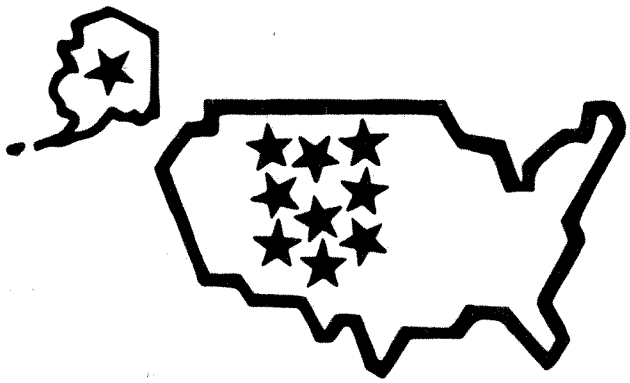
Western Governors' Policy Office

WESTPO



PERMITTING AND SITING OF ENERGY PROJECTS:
CAUSES OF DELAY
STATE SOLUTIONS

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WESTPO is an independent, non-partisan organization
of thirteen intermountain-high plains states.
Established in 1977, its purpose is to strengthen the policymaking
and management capacity of member states
and their role in the federal system.
It serves the interests of the governors across a range of
functional concerns, including energy, agriculture,
water, natural resources, international trade,
human services, and related issues.

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EXECUTIVE SUMMARY

The governors of the Western Governors' Policy Office (WESTPO) are promoting efforts by states to expedite the review and approval of the siting of critical energy facilities. A review of studies of this topic, extensive communication with state and federal officials, and a two-day workshop on state energy permitting have led to several major conclusions:

- Environmental regulations are not the major cause of energy project delays.
- In those cases where environmental regulation does result in project delays, actions by state agencies are not a major cause of these regulatory delays.
- States are the most appropriate focal points for coordination of reviews and approvals of energy projects.
- WESTPO states have initiated many efforts to expedite or coordinate review processes. These efforts have been effective in preventing regulatory delays for energy projects.
- While both have been effective in preventing regulatory delays, informal efforts by states to expedite and coordinate project reviews have been more numerous and effective than formal efforts.
- Additional efforts by WESTPO states to provide efficient project reviews and approvals will likely depend on expanded application and streamlining of efforts currently being used by some of the states.
- The appropriateness of state expediting and coordination mechanisms varies for different states. States need the flexibility to design their own approach to preventing energy project delays.

Although this study concludes that regulatory actions by state agencies have not been a significant cause of energy project delays, state agencies can take steps to further reduce regulatory delays. In addition, state agencies are in a position to prevent project delays caused by other factors. WESTPO states have long been committed to expeditious treatment of proposed energy projects, and recent initiatives have contributed to this good record.

INTRODUCTION

At their annual meeting in Park City, Utah on September 4-5, 1980, the governors of the Western Governors' Policy Office (WESTPO) approved a resolution related to permitting and siting decisions on major energy projects. This resolution states in part that the "expediting of critical energy siting decisions requires the cooperation of western states in a federal-state relationship which will not lead to the pre-emption of state law." The resolution establishes a regional program through which the WESTPO states can exchange information, ideas, and personnel. A workshop on state permitting and siting was to be a key part of this program.

The workshop was held in Albuquerque, New Mexico on December 16-17, 1980. A workshop summary appears in the appendix. The information in the body of this report is based on presentations and discussions at the workshop and conversations with state officials and other individuals. The permitting workshop and subsequent research focused on the causes of energy project delays and on efforts by WESTPO states to prevent these delays in the future. This report concludes that state agency regulations are not a major cause of energy project delays, due to efforts by these state regulatory agencies to expedite and coordinate the review of proposed energy projects.

State efforts to expedite energy permitting and siting decisions have been either formal or informal and either on a process basis or on a project-specific basis. Formal process efforts, like the Colorado Joint Review Process, and formal project-specific efforts, like the Utah Interagency Task Force (used to help select an acceptable site for the Intermountain Power Project), have resulted in expeditious reviews of major energy projects.

Although the informal efforts by states to expedite and coordinate energy project reviews are sometimes less visible, they are numerous and have been very successful. Some of these efforts are discussed in a later section.

The listing in this report of state efforts to ensure efficient project reviews is not meant to be comprehensive. Nevertheless, they are representative of the commitment of WESTPO states to advance the national goal of energy independence while protecting the quality of life of the residents of these states.

CAUSES OF ENERGY PROJECT DELAYS

The energy industry has long been concerned about delays encountered in the pre-construction phase of energy project development. Indeed, there is reason for such concern since planning lead-times for energy projects "have increased significantly since 1967, perhaps doubling in ten years. They are now lengthy, running 10-15 years for nuclear plants and 6-11 years for coal-fired power plants." (1)

Many industry spokesmen have attributed the blame for these long delays to government laws and regulations. In a report discussing the "major legislative and regulatory impediments to conventional and synthetic fuel energy development", the American Petroleum Institute(API) states that "the Clean Air Act is only one of a whole constellation of laws that are currently impeding the development of energy sources." (2)

Studies have been conducted by a variety of organizations to examine the causes of energy project delays. These studies, all of which are based on reviews of project experience, have consistently pointed to factors other than government law and regulation as being of equal, if not primary blame in the delay of energy projects. Conclusions on this issue from some of these studies are listed below.

Michael Hamilton, Colorado State University (CSU):

> "No doubt the establishment of more stringent environmental controls in the early 1970's contributed to longer lead-times. But the imposition of regulations does not in itself constitute unwarranted or unnecessary delay." (3)

Michael Mantell, The Conservation Foundation:

> "(Environmental and land use laws) are not usually the primary reasons for project delays. Other factors are more important:
>
> a. Lack of consensus regarding need;
>
> b. Mundane problems: Late delivery of equipment, financial difficulties, lack of demand and labor troubles." (4)

Tosco Foundation:

> "While regulatory delay is often not the principal cause for delaying a complex project, flaws in the regulatory process have come under increasing criticism." (5)

Congressional Research Service:

> "It is difficult to attribute the delay or foreclosure of construction of energy development facilities solely to substantive Federal environmental protection laws ... it appears that a general lack of consensus on the need for the project, at least as proposed, underlies the difficulty promoters of projects have faced in trying to obtain necessary regulatory approvals." (6)

Environmental Policy Institute (EPI):

> Reports of the Federal Power Commission on reasons for delay as perceived by utilities *(emphasis added)* in the process of bringing powerplants on line between 1967 and 1976 provided the following results:

REASONS FOR DELAY	NUMBER OF TIMES CITED	%
Vendor-Related Problems	154	37%
Labor-Related Problems	142	34%
Regulatory Problems	51	12%
Utility-Related Problems	38	9%
Legal Challenges, Weather, Etc.	34	8%
	419	100%

> It should be noted that most utilities gave more than one reason for delay for each plant. (7)

These and other studies have also indicated that when delays are caused by government laws or regulations, the most frequent types of regulatory delays encountered are those of changes in federal regulations and delays in the issuance of federal approvals. Thus, approval delays by state agencies are generally not the major cause of regulation-related delays.

The following study results support this conclusion:

Environmental Policy Institute (EPI):

> The EPI study previously cited identified project delays caused by federal, state and local regulatory actions as follows:

CAUSES OF DELAY	NUMBER OF TIMES CITED	%
Regulatory Problems		
Changes in Regulatory Requirements	29	57%
Delays in Obtaining Permits	22	43%
	51	100%

A further breakout for the 22 instances of permit delays is provided below.

CAUSES OF DELAY	NUMBER OF TIMES CITED	%
Delays in Obtaining Permits		
Delays in local certification	8	36.4%
Delays in state certification	4	18.1%
Delays in federal certification	2	9.1%
Level of government not specified	8	36.4%
	22	100 %

(8)

Even if we assume that, where the level of government is not specified, delays in state certification are always the cause of project delay, this would still credit state agencies with only 54.5% of permit delay problems, which in itself, accounts for only 43% of those delays caused by regulatory problems. Thus, as the results of this study indicate, delays in state permits represent less than 23.4% (54.5% of 43%) of the project delays caused by regulatory problems.

National Governors' Association (NGA):

> "Several recent examinations, including studies by the Nuclear Regulatory Commission and the Northwest Energy Policy Project, have indicated that state facility siting activities were not a significant source of delay in gaining certification of proposed facilities. The latter study points to a tangle of jurisdictional oversight, a plethora of internal conflicts in legislation, and an uncertain relationship with programs in the federal agencies' as more significant sources of delay." (9)

A review of specific energy projects which have experienced regulatory delays, confirms the conclusion that permit delays by state agencies are not a major cause of project delays. The projects listed below are not intended to be representative of energy projects which have encountered regulatory delays, but do provide some insight as to the causes of such delays.

