

Summary Minutes
NEW MEXICO RESOURCE ADVISORY COUNCIL
August 20-21, 2008
Albuquerque

RAC Members Present:

Gerald Chacon
Bruce Gantner
Betty Haagenstad
Cliff Larsen
Mark Marley, Chair
Randall McCormick
Raye Miller
Lynda Sanchez
William Sapien
Lynne Sebastian
John Thompson

RAC Members Absent:

Crestina Trujillo-Armstrong
Matthew McQueen
Martha Yates

Designated Federal Official:

Linda Rundell

BLM Staff:

Doug Burger, Pecos DO
Bill Childress, Las Cruces FO
Sam DesGeorges, Pecos FO
Thomas Gow, Rio Puerco FO
Steve Henke, Farmington DO
Theresa Herrera, NMSO
Jesse Juen, NMSO
Gina Melchor, Albuquerque DO
Bill Merhege, NMSO
John Merino, Socorro FO
Ed Singleton, Albuquerque DO
David Sitzler, Rio Puerco FO
Hans Stuart, NMSO

Scribe:

Karen Meadows

AUGUST 20, 2008 FIELD TRIP

PUBLIC COMMENT PERIOD

RAC Chairman Mark Marley opened the Public Comment Period at 6:10 p.m. Members of the public were invited to speak.

Dan Rey-Bear, Nordhaus Law Firm Federal Indian Law Specialist for the Pueblo of Laguna, asked to speak. He thanked the RAC for visiting the Pueblo. Laguna Pueblo is one of the largest in the area. The population lives in six villages scattered around the reservation. He showed a map that included the pueblo and the area where the RAC took their field trip to see the Jackpile-Paguete Mine.

Mr. Rey-Bear said the reservation is located mainly within unit 2, and also in unit 4 of the BLM Rio Puerco Field Office. Laguna Pueblo strongly encourages BLM to fill the vacant tribal position on the RAC. It is crucial to be informed of the ongoing Indian position, especially this year, during ongoing work on RMP revisions.

Laguna Pueblo strongly supports land exchanges in areas affecting the pueblo. He distributed maps (Attachment 1) with outlined lands in which the Pueblo is primarily interested, including Harrington Ranch. He said BLM and the Pueblo would both benefit from the exchange of Harrington Ranch checkerboard lands. Those include State trust lands, so the Pueblo will encourage their inclusion in an exchange.

Question/Answer/Comment

- Clarification. Was the handout a map of what Laguna Pueblo would like to have as part of its reservation? Mr. Rey-Bear said no. The Pueblo purchased Harrington Ranch. All the numbered white

areas on the map are existing trust lands. The orange sections are BLM land. The exchange could be as simple as, “You take the west half, and we’ll take the east half.” The Pueblo hopes to reduce the checkerboard.

- Concerning the portion in Cibola County—have you spoken to the county commission? No. That is existing trust land. For example, squares 31, 33 and 35 have been trust lands for many years through a purchase. The outline is the exterior boundary of the reservation. The blue areas are state trust land; and green represents national forest.
- Have you put together a proposal for BLM? The Pueblo has not specifically proposed this to BLM. The Pueblo will be commenting on the pending RMP amendments.

Harrington Ranch is the area with the most checkerboard lands. The next area of interest is the Sanchez/Major Ranch—which has isolated BLM parcels. The Montañño Grant portion of it abuts Laguna land and Tohajilee, formerly known as Cañoncito. Some portions are surrounded on three sides by Pueblo of Laguna trust land. The Pueblo would like to talk further with BLM about these exchanges as part of the pending RMP.

Question/Answer/Comment

- Grazing permits on the lands Laguna is interested in need to be considered.
- The Pueblo currently spends about \$10,000/year for grazing rights.
- There are also other permittees.
- Conceivably, Laguna could swap out everything on page 1 to acquire pages 2 and 3. Mr. Rey-Bear said that is one of many possibilities. The Pueblo doesn’t know about BLM’s priorities.

Laguna Pueblo supports alternative energy development but not uranium. The Jackpile Mine operated from 1953-1983. It was the largest open pit uranium mine in the world. It had an impact on local villages, and Laguna Pueblo adopted a moratorium based on its past experience. Much of the area being considered for uranium development is in the Mt. Taylor region. Two Laguna villages would be downstream. In situ leach mining, in particular, would potentially cause harm to health and the environment. In situ mining also requires water, which is already very limited there. Byproducts would have to be disposed of--there would be higher cancer risk.

