice in the public theater—is the rich guy with the ruined view. It's real estate impacts. It's aesthetics. It's the perception that something pretty isn't as pretty anymore. And particularly in the East, or in those other areas where there has been a lot of development but a need for significant additional transmission, the mitigation issues are really associated around things that aren't a matter of federal law.

Real estate is cheap now, so we probably could do some more mitigation in an affordable way. But the hardest part of a lot of this is all about private-sector real estate transactional values, and that translates itself into the political influence exerted through local siting and regulatory authorities and, occasionally, through federal authorities. And that's just not going to get fixed. I don't see how.

Jeff Wright: I would just say that I would agree. I think NEPA is probably fine the way it is, but I think that certainly there is going to be this so much more visceral reaction to, all of a sudden, these proposals for things ruining my view shed. And I still go back to remembering when we were writing the regulations for the supplemental transmission siting, and one of my hydro people on this team pointed to the gas people and said, "you're lucky; you get to bury your mistakes." So, it's a 50-year plus proposition of view sheds being ruined or altered to an extent, and an acceptance needs to be realized there.

Sharon Buccino: I think you raised a very valuable point, which I don't think has necessarily been focused on as much as it could be in the debate so far. For me, I think this emphasizes the importance of planning, again, and I think NEPA can get us to the planning that needs to happen. But I think that mitigation becomes a critical part of developing the package that then is acceptable and can move forward. I know that the authority under NEPA to actually enforce mitigation is pretty limited, and that may be partly where your question is coming from. In fact, there is going to be a legislation. Should we look at enhancing that authority? I don't know. To be honest, I don't think that's been explicitly addressed. I don't feel like it's necessary to achieve a result that does look at mitigation as a critical piece of the solution that's going to be accepted.

Jeff Wright: I would say that we're not shy about issuing conditions with environmental mitigation. With Sparrows Point, I think there were 147 conditions that were attached to that order, a lot of them environmental mitigation. With regard to the Rockies Express pipeline, which is about 1,800 miles in length, I think there were like 131 conditions. So, we're not shy in taking NEPA and running with mitigation to make sure that things are made right.

Sharon Buccino: This happened before. Say you've issued the mitigation point and you have [indiscernible] or something and then the court takes back [indiscernible] so they just have the information they needed.

Jeff Wright: Well, no dirt is being overturned yet in that. That's not going to happen until part of those conditions is you get your permits from XYZ and the Corps. So, you're not going to turn any dirt. No environment is going to be disturbed until those initial conditions are met. And let me tell you, it's kind of a three-step process. You can get certification from FERC, but you're not turning any dirt until we're satisfied that you've met conditions. And then you ask our office director, my boss, for permission to do that, then you construct. Then there's a third approval. You can't go into service until we're sure that you've met all these conditions to restore and all the other mitigation conditions, and then you ask for another signoff. So, it's a multistep process. You just don't get a certificate and run with it.

Horst Greczmiel: Let me just take this opportunity to commend FERC and other agencies that not only see §102(2)(C) of NEPA as being a requirement, but also read §102(A), which talks about the fact that agencies are to implement and use the law in accordance with and to further the policies of the National Environmental Policy Act, which would include things such as mitigation. I also point to §105 of NEPA, which talks about the fact that NEPA is supplementing the agency's authorities.

So, using that, you do have the inherent ability within the statute, as it currently reads, to look at mitigation and mitigation alternatives as a part of the NEPA process. When people say, "oh, my gosh, it's taking a long time," remember, we just talked about a process that has to address one of the most contentious issues, that mobilizes opposing forces quicker than anything else in this country. And so yes, it's going to take a while to come to grips with what kinds of mitigation are reasonable if we're going to put wind power out in the outer banks of North Carolina, for example, or off Nantucket, or somewhere else. Where are we going to put the transmission lines if we have to get them to areas where there are national parks?

So, those kinds of issues and those kinds of "mitigations for alternative routes," for alternatives, as well as inherent mitigations on how siting is done in a specific locale, are going to take some time. Does that mean that NEPA is slowing down the process? No. It means that you have a tool to actually address those difficult issues and try to bring some discipline to how they are addressed.

Thomas C. Jensen: One additional observation here is as to how we'll be testing this over time. Most of you who practice in the NEPA area would probably share this observation: that the cases, they really get tied up. The ones where you end up spending millions of dollars and many months fighting are either hugely problematic from the environmental standpoint, or there's a commercial competitor who's offended.

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And NEPA is often used by commercial interests as a defensive tool, a way to defend a market or a market share via the environmental community. And Horst and I got to know each other in the midst of a fierce commercial battle among hydrocarbon interests disguised as a NEPA fight. I see from the list of people on the phone, I know there are some people involved in this conversation who are very good at using NEPA as a tool to protect markets, economic interests, not environmental interests per se. And a lot of what will determine where we put these power lines will be the effect on power markets, not tortoises and wetlands.

Audience Member: To Sharon, how does the EIA process help avoid siting transmission lines in areas that might have wilderness potential?

Sharon Buccino: You're talking of environmental impact statements? That's what you're talking about, right?

Audience Member: Well, the whole process.

Sharon Buccino: Okay, the NEPA process, that review process. Well, I think the critical piece is the scoping process and going, "oh, we still have a list out there." So, that's the first step. And certainly, when you're doing an EIS, there is a robust scoping process. I think it would be useful to engage in that pre-filing or initial, or have a robust process right at the front end. So, the California RETI example is not officially part of the NEPA process. That's exactly the kind of collaboration and meeting of minds, the coming up with a workable solution that then can be plugged into either. I think the BLM programmatic EIS on solar is a specific process that could be informed by the planning and mapping, and it hasn't happened yet. It hasn't in some of the areas that are being covered by the BLM. They can incorporate this kind of planning into the programmatic EIS that they're doing.