Intermountain Power Project (IPP), Utah

This 3000 MW coal-fired power plant faced likely disapproval by the Department of the Interior (DOI) on the grounds that the site chosen would require a variance under the Clean Air Act. The work of the Utah Interagency Task Force, appointed by the governor of Utah to find a more acceptable location, resulted in quick selection of an alternative site. However, DOI approval of this site was not issued until two years after its selection. (10)

Caballo Coal Mine Expansion, Wyoming

Problems identified by the Carter Mining Company in its amendment of mining permits for the Caballo coal mine are as follows:

1) changing regulations as a result of the 1977 Surface Mining Control and Reclamation Act;

2) changing jurisdictions on the federal side from the U.S. Geological Survey (USGS) to the Office of Surface Mining (OSM);

3) interagency conflict between federal and state regulatory groups; and

4) personnel turnover (in agencies). (11)

Gulf's Mount Taylor Uranium Mill Project, New Mexico

Review and approval of this project by the Uranium Mill Licensing Section of the New Mexico Environmental Improvement Division (EID) took 2½ years. This time would have been cut in half had the Nuclear Regulatory Commission (NRC) not issued guidelines on radioactive materials disposal midway through EID's review process. (12)

Northern Great Plains Coal Gasification Plant, North Dakota

Although the review and approval of this project by state agencies has been a relatively smooth process, a negative recommendation by a Federal Energy Regulatory Commission (FERC) administrative law judge on the issuance of a certificate of convenience caused some delay on the federal side. This recommendation was later overturned by the full Commission. A lawsuit by various organizations concerning FERC's ruling has caused additional delay. (13)

Colony Oil Shale Development, Colorado

Difficulty in obtaining water supply approval from the Bureau of Reclamation and a final environmental impact statement from the Bureau of Land Management (BLM) have been major delaying factors. The slowness of these and other actions by federal agencies has been caused, in part, by the lack of demonstrated commitment by the project's sponsors to proceed with its development. (14)

SOHIO PACTEX Pipeline, California to Texas

Fourteen years of regulatory review for this crude oil pipeline ended in abandonment of the project by its sponsors. The major regulatory problem encountered was EPA's implementation of an air quality offset policy and transfer of the authority for offset approval to the State of California. Also blamed for delay are California's complex bureaucracy and the existence of several actual and potential legal challenges to the project. (15)

Kaiparowits Coal Project, Utah

This project involved the mining of nine million tons of coal per year and the construction of a 3000 MW power plant in southern Utah. After fourteen years in the regulatory approval process the project proponents abandoned the project. Causes of delay included early conflicts between the State of Utah and the Bureau of Reclamation over water rights for the project (state water rights were subsequently granted in two years and federal water rights in four years), rising costs of the project, partially due to delay, and changing environmental laws and regulations. (16)

FOOTNOTES

1. Michael S. Hamilton and Norman Wengert, Environmental, Legal and Political Constraints on Power Plant Siting in the Southwestern United States: A Report to the Los Alamos Scientific Laboratory (Fort Collins, Colorado: Colorado State University, Department of Political Science, March 1980), p. 70.

2. American Petroleum Institute, Major Legislative and Regulatory Impediments to Conventional and Synthetic Fuel Energy Development (Washington, D.C.: March 1980), p. iii.

3. Michael S. Hamilton, "The Permit Explosion: Siting New Energy Facilities in the Western United States" (paper delivered at the Western Governors' Policy Office (WESTPO) State Energy Permitting Workshop, Albuquerque, New Mexico, December 16-17, 1980).

4. Michael Mantell, "Siting State Energy Facilities: The State Gambit" (Washington, D.C.: Conservation Foundation, December 1980).

5. Camilla S. Auger and Martin E. Zeller, Siting Major Energy Facilities: A Process in Transition (Boulder, Colorado: Tosco Foundation, October 1979).

6. John E. Blodgett and Joseph P. Biniek, Energy Development Project Delays: Six Case Studies, Serial No. 96-7, Congressional Research Service, Library of Congress, (Washington, D.C.: September 1979), p. 6.

7. Marc Messing, Reasons for Delay in Powerplant Licensing and Construction: An initial review of data available on powerplants brought on line from 1967 through 1976 (Washington, D.C.: Environmental Policy Institute, March 1978), p. 10.

8. Ibid., pp. 1-10.

9. National Governors' Association (NGA), State Initiatives in Expediting Facility Siting Review Procedures (Washington, D.C.: August 1979), p. 1.

10. Reed Searle, "The Intermountain Power Project", Intermountain Power Agency Legislative and Public Affairs (Paper delivered at the Western Governors' Policy Office (WESTPO) State Energy Permitting Workshop, Albuquerque, New Mexico, December 16-17, 1980).

11. Jerry Goodrich, "The Caballo Coal Mine" Carter Mining Company (Paper delivered at the Western Governors' Policy Office (WESTPO) State Energy Permitting Workshop, Albuquerque, New Mexico, December 16-17, 1980).

12. Jerry Steward, "A New Mexico Department of Health and Environment Uranium Mill Licensing Station, Environmental Improvement Division" (Paper delivered at the Western Governors' Policy Office (WESTPO) State Energy Permitting Workshop, Albuquerque, New Mexico, December 16-17, 1980).

13. Nancy Rockwell, "The Northern Great Plains Coal Gasification Project" Governor's Office, North Dakota (Paper delivered at the Western Governors' Policy Office (WESTPO) State Energy Permitting Workshop, Albuquerque, New Mexico, December 16-17, 1980).

14. John M. Berry, "Gearing Up in the West for Oil Shale Production", Washington Post (Washington, D.C.: September 28, 1980).

15. John E. Blodgett and Joseph P. Biniek, supra note 6, pp. 105-129.

16. Ibid., pp. 11-23.

STATE EFFORTS TO EXPEDITE/COORDINATE ENERGY PROJECT REVIEWS AND APPROVALS

Efforts by WESTPO states to expedite and coordinate reviews and approvals for energy projects are numerous and have proven to be very effective in preventing delays. The successfulness of these state efforts and the trend toward state administration of environmental programs indicate the appropriateness of state, as opposed to federal, project coordination.

State expediting-coordination efforts can be described as either formal or informal and as either process-oriented or project-specific. Formal efforts are those established by law, executive order or regulations, and are structural in nature. Informal efforts are agency actions not normally established by the above means but instead by agency discretion. These efforts are administrative or procedural in nature.

The distinction between process-oriented and project-specific expediting and coordination is related to the scope of the efforts. Those efforts which are established as standard operating procedures for application to all projects are process-oriented; agency efforts related to individual (and usually major) energy projects are project-specific.

Formal process-oriented efforts by state agencies to coordinate or expedite the reviews of energy projects have recently been well-publicized. The Colorado Joint Review Process (JRP), for example, has received wide notoriety. In this process, agency officials from various levels of government are brought together by a lead state agency to coordinate timetables for permit reviews on major energy and mineral projects. Siting councils in Wyoming and Montana are among the many such groups established to approve proposed project sites.

Formal project-specific expediting and coordination efforts have also been fairly visible but have been fewer in number. The Interagency Task Force established to help select a site for the Intermountain Power Project (IPP) in Utah, is an example of such an effort initiated by a state. Federal-state coordination in permit and environmental impact statement processes for the Northern Tier crude oil pipeline and the Northern Border natural gas pipeline, are two formal project-specific efforts initiated at the federal level.

Informal processes used by states to facilitate regulatory reviews of energy projects -- such as permit directories, time limits and other administrative or procedural activites -- have ususally not received as much publicity as formal efforts. Yet these processes, often as subtle as agency attitudes, are pervasive in all WESTPO states and contribute a great deal to the expeditious consideration of proposed projects.

Informal project-specific efforts, which are also quite subtle in most cases, have been numerous and important in coordinating agency efforts on major energy projects. Since most major projects require substantial involvement by federal agencies, state-federal coordination in project reviews and approvals is essential.

In each of the following sections, the four categories of state efforts cited above are discussed in further detail, with examples from WESTPO states listed for each. The table below provides a list of some of the efforts discussed.

State Expediting-Coordination Efforts

	Process-Oriented	Project-Specific
Formal	Master application Siting permits Long-range plans	Intermountain Power Project, Utah Northern Tier Pipeline Northern Border Pipeline
Informal	Permit directories Permit information centers Pre-application meetings Agency attitudes Time limits for review State preparation of federal permits	Alpetco refinery, Alaska Deseret power plant, Utah ETSI coal slurry pipeline, Wyoming to Louisiana Rawhide coal mine, Wyoming New Mexico Generating Station Palo Verde to Devers transmission line, Arizona to California Allen Warner Valley Energy System, Nevada and Utah

FORMAL ENERGY PROJECT APPROVAL EXPEDITING/COORDINATION PROCESSES

Most WESTPO states have put into place a formal siting or permit expediting process. In seven of the states, a siting permit must be obtained by energy project developers prior to construction. These permits are issued by public service commissions, siting councils or other authorities. Other states have established master application or joint review processes and long-range plans for energy projects.

Siting permits have long been required by several states. These permits, while based on different criteria in different states, are generally issued with consideration given to the requirements of local, state and federal laws and regulations. This is usually accomplished through input from agencies responsible for administering these laws and regulations. This distinguishes siting permits from the "certificates of public convenience and necessity" issued by most states on the basis of need for power.