In contrast, New Mexico has substantial wind and solar resources, which the Pueblo encourages BLM to pursue.

Question/Answer/Comment

- Does Laguna Pueblo also feel strongly about underground uranium mining near her lands? The Pueblo doesn’t object to all mining, but does object to uranium mining.
- Linda asked about solid facts relating cancer to uranium. Mr. Rey-Bear said those facts are available, perhaps anecdotal. For example, he said, the women in the Laguna village closest to the Jackpile Mine got as much cancer as the men working the mines because they washed the miners’ clothing by hand.
- The Pueblo of Laguna supports traditional cultural property status for Mt. Taylor. They hope for BLM support to prohibit large-scale development, believing this is an important consideration for public lands. Private lands are not necessarily affected.
- Lynne said that was not true. The Traditional Cultural Properties Act also has implications for private lands. The act does not limit access. The National Historic Preservation Act designates special types of national historic sites. Hunters, hikers, etc., would not be affected. However, if a mine were proposed, they would have to study what effect the proposal would have on those properties.

- Currently Mt. Taylor is on emergency listing for the state registry of cultural properties. A much larger area is eligible for the national act. State law requires agencies to prove there would be no bad effect on such properties.
- There was public notice and a hearing about emergency designation under state law. Tribes supporting designation of Mt. Taylor had to apply to the state for emergency designation, which gives a one-year period to document. Full application for permanent designation follows.
- They are currently under process for permanent listing.
- Weren't residents of the area against that designation?
- From media reports, it appears that those who attended the public meeting were evenly divided.
- If public access would not be prohibited, why did they object?
- It's not known how it would affect private land. If a land grant community or a rancher wanted to dig a well or start a mine, it would need to be authorized by the state.
- If you are going to get State or federal authorization, impact on the user has to be considered in the decision making process. Currently, no consideration is given to that at all.

Mr. Rey-Bear said his last point centered on an isolated 11-acre parcel of BLM land at Rio Puerco, located near I-40, largely in an arroyo. It is surrounded on all sides by land that is currently in trust or has been requested for trust. BLM proposes a competitive bid sale for that property, because of interest from another adjoining landowner who the Pueblo heard wants to either develop or sell that land. The pueblo land in the area is all undeveloped and would be kept that way. The parcel in which they are interested was developed for a business in the past, possibly a restaurant or hotel. Laguna Pueblo has a casino and gas station/convenience store across the road nearby.

Question/Answer/Comment

- Would there be anything to stop the Pueblo from developing that land at a later time? It is in an arroyo. There are no plans to develop the area. The Pueblo already owns substantial land in the area.
- There would be nothing to stop the Pueblo from developing it. Governors change; ideas change.
- Mr. Rey-Bear said if the Pueblo wanted further development in the future, it has plenty of land to do that. This particular parcel would be acquired to stop development there.
- The adjoining landowner, who wants to purchase the property, owns a 5-acre parcel adjacent to Pueblo and BLM land.

Mr. Rey-Bear continued that while BLM has proposed a competitive bid, in the Pueblo's view, the Federal Land Policy & Management Act (FLPMA) mandates putting it in trust for the Bureau of Indian Affairs, in trust for the pueblo. He read a section of FLPMA. There is an existing process for this. That land should be subject to the regulatory process rather than sale. He cited further information from FLPMA and the Indian Reorganization Act. Laguna Pueblo proposes that BLM make a direct sale to the Pueblo. FLPMA authorizes direct sales, he continued. The Pueblo has proposed this to the BLM Rio Puerco Field Office. He said BLM maintains that the pueblo is misinterpreting FLPMA, and BLM's position is to proceed with a competitive sale. It may well be that this parcel could be included in a broader land exchange.

Mark invited the Rio Puerco Field Office to comment.

Tom Gow said the Rio Puerco Field Office strongly supports land exchanges. He and his staff have met with the Laguna Pueblo Governor and discussed exchanges, the RMP revision and the West Wide Energy Corridor. Within their discussions was the possibility of consolidation. He pointed out the Petaca Pinta wilderness study area, which would need to have access. Access would also be needed to Big Bead Mesa. There will be a possibility of land exchange and consolidation in the RMP revision.