If it hasn't been done at the programmatic level, which I think is the right place to do it, then you then end up . . . say, for example, take Wyoming. They have tremendous wind resources. You have a number of different stakeholders; there's a lot of federal land that BLM owns. There's a lot of state and some private land too. But if you can use, say, the Rawlins office of BLM, they're looking at the resource management area that they manage and trying to approach it at the resource management plan level. So, that's not quite as big as the programmatic, but if it's for the regional basis, the RMP level, you could, in fact, utilize a similar kind of planning process as part of that NEPA mechanism as the EIS that's being done to go with a resource management plan revision that's done. We missed an opportunity in Utah, for example. Six RMPs were revised and finished and done. The records of decision were issued right at the end of the last administration. None of them addressed the renewable resource potential at all.

Scott Schang: One other question kind of ties into this. Is there any effort underway, and this came up on our call, to use technology to try to speed NEPA reviews and NEPA processes, such as someone said that you do kind of a "Turbo Tax for NEPA." In other words, a process that has mapping in endangered species areas and protected areas that are readily loaded, and people can overlay maps in various agencies and places so that they can get a sense of what's happening from a NEPA perspective. Are there efforts underway for that?

Horst Greczmiel: The Western Corridor study that was done under, I think it was Section 368 of the Energy Policy Act, I would set aside as an example of good NEPA work. But taking a look at the robust Geospatial Information System (GIS) that was developed as part of that process, and the overlays which look at all of the different resources, I think demonstrates the fact that, yes, with what we have available today, just on mapping system and GIS, it's incredible and very helpful. And the type of information it provides and the way it informs the NEPA process puts us, today, way ahead of where folks started the NEPA process 10, 15 years ago.

There are other IT tools out there as well that use visualization to show, for example, what an area looks like with and without transmission lines in the air, with and without wind towers in the distance. So, there is a lot that can be done with IT. The question is: are people going to be making use of that? And that's where I think I might be optimistic. But I find encouragement in the direction in the Recovery Act to say that agencies are supposed to use their funds to help move that NEPA process along. Part of that, I would think, would have to go to enhancing those tools and using them, not only for the planners within the agency, but also making them accessible to the public so that they can also see these areas in the maps, such as the ones that Sharon pointed out.

Sharon Buccino: I was just going to give a concrete example of using that information. I can certainly say—within the next month, maybe even sooner—the product of an effort that NRDC has worked on for the last six to nine months using Google Earth and the Google Earth layering capability—collecting the GIS data that exists has been a matter of going to the different BLM businesses—pulling that all together so that you end up with a Google Earth mapping tool that does allow you to pull up mapped information. We're focused right now on the western states, and that's what the data has been pulled together for. But you will end up. . .you could go to Wyoming, a particular state, and you could pull up different layers on a map. If you wanted to just look at wilderness areas or areas that are designated as no-go by statute, you could do that. And then could you layer more on top of it, and you could then use that to figure out if you're dealing with this particular line, or you want to get generation from here over to here. How do I actually site it?

So, that's one concrete example. The thing that I wonder about is apart from mapping: is there a way to use technology to really enhance the collaboration on that? And some agen-

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cies are able to do it better than others, just in terms of even getting all of the NEPA documents posted on the Internet. So, that's another area where I think some work could be done. I don't know whether it's chat rooms or what, but using technology to enhance the ability to collaborate and have the conversations that need to happen.

Thomas C. Jensen: There's another initiative, and I'm not quite sure whether it's still on life support or not. But in the last administration, a very powerful person at the U.S. Fish and Wildlife Service began an effort to create a gateway streaming system that would answer ESA permitting questions for developers of linear infrastructure. He had very little funding and support, working with the U.S. Department of Transportation and the Department of Homeland Security to create a way to essentially go into a database and say: "I want to build a border fence from here to here. I want to build a pipeline from here to here. What do I need to know about endangered species compliance along this corridor? Where is critical habitat? What are the mitigation measures? What are the best management practices? What do I need to do instead of having to go nearly 100 miles through three different Fish and Wildlife Service regions and go to three different biologists, when each will have a different answer about the critical needs of a particular species or the appropriate standards for mitigation, given particular impacts on habitat?"

And they were trying. I hope this system receives the support in this administration it deserves, but it would be another one of these layers of compliance in planning and engagement that ought to make life a lot simpler for everybody who is involved in one of these things.

Scott Schang: Final question from the phone: will the CEQ Recovery Act Guidance include requirements for streamlined permitting on projects—a one-stop shop involving multiple federal agencies? And if so, to what degree?

Horst Greczmiel: At this point, I think we need to recognize that Recovery Act guidance is going to be evolving over time. So, the first edition, if you will, of that guidance may not cover all of the points that folks are beginning to raise. And part of the reason for that is that we needed to get out something in the near term that would also address the reporting requirements as well as some of the basic questions with regards to the Recovery Act. We've been taking input from the agencies and from other interested parties on what other issues we should be addressing in guidance under the Recovery Act, and that's one point that's come up on a couple of occasions. So, we're going to be taking a serious look at whether or not we're going to need to advance something explicitly on that point. The recommendation that agencies use that kind of a process when it's possible, of course, has been out there for a long time, and it's something that has been endorsed not only by CEQ, but by industry, the NGOs, and all—I would say or I would submit—all interested parties in the NEPA process. And the stakeholders have been advocating that, and it has been shown to be successful when it's been used properly. I can see the continuing need to reinforce that message, and I appreciate that comment.

Scott Schang: Thank you all for coming. We appreciate it very much.