The types of projects covered by siting permits vary in individual states. While permits are required for power generation and transmission facilities in almost every case, requirements for synthetic fuel plants, pipelines and other facilities vary. Individual states have also established different size thresholds for energy facilities. These criteria, as well as other information on siting processes, are listed for each state at the end of this section.

The Colorado Joint Review Process (JRP) and the Alaska master application process are examples of mechanisms which have been used by states to coordinate and expedite permit reviews. Both of these efforts are optional processes through which project proponents can readily determine which permits are required and can receive coordination assistance through a lead state agency.

While the Alaska master application process was established by legislation, the Colorado Joint Review Process (JRP) was initiated by agency action. Both were begun in 1978. Proponents of all commercial projects may use the master application process in Alaska, while the JRP is used for major energy and mineral projects as selected by the Colorado Department of Natural Resources. Another distinction between these two processes is that the JRP provides for more active participation by agencies and the public in early conferences and in the establishment of decision deadlines.

The Alaska master application process has been used by eight or nine projects since its inception. For many of these projects this process was used only to determine permit requirements and obtain applications. Thus, it would seem that many applicants prefer not to participate in a joint public hearing and have the lead state agency set decision deadlines.

State officials in Alaska attribute the low level of industry participation on and the partial use of the master application process to the companies' fear that the process will impose additional time and resource requirements. Many companies feel that they can obtain quicker approvals through conventional procedures. State officials acknowledge the cumbersome nature of the master application process and will be recommending streamlining measures to the legislature in the near future.

The Colorado Joint Review Process (JRP) has been used for four projects, which are still being reviewed by the responsible agencies. In each case the timetables for review have been followed by the involved agencies. The JRP has been praised by individuals from a variety of organizations. Some agency officials note that this kind of effort should be reserved for major projects since involved agencies must commit extra resources to the review of these projects.

An indirect formal expediting-coordination mechanism used by some states is long-range planning. Four WESTPO states require utilities and other proponents of energy projects to publish and periodically update plans for energy projects which are to be constructed in the next ten years. This enables agencies to project and review resource needs and to engage in early communication with proponents, thus ensuring timely submission of complete applications. In addition, it enables agencies to consider projects in the context of anticipated cumulative development.

Many of these formal processes have been established since the "energy crisis" of 1973-1974. The Montana and Wyoming siting processes were established in 1975 and the Alaska and Colorado coordination processes were established in 1978. There has been a trend toward the use of more elaborate, formal processes but, as is shown later in this report, these kinds of efforts are not always the most effective means of preventing regulatory delays.

Formal expediting and coordination efforts used by each WESTPO state are listed on the following pages.

Formal Energy Project Approval Coordination Processes

	FACILITY SITING PERMIT - for				LONG RANGE PLANS	FORMAL INTERAGENCY COORDINATION	OTHER FORMAL COORDINATION MECHANISMS
	Power generation	Transmission lines	Pipelines	Other projects			
ALASKA							Master application
ARIZONA	X	X			X		
COLORADO						X	
MONTANA	X	X	X	X	X	X	
NEBRASKA							
NEVADA	X	X	X				
NEW MEXICO	X	X					
NORTH DAKOTA	X	X	X	X	X		
SOUTH DAKOTA	X	X	X	X	X		
UTAH	Project-specific						
WYOMING	X	X		X		X	

ALASKA

Master Application

- Established by Environmental Procedures Coordination Act, 1977.
- Is available for all commercial projects.
- Is used at the option of the project proponent, who may drop out of the master application process at any time.
- Should be filed at a "permit requirements information center", four of which have been established on a regional basis by the Alaska Department of Environmental Conservation.
- Is circulated by the information center to all state agencies and appropriate federal agencies for response as to their jurisdiction and permit requirements.
- Serves as a trigger for a joint public hearing involving all interested agencies.
- Leads to the setting of deadlines by the Department of Environmental Conservation for final decisions by all interested agencies. These decisions must be made no later than 90 days after the public hearing.
- Has been used for eight or nine projects since its establishment in 1978. Most of these projects have used the process only to determine permit requirements.

ARIZONA

Certificate of Environmental Compatibility

- Issued by the Powerplant and Transmission Line Siting Committee under the auspices of the Arizona Corporation Commission.
- Required for
  - power plants with a nameplate rating of 100 MW or more.
  - transmission lines with a capacity of 115 KV or more.
- Permits are conditioned on compliance with all applicable federal, state and local environmental requirements.
- Can supersede local laws if the committee finds that they are unreasonably restrictive.

Ten year plans

- Must be submitted by anyone planning to build or operate a generation or transmission facility in the next ten years.
- Must consider the facility's location, impact on the surrounding area, fuel source, estimated demand, and other factors.

COLORADO

Joint Review Process

- Established in 1978 by executive order and with partial seed money from the U.S. Department of Energy (DOE).
- Is administered by the Colorado Department of Natural Resources.
- Is applicable to all "major energy resource development projects."
- Is voluntary at the discretion of project proponents and agencies.
- Coordinates review and approval processes of federal, state and local agencies by providing interagency meetings at which agency responsibilities are discussed and timelines for decisions are set.
- Provides the opportunity for more public input at early stages of project reviews.
- Promotes timely decisionmaking by agencies through the use of project decision schedules and the monitoring of agency actions by the Department of Natural Resources.
- Is currently being used for four energy and mineral projects, all of which are proceeding essentially on time.

IDAHO

No formal expediting processes for energy project approvals.

MONTANA

Certificate of Environmental Compatibility

- Established by Major Facilities Siting Act of 1975.
- Issued by the Board of Natural Resources and Conservation.
- Required for
  - generating plants greater than 50 MW.
  - coal gasification facilities producing more than 25 mmscf/day.
  - coal liquefaction facilities producing more than 25,000 barrels per day.
  - uranium enrichment activities.
  - plants which utilize, convert or refine coal.
  - transmission lines.
  - pipelines.
  - geothermal plants.
  - in-situ coal gasification.
- Is based on recommendations from the Department of Health, which are binding on the Board, regarding compliance with air and water regulations. Is also based on recommendations from the Department of Natural Resources and Conservation, which serves as staff to the Board. These recommendations will include a state environmental impact statement if one is required.
- Must be issued or denied within 60 days of a public hearing, which must be held within 120 days from receipt of recommendations and reports from the Department of Health and the Department of Natural Resources and Conservation. These recommendations and reports must be sent to the Board within 22 months from submission of complete applications by the applicant.

- Has been issued to several transmission lines and to Colstrip power plant units three and four. Although the issuance of the certificate for Colstrip took three years the first of these years was spent acquiring needed staff.

Ten year plans

- Must be submitted to the Board of Natural Resources and Conservation by companies planning projects requiring a certificate of environmental compatibility for construction during the next ten years.

- Must be updated annually.

NEBRASKA

No formal expediting processes for energy project approvals.

NEVADA

Electric facility siting permit

- Issued by the Public Utilities Commission.
- Required for
  - electric generation.
  - transmission facilities.
  - oil pipelines.
- Is granted after a public hearing is held and the Commission considers the need for power, the environmental impact of the project, and the public interest in such a project.

NEW MEXICO

Certificate of Public Convenience and Necessity

- Issued by the Public Service Commission.
- Required for
  - power plants generating 300 MW or more.
  - transmission lines capable of carrying 230 kilovolts or more.
- Issuance carries with it the requirement that the facility comply with water, air, and other environmental regulations.
- May supersede local or state land use regulations if the Commission finds that they are overly restrictive.

NORTH DAKOTA

Certificate of Site Compatibility

- Established by Energy Conversion and Facility Siting Act, 1975.
- Issued by Public Service Commission.
- Required for
  - transmission lines capable of carrying 115 kilovolts or more of electricity.
  - coal, gas or oil pipelines.
  - power plants capable of generating 50 MW or more of electricity.
  - manufacture or refinement of 100 mmscf/day or more of natural gas.
  - manufacture or refinement of 50,000 barrels or more of liquid hydrocarbons.
- Shall not supersede local laws or regulations EXCEPT for transmission lines, where local laws may be waived if the Commission finds that they are unduly restrictive.
- Is issued after review by the Commission of submitted environmental studies, proposed measures for mitigation of all adverse impacts of construction and other information required by the Commission.
- Must be issued within six months of the filing of a complete application for site approval and within three months for corridor approval although an extension is possible.
- Is conditional upon the gathering of and compliance with required permits.
- Has been granted to over a hundred facilities, including the Northern Tier pipeline (issued in 47 days) and the Northern Great Plains Coal Gasification project (in seven months).

Ten year plans

- Must be submitted by all utilities annually to the Public Service Commission.
- Must contain information on projects planned for the next ten years, their tentative locations, and company efforts to identify and minimize environmental problems.