When they discussed the Westwide Energy Corridor, the governor was clear about not transporting uranium across Pueblo land. Tom thought the response at the public meeting was fear of the unknown, and the belief that the plan was an attempt to turn land grant land into Federal land. The potential sale of the 11 acres on I-40 that Mr. Rey-Bear spoke of was brought to Tom's attention 5 years ago by a realtor whose client was interested in purchasing it. Tom told them that there would be a competitive sale. He thought the arroyo was actually part of the Rio Puerco. They would have to survey to be sure. It could be developed, but it runs down slope into the Rio Puerco, so there are concerns. He has researched the parcel and will provide a response. It could be part of a larger exchange. If the Pueblo had first right of refusal, that would take the other bidder out of the process.

Mark closed the Public Comment Period at 7:11 p.m.

AUGUST 21, 2008

RAC MEETING

CALL TO ORDER, WELCOME & OPENING STATEMENTS

Mark called the meeting to order at 8:08 a.m. He welcomed all and asked Linda Rundell to speak. Linda said she was impressed with the RAC's response during the Public Comment Period, including the types of questions, and their knowledge of multiple uses. She complimented them on their astuteness and understanding of issues brought up. She asked Lynne to share her thoughts on the field trip to the Jackpile uranium mine. BLM will also ask someone from the uranium industry to the next RAC meeting, to assure that the RAC hears a broad review of the topic.

Lynne is chair of the Uranium Working Group, which includes Cliff and Bill Sapien, and Bill Childress as BLM advisor. A colleague of Cliff's has worked on environmental consequences of uranium mining, so they would recommend bringing him to a future meeting. Lynne thought the RAC field trip to the Jackpile Mine illustrated the past—before the Safe Mining Law and other environmental laws were passed. Technology, as well as laws, would have a very different effect on future uranium mining. Since the last uranium boom, we have gained a great deal of experience, both in improvements in technology and increased understanding of impacts. It's worth looking at and understanding why current laws apply. She mentioned areas of interest, including cancer rates, downstream issues, air release of dust from tailings, and containment of what's injected. Lynne would like to know what concerns the RAC has that the Uranium Working Group could address. She invited RAC members to e-mail her with questions and comments.

There have been studies about health effects. Bill Childress said BLM has a reclamation handbook being rewritten and waiting for signature. BLM held a workshop the prior week in Salt Lake City specifically looking at best management practices. Bill can give the working group draft documents on drill hole reclamation and radiation issues. Salt Lake City results will go on the BLM website.

Ed Singleton said the uranium belt runs east from Grants past Acoma Pueblo into the Rio Grande. So the public is concerned about radioactive sediment getting into the Rio Grande. Hopefully, after all these years, there is some helpful data. Gerald asked whether the State monitors the water coming off the reservation. There wasn't as much up-to-date information on current conditions during the field trip as he would have liked.

Cliff said there are clearly a lot of issues, including legacy issues. With the exception of Australia and Canada, uranium mining happens in third-world countries with less governmental clout. The Sierra Club, therefore, handles uranium through an arm called environmental justice. Australian uranium mining is mostly on aboriginal land because the land where uranium occurs is what used to be called worthless and thus was assigned to aborigines. No uranium mining company sets out to cause injury. It happens by error. Uranium in and of itself is not dangerous. There are dangers in dealing with waste piles and ponds, and treatment of discharge. Australian policy is to have zero discharge.

Canada has a similar ruling. Nonetheless, one relatively large company had a major blowout of tailings that contaminated a vast amount of land. Uranium mining will be difficult and contentious.

Bill Sapien said their working group's goal is to recommend and advise on best management practices. The working group will consider the investment in resources, including people, and what effects uranium mining will have on people and the land. That probably will include issues not even thought about at this time. At what point will we put a stop to uranium mining? It's a process, and we want to make this a win-win situation. We want to reclaim things when a company stops production, not years later. Keep in mind that companies come in to make money. Some of the issues are intangible, so it's best to grapple with the facts.

What are the backups for failure or human error or catastrophe? We should be thinking about what happens when. There will be more push for uranium mining, and BLM will have to deal with it.

