

Development On Public Lands Is A Federal Priority – Or Is It?

The Obama administration has made no secret of its interest in developing increasing amounts of wind energy. However, it has also made protecting public lands a similar priority.

BY ANDY SPIELMAN

Public lands in the U.S. can be as controversial as they are beautiful. Public lands, which represent more than half of all of the land in the western U.S., often conjure up notions of scenic vistas and outdoor recreation – both important uses of our shared resource. However, the half dozen or so federal agencies directed by Congress to manage these lands for all Americans are required to do so for multiple uses, including energy development.

Western public lands have long been used for the development of conventional energy sources, such as oil, gas and coal, and these resources play an important role in meeting our nation's energy demands. But in a new, cleaner energy economy, these same massive tracts of federal lands are also of great interest, and perhaps neces-



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sity, to wind energy developers. As with conventional energy resources, public lands are also where the wind resource is located.

North America is increasingly becoming home to wind energy facilities at an unprecedented scale. Moreover, utilities and their customers are demanding new utility-scale renewable energy facilities. Whether this trend is fueled by renewable portfolio standards, a desire to further develop domestic energy sources, environmental

values, business decisions or any combination thereof, the growth and benefits are undeniable.

Why public lands?

Conventional wisdom, particularly in the western U.S., has long held that a wind developer's land base of choice was private land. Private land was viewed as far easier to work with from a regulatory perspective. It was reasonable to expect any required government approvals (e.g., county

land-use permits) in just a matter of months for projects developed on private property. In contrast, for projects developed on public lands, it could take upwards of a few years to complete the required permitting. These time frames are not simply a matter of developer convenience; they affect access to capital and other market requirements integral to successful project development.

It is widely assumed that many of the easiest and earliest opportunities to develop large tracts of private land in resource-rich locales are gone. Therefore, attention has increasingly turned to public lands. With more than 600 million acres in the West alone under federal management, it is hard to conceive serious utility-scale wind development without some use of public lands. Nonetheless, it is difficult to build wind projects on public lands for various reasons, including turbine placement and transmission constraints.

It is possible that, in some areas, public lands could be the only feasible means of accessing the vast acreages of land needed for generation facilities

or for access to transmission corridors spanning multiple states to bring power to energy-starved markets. In almost all of the Western states, much of the land base is public. In Nevada, for example, 84.5% of the land is public. Therefore, it stands to reason that some of this land may be needed in order to develop renewable energy resources.

The federal agencies managing public lands, all of which have increased responsibilities and external demands with decreased funding, have a process for permitting commercial uses of those public lands. In all cases, renewable energy developers must undergo what are usually multi-year, multi-agency regulatory processes to obtain authorizations to use public lands to build their projects.

Important environmental, historic, cultural, biological and even socioeconomic impacts must be considered through public processes that involve a maze of agencies and an alphabet soup of regulatory regimes, such as the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act,

the Clean Air Act, the Clean Water Act and the Bald and Golden Eagle Protection Act. These environmental reviews come at significant cost to the agencies (and, therefore, the taxpayers); the proposed developer; and the energy consumer. They are cumbersome not by design, but as a result of what is at stake and how much controversy they can attract.

Recent policy

Like all questions of public policy, balancing competing values, interests and priorities holds the key to renewable energy development patterns. Although the renewable energy community is increasingly looking to public lands, some industry observers have raised concerns about renewable sprawl and have advocated for government restrictions on renewable energy development on public lands.

Recently, the federal government has proposed a draft that includes the most onerous restrictions yet on wind energy development. Many believe that recently proposed federal guidance on wind farm development and the protection of eagles – an impor-

tant resource themselves – have posed such overly burdensome limitations on the practical use of public lands for wind development as to, at least in part, curtail it. Simply stated, some important projects may no longer proceed as planned.

The importance of facilitating the renewable energy industry in the U.S. and reducing regulatory impediments was evident early in the Obama administration. Agencies across the government seemed to be working together to expedite processes and fast-track reviews of priority projects while considering whether particular public lands were appropriate for a given project, or if private lands could be used as an alternative.

U.S. Department of the Interior (DOI) Secretary Ken Salazar, a lifelong leader in public-lands policy matters and a strong supporter of renewable energy, announced numerous initiatives to expedite renewable energy development, including using stimulus funds to speed up reviews of proposals and the pre-screening of certain federal lands to analyze their suitability for renewable energy projects.

Marketplace: Environmental Compliance

To further review proposals from energy companies, Salazar established new DOI offices in five states across the West and one in the East – all charged with facilitating the development of renewable energy projects on public lands. Facing a long list of renewable energy proposals in California (where the resource and market demands are both strong), Salazar and then-Gov. Arnold Schwarzenegger agreed to a process of concurrent state and federal reviews of projects to get this important work accomplished more quickly.

These early actions are more than noteworthy; they are illustrative of exactly the type of federal leadership that can promote next-generation energy goals now. It is against this backdrop that the new draft guidance on Draft Eagle Conservation Plan Guidance, issued by the U.S. Fish and Wildlife Service (FWS), is particularly perplexing.

Earlier this year, the FWS published draft guidance for implementing a program for assessing the risk of a take of an eagle from wind farms. A take has a statutory definition that includes

not only killing or harming eagles, but also disturbing eagles. This new guidance (public comments are accepted until May 19) is a very significant departure from prior practice and requires assessments of the presence of eagles within a 10-mile perimeter of a proposed project. If eagles or their prey may be present, and if modeling indicates a chance of moderate mortality of eagles, then in all likelihood, a project will not be permitted.

The 10-mile perimeter is the source of much concern in the wind energy community and caught most people by surprise. After all, at the close of 2010, just weeks before the issuance of the guidelines, there was talk within the DOI that a two- or four-mile perimeter would be the appropriate metric.

For example, a circle with a radius of 10 miles has an area of 314 square miles. The odds seem fairly strong that an eagle or its prey may be located in any 314-square mile area in the West.

While cries of federalization of wind energy development may not be helpful while working toward a

place of mutual accord, concerns over the practical effects that these new permitting requirements may have on wind energy development in the West are serious and sincere. Industry representatives and some within the DOI have expressed concern that these guidelines lack the benefit of adequate data on the interactions of turbine siting and eagles.

As the guidelines are currently undergoing public review and comment, they may well differ in their final form. But, just as the future of these standards is unclear, so is their impact on future wind energy production in over half of the western U.S.

Public lands have always made important contributions to the nation's energy needs. As it has with conventional energy development, the federal government must choose a path – a single regulatory path forward for developing wind energy facilities on public lands – and provide the type of certainty the private sector requires to finance these projects. Public opinion holds that balancing conservation and development interests in energy development dictates a road

toward increased reliance on renewable resources.

Wind has proven itself as a viable resource, and many in the energy world believe it an inescapable conclusion that build-out of a national renewable energy grid will require some level of additional use of federal public lands.

Just a year ago, the government and industry were focused on ways to streamline federal reviews and permitting of wind facilities on public lands, but now there is a more fundamental question at hand. If the Obama administration is serious about facilitating wind development on public lands in a meaningful way, then it must work harder than ever to reconcile that objective with its new proposed regulatory framework. **VP**

Andy Spielman practices energy and natural resources law and government relations in the Denver and Washington, D.C. offices of Hogan Lovells, an international legal practice. He can be reached at andy.spielman@hoganlovells.com.