SOUTH DAKOTA

Siting permit

- Established by Energy Conversion and Transmission Facility Siting Act.
- Is issued by Public Utilities Commission.
- Is required for
  - energy conversion facilities generating 100 MW or more of electricity.
  - transmission lines carrying 250 KV or more of electricity or 115 KV or more if the line does not follow existing corridors.
  - liquid or gaseous hydrocarbon pipelines.
- Can supersede local land use, zoning and building laws if the Commission makes a specific finding that they are "unreasonably restrictive."
- Must be preceded by a Commission-prepared environmental impact statement when required by the state environmental protection act and when a federal EIS has not been prepared.

Ten year plans

- Must be submitted to the Public Utilities Commission by anyone owning or operating a conversion or transmission facility.
- Must be updated every two years.
- Must outline plans for growth or new construction for the next ten years.

UTAH

No formal coordination processes for energy project approvals.

A formal project-specific effort (as opposed to a process applied to all projects of a certain type) has been used in some instances.

Interagency Task Force

- Established by Governor Matheson in 1977 to evaluate potential sites for the Intermountain Power Project (IPP).
- Is composed of 30 individuals from government agencies, industry, public interest groups and the general public.
- Makes recommendations on siting; decisions are advisory only.
- Has made siting recommendations upon the request of proponents for seven other power plants (including four by the same company).

WYOMING

Wyoming Industrial Siting Council

- Established by the Industrial Development Information and Siting Act, 1975.

- Is a seven member board appointed by the Governor and assisted in its administration of the Act by the Office of Industrial Siting Administration.

- Issues a siting permit for the construction of

  - generation or conversion plants or additions capable of producing 100 MW or more of electricity.

  - coal gasification plants or additions capable of producing 100 mmscf/day or more of natural gas.

  - generation or conversion plants capable of producing 50,000 barrels or more of liquid hydrocarbons.

  - transmission lines capable of carrying 115 KV or more of electricity.

  - uranium enrichment facilities with a capacity of more than 500 pounds of U308 per day.

  - any industrial facility with an estimated construction cost of at least $50 million. This amount is periodically adjusted to account for inflation.

- Makes provision for input from other state agencies regarding their areas of responsibility, including input on the need for power from the Public Service Commission and the availability of water from the State Engineer. Recommendations from these and other agencies are binding only for the particular areas of authority addressed and do not direct the Council's siting decision.

- Must determine that a facility is designed in compliance with all federal, state and local laws and regulations prior to issuing the siting permit. Local laws and regulations can be waived if the Council determines that they are "unreasonably restrictive."

- Must issue a final decision within 180 days of the receipt of an application.

- Is required to hold a public hearing on proposed projects within 90 to 120 days from the receipt of a siting permit application. The final decision on each application must be made within 60 days of the public hearing.

- Has issued six siting permits since the adoption of rules and regulations in 1977. Most of these permits have been conditioned on certain socioeconomic monitoring and mitigation measures to be adopted by the project proponents.

FORMAL PROJECT-SPECIFIC EXPEDITING EFFORTS

A second form of state expediting efforts is the use of formal mechanisms for individual projects rather than as a process applicable to all projects. Thus, a governor might appoint a task force to study a project and solicit public input in a manner not normally followed. Alternatively, legislation might be passed to coordinate or expedite the reviews for a major project.

An example of the first mechanism is the use of the Interagency Task Force in Utah to find a site for the proposed Intermountain Power Project (IPP). This task force was established by Governor Matheson upon notification from the Department of Interior (DOI) that the plant's intended site would not be approved. The Task Force was composed of 30 individuals from government agencies, industry, public interest groups and the general public. It was given two months to recommend an acceptable site for the power plant. By gathering input from various agencies and interest groups, the task force was able to develop a list of potential sites, ranked by order of preference, within the time allotted. One of these sites was subsequently selected for use by the power plant and few approval problems have been encountered since.

Two examples of the use of federal legislation to expedite reviews are the Alaska Natural Gas Transportation System's Northern Border pipeline and the Northern Tier crude oil pipeline. Both of these projects were authorized by federal legislation. For the Northern Border pipeline, a federal agency has been established, the Office of Federal Inspector, to monitor progress on the pipeline. Affected states were involved early in both projects. The governors of states affected by the Northern Tier pipeline met prior to Congressional approval and passed a resolution asking Congress to provide for expedited consideration of the project. Environmental analyses performed by Montana and North Dakota on both projects have also promoted prompt consideration of the projects by state and federal agencies. Although the State of North Dakota and the Department of the Interior (DOI) disagree on the corridor to be used for the Northern Border pipeline, the state is prepared to quickly issue regulatory approvals once agreement is reached.

INFORMAL STATE PROCESSES FOR EXPEDITING AND COORDINATING ENERGY PROJECT REVIEWS

WESTPO state agencies have established many informal processes to facilitate reviews and decisions on proposed energy projects. Although these processes are often not as widely visible as formal process and project efforts, they are used by most state agencies and have been effective in reducing the time required for regulatory reviews.

Used by state agencies on an ongoing basis, they are aimed at assisting project proponents in dealing with state agencies, increasing communication among agencies, and limiting time periods required for agency decisions.

Permit Directories

Books providing information on permits required for various commerical projects, usually known as permit directories, have been developed in some form in four WESTPO states. Alaska and Montana have formally adopted directories while Colorado's is still in draft form. Utah's is unofficial, having been published by the Utah State Bar Association. All four of these directories cover federal, state and local permit requirements in their states.

Permit directories are primarily useful to companies which are not familiar with state regulatory requirements or which do not have the resources required to easily determine regulatory requirements for new projects. Since many energy projects require over 100 permits from federal, state and local agencies, it is often useful to have these permits listed and described in one place.

Most permit directories contain a one-paragraph to two-page description of each permit required for commercial projects. These descriptions usually contain the permit's purpose, statutory authority, applicability criteria, application requirement, and an agency contact. The usefulness of these directories is enhanced by inclusion of specific applicability criteria, general information requirements, and process time requirements.

Permit Information Centers

Like permit directories, offices that provide information on permit requirements are particularly helpful to companies new to an area or without the resources to determine regulatory requirements in a timely manner. Within the WESTPO states, only Alaska has established these centers on a regional basis (in four Alaska cities), although other states often have an office which can identify regulatory requirements, such as the Departments of Natural Resources in Colorado and Montana.

Alaska's permit information centers provide more than just information on permits. They also help project proponents fill out and submit applications, including Alaska's master application. This type of assistance has also been established in the state of Georgia where it is called an "escort service."

Pre-Application Meetings

Although many WESTPO state agencies frequently hold pre-application meetings between agency officials and applicants, few states hold these meetings for every project. Colorado's Department of Health Air Quality Control Division is required by statute to hold a pre-application meeting between Division officials and company representatives for the state air quality emissions permit. Utah's Department of Environmental Health always holds a "pre-design conference" in which the applicant and officials from the six bureaus within the Department, other state agencies and usually local and federal agencies participate.

The purpose of pre-application meetings is to bring together the applicant and agency officials in a forum which allows the applicant to discuss project plans and receive feedback from agencies on permit requirements and potential problem areas. Although joint pre-application meetings reduce the burden on applicants who would otherwise have to visit each agency involved they often do not allow discussion of detailed requirements and problem areas because of the large number of individuals involved.

Agency Attitudes

A little-recognized but extremely important factor in agency review and approval of energy projects is the attitude of agency officials toward project proponents. A spirit of good will and cooperation is essential in order for reviews to be fair and expeditious. This does not mean that agencies must sacrifice objectivity toward proposed projects. It does mean that agencies should discuss regulatory requirements and concerns in an open, frank manner; review applications as quickly and fairly as possible; and offer suggestions for alternative approaches when a proposal is not permissable, rather than simply denying a permit.

This is an area in which WESTPO states have long excelled. Although agency resources are virtually limited, agencies in WESTPO states have been extremely willing to provide information on regulatory requirements, to minimize the time required for review, and to be open-minded on project alternatives and mitigation measures. This is indicated by the fact that state agency actions have rarely been blamed for project delays and by the many state efforts listed in this report to coordinate and expedite reviews.

Time Limits for Review

Most state agencies in WESTPO states grant regulatory approvals according to time limits established by state law or by administrative decision. These time limits are almost always shorter than the time limits (if any) of federal agencies issuing similar permits.

Examples of these time limits are listed below.

Alaska - Under the master application process all state agency decisions must be made within 90 days of a joint public hearing held by the Department of Environmental Conservation. The Department of Environmental Conservation has also drafted a legislative proposal to standardize permit review times for all regulatory approvals.

Colorado - Air pollutant emissions permits must be issued in draft form within 60 days of receipt of a complete application. Final permits must be issued within 30 days of the draft permit issuance.

Montana - Air quality permits for projects not requiring an environmental impact statement under the Montana Environmental Protection Act (MEPA) must be issued in preliminary form within 40 days of the receipt of a complete application. Final permits must be issued within 60 days of receipt of a complete application.

For projects covered by MEPA and the Montana Major Facilities Siting Act, preliminary decisions on the proposed and alternative sites for air quality permits and water quality permits must be made within seven months of receipt of complete application.