Administrative details were covered.

Lynda Sanchez left the meeting due to illness, so there was no longer a quorum. Mark said there was a change to be made in the last meeting's minutes, although the minutes could not be approved.

ALTERNATIVE ENERGY APPLICATIONS UPDATE

Bill Merhege, BLM Acting Deputy State Director, Resources (Attachment 2)

Wind energy development always involves right-of-way (ROW) actions. BLM will not issue rights-of-way for National Landscape Conservation System lands. Additional areas may be excluded because of resource impacts that can't be mitigated. All regulations related to the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Migratory Bird Treaty Act and the Antiquities Act apply.

Solar energy is similar, but introduces a new issue. It will change land from multiple-use to single-use. Additional areas may be excluded on the basis of resource impacts. BLM doesn't know how that will work because it does not conform to FLPMA.

BLM is getting overlapping applications for wind testing and development, so applications are being approved on a first-in-time first-in-line policy. There are two phases—testing that requires a ROW application and usually takes 3 years. Those may require NEPA, ESA and other clearances. The development phase requires another application with a plan of development due within 90 days. A wind development ROW is issued for 30-35 years, and subject to renewal.

For solar development, they submit an application. BLM NM suggests that they complete a plan of development in 90 days—that is not a policy. An ROW is issued for 30 years, and is subject to renewal.

Challenges

- Federal, State and private renewable energy applications have no coordination.
- There is insufficient or no transmission infrastructure in wind application areas.
- The proposed West Wide Energy Corridor does not address the problem.
- Solar projects may result in single-use of public lands.
- BLM may not have adequate staff in place to process applications, review NEPA documents, etc.
- Existing power line corridors may not be sufficient. Wind farms may need to expand width of corridors to allow construction of larger lines while maintaining use of existing lines.

Meeting the challenges

- BLM NM has had a series of meetings with the NM Department of Energy, Minerals and Natural Resources, the Renewable Energy Transmission Authority and the State Land Office—to coordinate.
- BLM NM is developing a strategy for a statewide renewable energy environmental impact statement.

- BLM NM met with the Public Service Company of NM to discuss BLM's request-for-proposal process.
- BLM NM is considering development of a renewable-energy team to process applications and other required actions.

The goal is to avoid a gold rush mentality and to develop a process that works for all.

Bill showed a map of NM wind and solar projects and energy corridors. The State has numerous applications too. Roads will be a problem. The biggest problem will be coordination of power lines.

Question/Answer/Comment

- BLM NM has one 146,000-acre wind application. Tom has heard from a company that tested on private land and wants to begin development where others have applications only for testing. We're walking new ground here. The first proposal beyond testing, in the Guadalupe Carlsbad area, is on hold due to bat issues and further restrictions placed by BLM.
- How will we deal with the loss of multiple-use for solar development? Linda said BLM NM is working with the national office on policy. The State's priority is highest and best use of the land. Linda's thought is, "Are you working with the public using that land, and what are your plans to include them?" The solar applicants have not gone through the NEPA process, so there has been no public comment yet. Water is an issue, e.g., solar panels need a weekly bath. Developers would have to buy water rights and that is complex. They would have to work with the State engineer. It will be a big challenge to coordinate between federal, State and private land managers and owners to get the least impact.
- Companies applying are mostly based outside NM. The main difference between wind development applications and wind testing applications is size. To test, potential wind developers put up small towers that test consistency and force of the wind.
- There's a lot of emphasis on visual impact. The online wind energy environmental impact statement has a large section on visual effects. We haven't gotten there yet with solar.
- This will impact habitat, and have biodiversity effects.
- Any solar energy system will take over the land.
- BLM has met with three solar companies and asked for plans of development (PODs). Hopefully, good PODs will help with reviewing applications.
- How can solar and wind energy development and NEPA and FLPMA be resolved? Congress will have to step in.
- Applicants would have to pay for surveys, and for all NEPA costs. Some companies have been billed. Las Cruces Field Office has not been reimbursed. In future, companies would put money in an account upfront.
- Tom said one application crosses two field office boundaries, with two different aspects—again it's first-in-time first-in-line for applications. Tom advised companies to access the West Wide Energy Corridor and they didn't even know about it.
- Tribes will affect this development. For example, the governor of Isleta Pueblo made it clear that nothing will come across Isleta land. Will the federal government take tribal land for rights-of-way because national security trumps tribal rights?
- Gerald said property rights issues were brought up in the past. Has BLM asked for legal advice on what ranchers will do if grazing rights are threatened? A legal opinion on property issues would shed light.
- In wind energy development on the east side of the State—they're leasing because there can also be grazing. Meanwhile, these wind proposals can't get something on the ground in less than five years.