Utah - Air quality permits, which are nearly identical to the Environmental Protection Agency's (EPA) Prevention of Significant Deterioration (PSD) permits are accepted by EPA as substitutes for its own analysis, and must be issued within 90 days of receipt of a complete application, with some extension possible.

In contrast to these state time limits, EPA must issue its PSD permits within one year of the receipt of a complete application and has no time limit for the issuance of its water pollution discharge (NPDES) permit.

State Preparation of Federal Permits

Many state agencies which have not yet been delegated the authority to issue federal permits, like PSD and NPDES permits, conduct the analyses and preparatory work for these permits. The state analyses or state permits are then used for the issuance of federal permits. This kind of cooperation is used for PSD permits in Montana and Utah and for NPDES permits in New Mexico and Utah.

Other Informal Expediting Processes

Many state agencies have established memorandums of understanding (MOU's) under which state agencies coordinate permit reviews. The Air Quality Section in New Mexico's Health and Environment Department, for example, has established an MOU with the state Office of Coal Surface Mining in which the two offices work together on air quality issues related to coal mining. The Bureau of Water Quality in Utah's Department of Environmental Health has established an MOU with the Division of Water Resources in the Utah Department of Natural Resources. Under the MOU, the Division of Water Rights acts as the lead agency for water issues related to development and notifies the Bureau of Water Quality when water quality issues arise. Agencies in many other states work together in this manner without formal agreements.

Another way of ensuring coordination is to make use of an interagency personnel exchange. The Air Quality Bureau of Montana's Department of Health and Environmental Sciences has an employee who works at the Department of State Lands to coordinate air quality actions related to mining projects. The Water Quality Bureau in Montana has an EPA employee in their office who coordinates the water quality permits of the two agencies. This has greatly enhanced communication between agencies who must work together for effective, efficient reviews to take place.

A final example of informal regulatory coordination is the use of a regular forum for discussing issues of an interagency nature. Although most WESTPO states have consolidated environmental responsibilities into one agency, there is still a need for interagency communication. One example of how this takes place is Utah's Environmental Coordinating Committee, a cabinet level group that meets monthly to discuss issues of concern to various agencies which have regulatory review responsibilities.

INFORMAL EFFORTS BY STATES TO EXPEDITE REVIEWS ON INDIVIDUAL PROJECTS

Since required regulatory reviews for major energy projects are numerous and often complex, state agencies usually give special emphasis to coordinating state and federal approvals for these projects. As the number of federal environmental requirements and the importance of new energy development have increased, the importance of this coordination has also increased. State agencies are increasingly identified as the most appropriate focal points for coordination of local and federal approvals, as well as state approvals for major projects.

Although the following list of projects is by no means comprehensive, it does contain a number of major projects for which state actions have been instrumental in securing timely decisions. It should be noted that while some of these projects have encountered pre-construction delays caused by other factors and some faced opposition by federal or state agencies, the consideration by agencies of these projects has been expeditious.

Deseret Generation and Transmission Project, Utah

The Deseret project consisted of an 800 MW coal-fired power plant and accompanying transmission lines to be constructed in northeastern Utah. Since the project would impact communities in both Utah and Colorado, coordination between responsible agencies in both states was essential to assure accurate, efficient environmental review and permit processing. The ensuing cooperation between agencies within the states and between state and federal agencies resulted in expedited reviews for all state and federal approvals, enabling the project sponsors to plan for timely construction of the project.

ETSI Coal Slurry Pipeline, Wyoming to Louisiana

This project would transfer coal from Wyoming to Louisiana through a coal slurry pipeline. Led by Wyoming, all relevant states worked with the Bureau of Land Managment (BLM) to establish an expedited schedule for state and federal reviews of water resources and other environmental impacts. This coordination resulted in expedited decisions on state and federal permits, leading to a final Department of the Interior (DOI) environmental impact statement scheduled for early 1981.

Rawhide Coal Mine Expansion, Wyoming

Expansion of Carter Mining Company's Rawhide coal mine required a siting permit from the Wyoming Industrial Siting Council, land and air quality permits from the Wyoming Department of Environmental Quality, a Prevention of Significant Deterioration (PSD) permit from EPA, and a surface mine permit from the Office of Surface Mining (OSM). Because of coordination between the responsible agencies, all permits were issued within a two and one half year time period.

New Mexico Generating Station

State officials, working together with the Public Service Company of New Mexico (PNM), established firm deadlines for Department of the Interior (DOI) approvals related to the project. These included Interior decisions on land exchanges, federal coal leasing, and federal land rights-of-way. This enabled PNM to plan for timely development of the plan, although economic considerations have delayed the company's plans.

Palo Verde to Devers Transmission Line, Arizona to California

A proposal to build a transmission line to transmit electricity from the Palo Verde Nuclear Plant in Arizona to Devers, California was stalled by conflicts over the proposed route, which was to cross the Kofa game range managed by the U.S. Fish and Wildlife Service. The Fish and Wildlife Service proposed an alternate route but this was opposed by the State of Arizona. The State instead worked with Southern California Edison, the Bureau of Land Management (BLM) and the Department of the Interior (DOI) to reach agreement with the Fish and Wildlife Service, permitting use of the originally-proposed route through the game range.

Allen-Warner Valley Energy System, Nevada and Utah

Several private and municipal utilities proposed the construction of the Harry Allen facility, a 2000 MW coal-fired power plant, near Las Vegas, Nevada and the Warner Valley facility, a 500 MW coal-fired power plant near St. George, Utah. Coal for the power plants would be slurried from a mine proposed in the Alton coal field near Bryce Canyon National Park in southern Utah.

Although the power plants and coal mine are opposed by environmental and other organizations, the states of Utah and California worked with the Department of the Interior (DOI) to ensure that decisions on the power plants would be handled in such a way as to avoid later challenges by interest groups. By investing the needed time and

resources in the analysis and resolution of environmental issues, the responsible state and federal agencies were able to issue final decisions in a way that minimized the risk of delay from post-decision litigation. Agency work on the Alton coal mine has not proceeded as smoothly, however, since a decision by the Department of the Interior (DOI) on an unsuitability petition filed by environmental groups did not allow for sufficient input from the State of Utah.

Other Projects

Environmental reviews and permitting for the MAPCO pipeline (orginating in New Mexico) has moved quickly because of state cooperation with federal agencies in establishing coordinated regulatory reviews. The Rocky Mountain Pipeline, to extend from Wyoming to California, is receiving expedited reviews due to Bureau of Land Managment (BLM) coordination of federal reviews and Western Interstate Energy Board (WIEB) assistance to affected states in their development of a cooperative review. A uranium mine and mill that is to be located in Wyoming by the Tennessee Valley Authority (TVA) will abide by state siting and other laws according to an agreement reached between the Governor of Wyoming and TVA. This avoided potential conflicts over the federal agency's power of eminent domain.

REGIONAL AND INTERGOVERNMENTAL

COORDINATION EFFORTS

Several efforts of a regional nature have been pursued by WESTPO states. As the number and magnitude of interstate energy projects and project impacts increase, it becomes more important for states to cooperate to enhance their management of industry and federal actions affecting the region and to avoid interstate conflicts. The Western Interstate Energy Board (WIEB), the Western States Water Council (WSWC), and the River Basin Commissions have facilitated these efforts.

The Western Interstate Energy Board (WIEB) has been involved with the negotiation of a cooperative agreement between WIEB, the Bureau of Land Management (BLM) and the U.S. Forest Service. The first project under this agreement will be the development and implementation of a "cooperative state-federal program for the review of applications for rights-of-way across public lands" for major interstate energy projects. State-federal review teams may be established to provide for state input into BLM and Forest Service decisions on federal rights-of-way. In addition, WIEB will be working to facilitate state input into the designation of corridors in advance of actual proposals for corridor usage.

A similar activity in which coal-producing states have worked together with WIEB is in the establishment of regional coal teams to review Department of the Interior (DOI) proposals for the leasing of public lands for coal development. Colorado, Wyoming, North Dakota and Montana were intimately involved in the design and establishment of the new coal leasing program and will essentially control the selection of tracts for leasing through participation on the regional coal teams. A regional review team has recently been established for the leasing of oil shale tracts as well.

Since water resource impacts of energy projects in the West will be substantial, early planning for water development needs is important. The Western States Water Council (WSWC), the Missouri River Basin Commission (MRBC) and the Pacific-Northwest River Basin Commission have all been involved in studies to project water supply needs of energy development. In addition, the Missouri River Basin Commission is conducting a Western Coal Planning Assistance Project to assist the three coal-producing states in their region plan for water supply needs and for the impacts of future coal development on land and water.

Intergovernmental coordination efforts initiated by states have been discussed in this and previous sections. It should be noted, however, that many similar efforts have been initiated by federal agencies. Although research in this area is limited, a few of these efforts can be briefly described.

The Department of the Interior (DOI) has been involved in many of the project-specific efforts described in the last section. Much of this work has been accomplished through the Bureau of Land Management (BLM) Special Projects Office, which works with other federal and state agencies to ensure quick reviews of energy projects affecting BLM land. Secretary-level attention to specific projects and to the negotiation of the previously discussed cooperative agreement with the Western Interstate Energy Board (WIEB) has also been helpful.

Although the Washington office of the Environmental Protection Agency (EPA) has worked to expedite project reviews, most intergovernmental coordination efforts have taken place at the regional level. These efforts have included the use of State-EPA agreements to establish priorities for both agencies to follow. Other efforts have involved frequent informal interaction with state agencies on major energy projects.

The U.S. Regulatory Council has worked with the National Governors' Association (NGA) to assist states in the development of project expediting and coordination mechanisms. Workshops will be held to examine causes of project delays and to identify useful state efforts to prevent these delays.

POTENTIAL ADDITIONAL STATE EFFORTS

Most of the measures that have been recommended for expediting or coordinating state regulatory reviews of energy projects have already been used in some WESTPO states. The wide range of state efforts discussed in the last four sections cover virtually every mechanism that has been suggested by authors of permitting studies, government officials, and industry.

The expediting and coordination efforts discussed earlier are not appropriate for all WESTPO states. Nevertheless, the use of some of these measures could be expanded. This might further increase the effectiveness of the states in addressing new energy development.

For several reasons, it is important that states be allowed the flexibility to implement their own set of expediting and coordination measures. First, the structure of state governments varies among the different WESTPO states. The responsibility for implementing environmental programs, for example, is sometimes placed in several state agencies and in other cases is consolidated in one agency. Second, the relationships among state agencies and between state and federal agencies vary for different states. Finally, the number and nature of energy projects and the political climate are unique to individual states.

Given the uniqueness of the structure, interagency relationships, and political climate of individual WESTPO states, it is difficult to list characteristics of state siting and permitting coordination measures that should be included in all state efforts to expedite or coordinate review processes. This issue was addressed by the permitting workshop and the results of these discussions are provided in the attached meeting summary. It should be stressed, however, that the major conclusion of this workshop and this report is that the appropriateness of expediting-coordination mechanisms for energy projects varies by state.

The permitting workshop participants focused on four categories of delay and discussed causes of these delays and state measures for delay avoidance. These categories were:

- information availability,
- interagency coordination,
- regulatory duplication, and
- outside forces (lawsuits, economics, legislative changes, public attitudes).

The general conclusions of these groups' discussions are briefly summarized below. For more detailed information see the meeting summary in Appendix 1.

Information availability

The appropriateness of mechanisms to ensure the availability of information on permit requirements varies by the size of energy projects and project proponents. For smaller projects and smaller companies, permit directories, information centers, and other assistance measures are helpful. For large projects and large companies some form of interagency coordination effort, whereby early communication and ongoing permit coordination are established, is useful.

Interagency coordination

Interagency coordination processes used by states should be applied only to projects where their use is appropriate. These processes should encourage early communication, protection of existing jurisdictions, intergovernmental cooperation, early development of consensus on project need, and participation by high level managers.

Regulatory duplication

Overlapping jurisdictions and procedural requirements should be clarified. Oversight of state regulatory actions by federal agencies should be limited.

Outside forces

Delays caused by lawsuits, economics, legislative changes and public attitudes are to some degree outside of the control of state agencies. There are measures states can use, however, to reduce the occurence of these delays. Early development of consensus on the need for projects, early opportunities for public input, and expeditious project reviews are a few of the ways in which these problems can be avoided.

Three points need to be re-emphasized by way of conclusion:

- Efforts by WESTPO states to expedite and coordinate energy project reviews are extensive and have proven to be effective in avoiding regulatory delays.

- Expanded use and refinement of these efforts by WESTPO states will further improve the efficiency of state reviews and approvals.

- The expediting and coordination efforts discussed are not not always appropriate for use by every state.

WORKSHOP SUMMARY

A. Meeting — State Energy Permitting Workshop

B. Sponsors — Western Governors' Policy Office (WESTPO) and New Mexico Department of Energy and Minerals

C. Dates — Tuesday, December 16 and Wednesday, December 17, 1980

D. Location — Albuquerque Convention Center
Albuquerque, New Mexico

E. Overall Meeting Objectives

1. To list and discuss causes of delay encountered by energy projects.
2. To review state efforts to expedite regulatory approvals of energy projects.
3. To discuss potential additional state efforts that might facilitate the regulatory review process.

F. Conclusions

1. Problems related to environmental laws and regulations are not the main cause of energy project delays.
2. Regulatory approvals by state agencies do not contribute significantly to the delay of new energy projects.
3. WESTPO states are involved in a large number of efforts to expedite and coordinate regulatory reviews of energy projects.
4. Although formal state expediting-coordination processes are most widely publicized, informal efforts are more numerous and effective.
5. The effectiveness of current state expediting-coordination efforts and the responsibilities of state agencies indicate that the state level is most appropriate for regulatory coordination.

G. Summary of Presentations and Discussions

I. Welcome, Introduction of Governor King: Phil Burgess, Executive Director, WESTPO

A. The State Energy Permitting Workshop is one of the many efforts of the governors of the Western Governors' Policy Office (WESTPO) to address the rapid energy development taking place in WESTPO states. We hope that through this workshop state officials can share

information and ideas on state efforts to prevent energy project delays so that we can improve and expand these efforts.

B. This project was initiated and has been guided by Governor Bruce King and the New Mexico Department of Energy and Minerals. Governor King's interest and assistance has been instrumental in bringing about participation from nearly all the WESTPO states.

C. The assistance and cooperation of the Western Interestate Energy Board (WIEB) and the Western Regional Council (WRC) have been instrumental in the organization of this workshop.

II. Keynote: Governor Bruce King (New Mexico)

A. The national goal of increased energy production calls for timely energy project reviews. State agencies have shown that we can accomplish both energy and environmental goals by efficiently granting environmental permits to energy projects.

B. New Mexico is experiencing rapid increases in the development of many different energy resources. Quick permit reviews and communication between state agencies has helped avoid project delays.

III. Opening Remarks: Larry Kehoe, Secretary, New Mexico Department of Energy and Minerals

A. The root cause of energy project delays is frequently the anatagonism that emerges during the regulatory process between project proponents, regulatory agencies and opposing interest groups or citizens. This antagonism is often caused by the formality of the regulatory process or ignorance about project impacts and regulatory requirements.

B. Early, informal interaction between project proponents and regulatory agencies and opportunities for early public input result in smoother, more efficient project approvals.

IV. Causes of Energy Project Delays: Two General Studies

A. Michael Hamilton, Colorado Energy Research Institute (CERI) fellow at Colorado State University

1. Regulatory delays are not the main cause of energy project delays. Most studies show that they usually run a poor third, behind equipment-related delays and labor-related delays.

2. States have put into effect many mechanisms for streamlining and coordinating permits but experience has shown that strong executive leadership and direction at state and federal levels and informal agency coordination are often as effective as elaborate schemes like siting councils.

B. Michael Mantell, Associate, Conservation Foundation

1. Environmental and land use regulations are not the main cause of energy project delays. Generally, equipment-related and labor-related delays account for a large share of energy project delays.

2. Lack of consensus on the need for projects, insufficient environmental planning by industry proponents, and uncertainty caused by lawsuits and changing laws are of equal importance to slow agency review and interagency coordination problems in causing project delay.

V. Four Energy Project Case Studies

A. Intermountain Power Project (Utah): Reed Searle, Manager, Legislative and Public Affairs, Intermountain Power Agency

1. In 1977 Secretary of Interior Cecil Andrus stated that he would not approve the site selected for a 3,000 MW coal-fired power plant if another site could be found which would not require a variance under the Clean Air Act, as did the preferred site.

2. Utah Governor Scott Matheson subsequently formed The Interagency Task Force and gave it the charge of finding a new site for the plant within three months. The task force was made up of 30 individuals representing the project proponent, responsible agencies, interest groups and the general public.

3. The Interagency Task Force recommended several alternative sites, one of which was chosen by the company. Remaining regulatory approvals were readily obtained.

B. Caballo Coal Mine (Wyoming): Jerry Goodrich, General Manager, The Carter Mining Company

1. Permits for mining of coal under private and state leases were obtained from Wyoming in 1976. In November 1978 Carter Mining Company applied for state and federal permits to expand the area mined to include federal land.

2. The final federal environmental impact statement was issued in August, 1979, more than three years from the time it was started. Because of this delay and because of changes caused by the Surface Mining Control and Reclamation Act (SMCRA) of 1977, final state approval of the mine expansion was not issued until July, 1980 and federal approval was not issued until October 1980.

3. The delays encountered in the expansion of this mine were caused by changing regulations and agency jurisdictions due to the passage of SMCRA, lack of coordination and information exchange between state and federal agencies, and agency personnel turnover.