- Doug said his staff toured a wind energy area that was extremely compatible with grazing and oil and gas. Solar is a more complex animal. It takes the entire landscape. BLM NM sent a question to Washington about someone with a ranch that's 70% BLM. If you take even a small area to use differently, the whole ranch may collapse. So there will be a point when you have to decide for one or the other. At some point only one right can prevail. It will come to a tiebreaker.
- Water rights become part of that question. It is complex.
- The Migratory Bird Treaty Act has hammered BLM for years. Lands under that act are perfect for wind and solar.
- Gerald said the Northern NM Stockman's Association got Dr. Meyer's research report on ranchers' rights to use forests and other federal lands. He did a historical review of property law that helped clarify property rights, use of water and grazing. The Colorado Land Grant was used to reacquire rights for recreation and gathering wood and herbs, even on private land. The same property law applies here. It opens an incredible can of worms. It's important to see Dr. Meyer's presentation on video. It has pertinent information for BLM staff; and puts a whole different light on things. Property law is the oldest law and carries weight.
- Is there a public appeal process for lands taken for national security? They can exempt areas from all laws; and it's not known whether the public has any recourse. For example, plans for the U.S./Mexico borderlands resulted in meetings with environmental and cultural specialists, who were told that national security overruled.

UPDATE ON WORKING GROUPS

WIND ENERGY

Raye Miller (Attachment 3)

Raye said there are some costs to companies for submitting wind applications, and a yearly cost to maintain them. Several RAC members toured the San Juan Mesa wind power field northeast of Roswell near Elida, and were impressed with its size and yet moderate impact to the area. Once construction is finished, changes to lifestyle would be fairly minimal. Monitoring is primarily by computer. Personnel perform maintenance or make repairs.

It appears that federal royalties are actually cheaper than those on private lands, but the process is more complicated. If the country has the perception that alternative energy is what we truly want, the public may go to State or private lands.

We have to be careful about asking for help from Washington because we don't always get the advice we want. The State should put a solar field right outside Santa Fe because they'd object the most. BLM has vast areas of land seen only by ranching families. Raye suggested that Washington waive some requirements but give direction on suitability to individual state BLM offices.

Bill Merhege said the first test would be when someone applies for development on public land and starts the NEPA process. Environmental groups will object and their response will add to the wall already erected by federal lands. Developers will push onto private lands where laws don't apply and there are no best management practices. It's not simple. There are checks and balances because costs are lower on federal land once approved.

Gerald said ranchers in northeast NM are forming associations for clean energy—getting help from legal firms out of Wyoming that have brought about lucrative agreements that are also protective. It behooves BLM to look into that. It is possible to get contracts that are very profitable for ranchers and other private landowners and also have environmental protection.

Raye said that is also happening with some Corona ranchers. Ranchers with mostly public lands are still at a disadvantage. He cautioned that collective bargaining is a balancing act. Prospective developers may go elsewhere.

Linda talked to the State Land Office and their concern is that BLM doesn't charge as much, so it may be unfair competition.

We also need to remember that wind blows forever but facilities have limited lives of 30-35 years. This industry has changed dramatically in technology, and will continue to advance. We need to assure that obsolete wind towers won't be left behind.

Question/Answer/Comment

- It is very interesting and helpful to take a field trip to wind or solar fields. Doug saw antelope using the shade from wind towers in warm weather; and saw 90' blades that were covered with ice in winter. They threw off ice chunks that could kill cattle or humans.
- Oil and gas companies can easily coexist with wind fields, and would be willing to share roads with wind fields.
- Siting is very important. Wind towers are placed at least 250' apart, based on research.
- Issues with birds vary depending on placement. See attachment 3 for information about raptors.
- Randall saw a wind field on private property with a county road through it where traffic was deterred by watchers. Trespassers might be a safety hazard.