C. Gulf's Mount Taylor Uranium Mill Project (New Mexico): Jerry Stewart, Chief, Uranium Mill Licensing Section, Environmental Improvement Division, New Mexico Department of Health and Environment.

1. Gulf submitted applications for a radioactive material license to the New Mexico Environmental Improvement Division (EID) in May 1978 and for a groundwater discharge permit in May 1979.

2. Although New Mexico is responsible for issuing radioactive materials licenses in accordance with an agreement between EID and the Nuclear Regulatory Commission (NRC), NRC made recommendations on tailings disposal procedures to Gulf which caused an extensive revision of Gulf's application. Final EID approval should come in January, 1981.

3. State approval of permits for this project took about two and a half years. This period might have been reduced to one and a half years if the NRC concurrent tailings licensing had not been involved.

D. Northern Great Plains Coal Gasification Project (North Dakota): Nancy Rockwell, North Dakota Natural Resource Coordinator, Office of the Governor

1. Planning and land acquisition for coal mining began in 1972 for the construction of a coal gasification plant.

2. Various state pre-construction permits and approvals were required, nearly all of which have been obtained. The U.S. Department of Energy (DOE) recently gave conditional approval for a $1.5 billion loan guarantee, the first of its kind.

3. Almost no problems have been encountered at the state or federal level. Construction of the plant has been delayed, however, due to a successful lawsuit challenging the method of financing construction costs.

VI. Luncheon Speaker: Timothy Glidden, Staff Director/Counsel, Oversight and Investigations Subcommittee, Interior and Insular Affairs Committee, U.S. House of Representatives

A. Although it is too early to tell what kinds of changes will take place under the new President and new Senate leadership, it appears that the trend toward shifting more responsibility to the states will continue.

B. It is important that state agencies act to prevent the kinds of regulatory delays that have occurred in the past.

VII. Federal Coordination Efforts

A. Environmental Protection Agency (EPA): Abby Pirnie, Special Assistant to the Deputy Assistant Administrator for Water Enforcement and Stuart Sessions, Branch Chief, Energy Facilities Branch, Policy Planning Division

1. An Energy Mobilization Board (EMB) Task Froce has been established within EPA to develop pollution guidelines for synthetic fuel plants and to implement permit coordination procedures. A task force subcommittee, the Permits Coordination Group, has studied permit approval procedures and installed a permit tracking system to monitor the progress of major energy projects.

2. On the regional level, EPA is following self-imposed permit deadlines and is working with states on an informal basis to ensure timely reviews of energy projects.

B. Department of Interior (DOI): Joseph Browder, Special Assistant, Office of the Assistant Secretary for Land and Water Resources

1. The most successful expediting and coordination efforts for energy projects have taken place in the West and are the result of the commitment of state agencies to timely reviews and intergovernmental cooperation. These efforts have been informal, focusing on results rather than management systems.

2. The Bureau of Land Management (BLM) Special Projects Office has encouraged and participated in these informal coordination efforts.

3. A cooperative agreement has been formed between the Western Interstate Energy Board (WIEB), the BLM and the U.S. Forest Service. Under this agreement these organizations will adopt a coordinated approach to the issuance of rights-of-way for energy projects across public lands.

C. U.S. Regulatory Council: Dan Maldonado, Associate Director

1. Working in concert with the National Governors' Association (NGA), the Western Interstate Energy Board (WIEB) and other groups, the Regulatory Council will meet with local, state and federal officials to determine the problems associated with energy project reviews and the feasibility of various coordination efforts. Recommendations will be made to the President on steps federal agencies should take to prevent future energy project delays.

VIII. Outline of Project Delay Factors

Four categories of major project delay factors were introduced for discussion by subgroups of the workshop participants. These factors are:

A. Information availability: Knowledge of permit requirements and the information and time needed for each permit;

B. Regulatory duplication: Overlapping requirements of state and federal agencies;

C. Interagency coordination: The need for coordination of federal, state and local permit reviews; and

D. Outside forces: Lawsuits, economic circumstances, legislative changes, and attitudes of individuals involved in approval consideration.

IX. State Coordination Processes: Two Examples

A. Colorado Joint Review Process (JRP): Gary Fisher, Program Director, Joint Review Process (JRP), Colorado Department of Natural Resources

1. The Joint Review Process (JRP) was initiated in 1978 under partial funding from the U.S. Department of Energy (DOE).

2. The first step in establishing this process was to research the problems connected with project approval processes. It was found that project proponents tend to wait too long to apply for permits and approach these permits incrementally. The proliferation of permit requirements has created the need for interagency coordination.

3. The JRP is a voluntary administrative procedure whereby proponents of major energy and minerals projects can ask the Department of Natural Resources to organize and conduct an intergovernmental coordinated review of a proposed project. Coordination techniques used in the JRP include pre-application meetings, consolidated permit applications, joint hearings, and informal public participation activities. Projects are coordinated by a JRP team comprised of one coordinator from each level of government and a company representative. Joint reviews of projects are managed by this team through a series of written agreements.

4. The major management tool used to coordinate joint reviews is a Project Decision Schedule (PDS). The PDS outlines the procedures, timeframes, and milestones of each applicable permitting process and the company's anticipated schedule. Each PDS is agreed upon in writing by its contributors.

5. Four projects are currently being reviewed through the JRP:

   - AMAX Mt. Emmons molybdenum mine
   - Rio Blanco oil shale project
   - Multi Mineral Corporation's nahcolite mine
   - W. R. Grace & Co.'s coal-to-methanol plant

   The reviews for these projects are proceeding on time.

B. Wyoming Industrial Siting Council: Richard Moore, Director, Wyoming Office of Industrial Siting Administration

1. The Wyoming Industrial Siting Council was established in 1977 by the Wyoming State Legislature. Companies planning industrial facilities whose size exceeds the thresholds listed in the legislation must submit an application to the Council for a siting permit prior to construction.

2. Siting permits are granted after demonstration by the project proponent that the project will be in compliance with all federal, state, and local laws. The Siting Council relies on other state agencies for input in their areas of jurisdiction. The approvals of these agencies are otherwise independent of the site approval.

3. Six siting permits have been issued since the establishment of the Siting Council.

4. During consideration of each siting permit the Council investigates potential socioeconomic impacts of the project. Usually the Council requires that certain impact mitigation measures be undertaken by the project proponent.

5. The Siting Council must hold an initial hearing within 90-120 days of receipt of an application. The siting permit will in many cases be granted soon after this hearing although a 180 day period may be allowed for further study with provisions for two 60 day-extensions.

6. The rigidity of the Siting Council's time frame and the flexibility of time requirements of other state agencies is one problem that inhibits effective coordination.

X. Causes of Delay and Potential Solutions Identified by Discussion Groups

Four discussion groups met for two hours to talk about the categories of delay factors identified earlier. Part of this time was spent identifying causes of delay within each category and the rest of the time was devoted to identifying potential solutions. The products of these discussions were then presented by the moderator of each group.

A. Information Availability: Glen Akins, Director of Environmental Quality Management, Alaska Department of Environmental Conservation

1. Causes of delay:

- lack of demonstration of need for projects;
- lack of centralized source of information on permit requirements;
- inexperienced agency personnel caused by large turnover;
- inadequate linkage between state agencies, federal agencies and Indian tribes;
- insufficient technical information provided by applicants;
- unclear agency jurisdictions;
- lack of early public awareness of projects;
- physical separation of reviewing agencies.

2. Drawbacks of frequently-suggested solutions:

- permit directories are easily outdated;
- master permit systems are sometimes difficult to use because of large number and complexity of permits.

3. Potential solutions:

- For large energy projects organize a pre-application meeting between the applicant, agency officials and the general public. This meeting would provide a forum for the applicant to present project plans and receive feedback on permit requirements and potential problems. These meetings could be held on a regular or ad hoc basis. A model for the former might be the land managers task forces of Alaska and Utah, which bring together officials concerned with land use each month to discuss issues of mutual concern. Ad hoc meetings could be established through interagency memorandums of agreement or through guidelines similar to those used for the Colorado Joint Review Process (JRP).
- For small energy projects some kind of permit assistance is needed. This might involve the use of permit directories, permit information centers or a central agency which would act as an "escort", leading the applicant through the process and assisting in the resolution of problems along the way.

B. Regulatory Duplication: Ben Costello, Manager, Permitting and Compliance, ARCO Coal Company

1. Causes of delay

a. Federally-mandated state programs

- Federal agencies often do not release full responsibility for permit programs. This results in:

  - duplicative information requirements;
  - duplicative permit reviews;
  - duplicative monitoring, reporting and enforcement requirements.

- Federal environmental impact statements (EIS's) often duplicate state EIS's or other federal EIS's. Three EIS's were written for the Northern Tier pipeline.

b. State-mandated programs

- State programs are often duplicated by federal programs enacted at a later date.
- State agency obligations are often statutory rather than regulatory in nature. This makes state programs rigid and not easily adaptable to different situations.

c. Local zoning and land use regulations

- Information requirements for local approvals often duplicate state and federal requirements.
- Local regulation adds to the time and resource burdens imposed on project proponents.

2. Potential solutions

a. Federally-mandated state programs

- Legislative changes are needed to confine the responsibilities of federal agencies to

  - developing general performance guidelines rather than detailed requirements for regulated activities;
  - providing technical assistance to assure regional consistency;
  - arbitrating interstate conflicts when a problem cannot be solved by states;
  - overseeing state actions only when a project of interstate nature and extraordinary national interest is involved.

- Concurrent legislative changes are needed to give states the responsibility for:

  - developing state-specific performance standards based on federal guidelines;
  - implementing these standards;
  - issuing all permits;
  - enforcing all requirements.

b. State-mandated programs

- Ambiguity of jurisdictional boundaries should be eliminated.
- Information requirements and design standards for similar structures should be standardized.
- An interagency coordination process should be established to ensure orderly permit reviews.
- EIS's should be prepared jointly. Alternatively, state-prepared EIS's should satisfy federal requirements.

c. Local zoning and land use regulations

- State and local agencies with similar areas of responsibility should cooperate more closely.
- Local approval processes should be made an integral part of state reviews.

C. Interagency Coordination: Steve Allred, Director, Idaho Department of Water Resources

1. Causes of delay

- Lack of coordination between state and local agencies. This is the result of:

  - frequent differences between state concerns and local concerns;
  - local government distrust of higher levels of government;
  - insufficient resources at both levels.

- Lack of coordination between state and federal agencies arising from:

  - different timeframes for permit reviews;
  - hostility caused by federal oversight of state programs;
  - insufficient resources at the state level.

- Lack of coordination among states and between states and Indian tribes.
- Changes in regulations and jurisdictions, particularly at the federal level.

2. Potential solutions

Mechanisms used by states to prevent regulatory delays through better interagency coordination will vary from state to state but there are some common ingredients that will be helpful in most cases:

- Commitment from top management in agencies and industry to make the system work;
- Recognition and protection of existing agency jurisdictions;
- Reliance upon state agencies as focal points for coordination except for projects significant enough to warrant Secretarial or Presidential attention;
- The use of incentives for agencies and companies to participate and disincentives for non-participation;
- Consolidation of permit processes only where it makes sense to do so and where agency objectivity will not be sacrificed;
- Provision for early agency-applicant consultation and early public input;
- The use of elaborate coordination processes only where they fit and the level of agency resource commitment can be justified;
- Clear identification of agency roles prior to substantive process;
- Clear, publicized process goals;
- Provision for interstate, as well as intrastate coordination;
- Separate treatment of policy issues in forums prior to and outside of the regulatory process;
- Use of uniform and consistent processes for individual permits to provide predictability;
- Continuance of intergovernmental consultation after project approval;
- Redefinition of the state-federal relationship as a partnership rather than one dominated by the federal government.

D. Outside Forces: Doug Larson, Executive Director, Western Interstate Energy Board (WIEB)

1. Causes of delay

- Lawsuits
- Economic forces
- Legislative and regulatory changes
- Industry and citizen attitudes

2. Potential solutions

a. Lawsuits

- Provide for early input from interest groups and the general public.
- Make provision for resolution of conflicts arising during permit review process.
- Encourage interagency coordination and an open review process.

b. Economic forces

- Reduce costly delays through measures outlined by other discussion groups.
- Decrease investment risks by reducing uncertainty caused by changes in regulations and unstated regulatory requirements.
- State agencies should somehow indicate whether certain projects will encounter "clear sailing" or a "bumpy road."

c. Legislative and regulatory changes

- New legislation should have clear grandfather provisions to protect projects already underway except where public health is endangered.
- Permit requirements should be fixed to the extent possible at some point in the review process for each project to reduce uncertainty caused by changing laws and regulations.
- Transition periods between federal and state administration of environmental programs should be as short as possible. The burden of proof as to whether states should be delegated programs should be shifted so that federal agencies must demonstrate the inadequacy of state programs rather than having states demonstrate adequacy.
- State and federal agencies should work together to develop new regulations.
- Administrative, rather than legislative, solutions should be emphasized in new areas of concern.

d. Industry/citizen attitudes

- Agencies should emphasize the need for project proponents to come forward early.
- For major projects governors should convene a group of regulators, public interest groups, and company representatives to provide for information exchange and identification of potential problem areas.

WESTERN GOVERNORS' POLICY OFFICE (WESTPO)

State Energy Permitting Workshop
December 16-17, 1980
Albuquerque Convention Center
Albuquerque, New Mexico

F-I-N-A-L A-G-E-N-D-A

Tuesday, December 16

8:00 a.m.	Registration: Isleta/Jemez Room
9:00 a.m.	Welcome, Introduction of Governor King: Phil Burgess, Executive Director of WESTPO Keynote: Governor Bruce King (New Mexico)
9:20 a.m.	Opening Remarks: Larry Kehoe, Secretary of New Mexico Department of Energy and Minerals
9:40 a.m.	Energy Project Delays - General studies Michael Hamilton, Colorado Energy Research Institute fellow at Colorado State University • TAB A Michael Mantell, Associate, Conservation Foundation • TAB B
10:00 a.m.	Break
11:00 a.m.	Case Studies - Four energy projects: Intermountain Power Project (Utah): Reed Searle, Manager, Legislative and Public Affairs, Intermountain Power Agency • TAB D
12:00 noon	Luncheon: Cochiti Room Speaker: Senator Pete V. Domenici (New Mexico)
1:30 p.m.	Continuation of case studies Caballo Coal Mine (Wyoming): Jerry Goodrich, Jr. General Manager, The Carter Mining Company • TAB E

Tuesday, December 16 Continued

Gulf's Mount Taylor Uranium Mill Project: Joseph A. Pierce, Chief, Water Pollution Control Bureau, New Mexico Environmental Improvement Division
- TAB F

Northern Great Plains Coal Gasification Project (North Dakota): Nancy Rockwell, North Dakota Natural Resource Coordinator, Office of the Governor
- TAB G

3:30 p.m. — Break

3:40 p.m. — Federal - State Coordination Efforts

Environmental Protection Agency: Abby Pirnie, Special Assistant to the Deputy Assistant Administrator for Water Enforcement.
- TAB I

Department of Interior: Joe Browder, Special Assistant to the Assistant Secretary for Land and Water Resources
- TAB J

U.S. Regulatory Council: Gil Jacobs, Project Coordinator
- TAB K

4:45 p.m. — Adjourn

5:00 - 6:00 p.m. — Reception: Apache Room

Wednesday, December 17

8:30 a.m. — Project Delay Factors - Introduction of four categories:

1. Information availability: Glen Akins, Director of Environmental Quality Management, Alaska

2. Regulatory duplication: Ben Costello, Manager, Permitting and Compliance, ARCO Coal Company

3. Interagency approval process coordination: Steve Allred, Director, Idaho Department of Water Resources

Wednesday, December 17 Continued

4. Outside forces (lawsuits, economics, legislative changes): Doug Larson, Executive Director, Western Interstate Energy Board

9:15 a.m. — Group Discussions - Four concurrent discussions on the above categories of delay factors

10:00 a.m. — Break

10:15 a.m. — State Coordination Efforts: Yolanda Heuser, National Governors' Association
- TAB L, M, N

10:30 a.m. — Colorado Joint Review Process: Gary Fisher, Program Director, Colorado Department of Natural Resources
- TAB O

11:15 a.m. — Wyoming Industrial Siting Council: Richard Moore, Director, Wyoming Office of Industrial Siting Administration
- TAB P

12:00 noon — No Host Luncheon

1:30 p.m. — Group Discussions - Four concurrent discussions on state solutions to the delay factors identified earlier

2:30 p.m. — Conference Summary and Wrap Up: Phil Burgess, Moderator

Report out by the moderator of each group on issues raised and recommendations for solutions for each delay factor

Concluding Remarks: Larry Kehoe

Adjourn

Thursday, December 18

9:00 - 11:00 a.m. — Debriefing session for moderators, workshop staff and other interested persons.

LIST OF PARTICIPANTS

STATE OFFICIALS

Alaska

Glen Akins, Director of Environmental Quality Management, Department of Environmental Conservation

Colorado

Gary Fisher, Program Director, Joint Review Process, Department of Natural Resources
Dan Hall, Department of Regulatory Agencies
George Lauderdale, Energy Coordinator, Air Pollution Control Division, Department of Health

Idaho

Steve Allred, Director, Department of Water Resources

Montana

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Nevada

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New Mexico

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Tim Glidden, Staff Director/Counsel, Oversight and Investigations Subcommittee, House Interior and Insular Affairs Committee, U.S. Congress
Gil Jacobs, Project Coordinator, U.S. Regulatory Council
Dan Maldonado, Associate Director, U.S. Regulatory Council
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Abby Pirnie, Special Assistant to Deputy Assistant Administrator for Water Enforcement, Environmental Protection Agency
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Stuart Sessions, Branch Chief, Energy Facilities Branch, Energy Policy Division, Environmental Protection Agency
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