SOLAR ENERGY

John Thompson (Attachment 4)

John reported that his list of questions lengthens as he learns more. The solar working group is trying to understand requirements and how each system works. They came to the same conclusion—they don't see how solar development can take over thousands of acres under current regulations. John is talking to CA solar plant developers about their operations. Water, access, roads, etc. are involved. He was not clear on the lifespan of solar panels. As with orphaned wells, what will BLM do if companies that are speculators go out of business and leave stuff out there? What if the political climate changes?

Question/Answer/Comment

- Bill Childress said half the companies applying for permits are established elsewhere, and the other half are new. BLM hasn't dug into bonding yet. They have to look into leasing permits on equipment. As mentioned above, this will call for a substantial fund from which BLM draws. Concerning cultural resources, decisions about potential large solar plots will be based on environmental impact.
- Seymour Antelope was introduced. He is a new public relations ambassador for BLM, and will be making his debut at the State fair.
- More discussion about solar fields and bonding followed. Jesse met recently with NM military officials and they came to unified consensus that it will take a tremendous amount of time and expense to make it feasible. Further, these developments in NM are not for our use. The energy captured is going out-of-state, mostly to CA. Once it's needed in NM, resulting power will already be sold out.
- John asked whether it behooves BLM NM to identify some areas that make sense for solar fields. Would they consider holding a lease sale? Bill Merhege said BLM NM is considering a statewide environmental impact statement.
- If current wind technology is effective for 35 years, could towers remain and generators be replaced? Technology changes so much that they probably would have to be entirely replaced. There may also be changes in which areas are best for harvesting wind energy.

SOLAR: POWERING AMERICA FOR THE NEW MILLENIUM

J.R. Sykes, Independent Energy Center, Farmington

John Thompson introduced J.R. He began his presentation with a quote from Thomas Edison circa 1849, "Solar energy's the real thing, what an incredible energy source. I hope we don't have to wait until oil runs out to tackle that one."

J.R. tracked solar potential, infrastructure and impacts. Roads will need to be built. Water will be needed. However, he charted gallons of water used for all technologies, and solar and wind rank lowest. Nuclear energy uses .62 gallons of water per kilowatt-hour of energy produced. Oil uses .43 gallons per kilowatt-hour. Solar water use is .03; and wind water use is .001.

Water use will increase no matter what technologies are applied and energy use will increase. He read a Sandia Labs prediction that the growing U.S. population and economy will require an additional 393,000 megawatts of new generating capacity—about 1,000 new 400 megawatt plants by 2020.

He warned that 42,000 megawatts of planned renewable projects in development right now in 45 states are in jeopardy because of misguided policy.

The large-scale types of solar systems include: photovoltaic, concentrating solar power, trough, power tower and dish. He told how each worked and gave examples of some in operation.

Plans are underway to build the largest concentrating solar power plant in the world 70 miles southwest of Phoenix, AZ. That plant will generate 280 megawatts of electricity, making it one of the first where a utility relies on solar power for day-to-day operations. It will provide electricity for 70,000-84,000 homes. It will employ 1,500 construction workers to build, followed by 85 full-time employees to run the plant. The plant will use 75% less water than the alfalfa farm there now.

J.R. addressed common myths about solar energy. He concluded that solar energy generated is a net positive from day one. Invested cost can be repaid in as little as 5 years. It provides jobs and economic stimulus; it is available during critical midday peak load hours; and it reduces dependence on foreign sources. He invited RAC members to contact him at jrsykes@iecsolar.com.

Comments followed. Some of the notes for the minutes were lost.

Gerald distributed a copy of an e-mail outlining his thoughts on elk management. (Attachment 5)

OUTGOING RAC MEMBERS

Linda Rundell spoke in appreciation of the five members of the RAC whose terms were ending. She thanked them for their service and listed accomplishments the RAC had made during their tenure. Also, she encouraged them to apply for RAC membership again.

Gerald Chacon, Bruce Gantner, Betty Haagenstad, Mark Marley and John Thompson thanked Linda and the BLM staff. They expressed their appreciation for what they had learned as RAC members, and how their perspectives were broadened.

The meeting was adjourned at 11:30 a.m.