



OREGON ENERGY FACILITY SITING COUNCIL MINUTES

June 11, 2010

Bob Shiprack, Chair
Lori Brogoitti, Council Member
Trey Senn, Council Member

Bryan Wolfe, Council Member
Barry Beyeler, Council Member

Minutes
Energy Facility Siting Council Meeting
Harney County Fairgrounds Memorial Building
69660 S. Egan Street
Burns, OR, 97720
June 11, 2010

I. Opening The Meeting

Chair Bob Shiprack called the meeting to order at 9.35 a.m and requested that each Council Member introduce themselves as part of taking the roll. A quorum was established.

II. In Attendance

A. Energy Facility Siting Council (Council):

Bob Shiprack, Chair
Lori Brogoitti
Barry Beyeler
Bryan Wolfe
Trey Senn

B. Oregon Department of Energy (ODOE):

Tom Stoops, Council Secretary
Duane Kilsdonk
Andrea Simmons
Kathy Shinn

C. Oregon Department of Justice (DOJ):

Janet L. Prewitt, Assistant Attorney General

D. Others:

Astrid Alexander
Hilda Allison
Juanita Andueza
John Audley
Wade Bailey
R.S. Bakey
Brad A Barnes
Brandon Baron
Wendell Baskins
Gretchen L Bates

Dave Becker
C. Beutz
Dave Bilyeu
Richard Bours Sr
Gerard Jr Lori La Brecque
Chris A Briels
Ron Brown
Renee Buermann
Barbara Cannady
Robert Cargill

Shirley Carson
Robert Cunningham
Becky Cunningham
Stacy L Davies
Fran L Davis
Selene Dobson
Dick Edmunsen
Pat Edmunsen
Jed Farmer
Michelle Farmer
Mike Faulhaber
William Feist
Brent Fenty
Mike Fine
Gerald E Francis
Ellen Franklin
Tom Frisbie
Randy Fulton
Cynthia Grasty
Steve Grasty
Peggy Grummen
Doug Gunderson
Eric Guthrie
Dan Haak
Corbin Hammond
D. Hammond
Dave Hammond
Susan Hammond
Larry G Hammond
Theresa Hand
Pam Hardy
John Hein
Matt Holmes
Melissa Honeycutt
Paul V Hyland
Maria Iturriaga
RJ Jenkins
Bill Jennings
D. Jess
Warren L Jess
Darwin Johnson
Sharon Johnson
Linda Johnson
J.R. Johnson
Margaret Johnson
Ron Jones
Jane Jones
Marl Kane
Chad Karges

Sam Kaser
Wanda Kaser
Robb Keeney
Terry Keim
Dixie L Keith
Jay Kerby
Wayne Kinney
Bill Marlett
Colby Marshall
Kate Marsh-Copeland
Pam Mather
Ben McCanna
Kenny McDaniel
Tara McLain
Carla McLane
Brandon McMullen
Paul Middelhoven
Craig Miller
Jerry Miller
Richard Miller
Melodi Moet
Betty Morgan
Leland F Morris
L Joyce Morris
Marvin Morse
Stephan Moss
Jon Norling
Ed O'Carroll
Julia Olson
Holly Orr
Robert Oswald
Bill Otley
Robert Otley
Mary Otley
Jennie Otley
Fred I Otley
Beth Paramore
Robert Paramore
Randy Parks
Amy Paul
Wilma Pedersen
Melvin L. Pedersen
Jack Djenkiret
Betty Djenkiret
Nona Popham
Chris Pratt
Frances R Reed
Skip Renschler
Jack Rinn

Susan Ramsay
Pete Runnels
Zola Ryan
Bob Sallinger
Myrene Sari
Fred Sawyer
Elizabeth Scheeler
Verne Scheen
Art Schlack (AOC)
James H. Schultz
Ruth Schultz
Gene Scrivner
Tom Sharp
Pat Sharp
Shawn Simpson
Kylee Simpson
Tim Smith
Darrel Smith
Holly Smith
Thomas P Smith
Mary Smith
Ron Smith
Cheryl Smith
Kalib Stallings

Ralph Steelman
Jerry Temple
Rebecca Thein
Candy Tiller
Dave Turner
Richard VanRy
Len Vohs
Patti Wagner
Julie Weikel
Jeff Wheeler
Pat L Wheeler
Larry L Williams
LaWanda Williams
Danny Williams
Donald Williams
Hoyt M Wilson
Hoyt Wilson
Darlene Wingfield
Bill Winn
Jay Winn
Arlene Woodell
Richard Yates
Paul Zipser

III. Agenda Item

A. Petition for rulemaking to include the Steens Mountain Cooperative Management Area as a Protected Area in OAR 345-022-0040.

1. Background Information

On April 2, 2010, the Oregon Natural Desert Association (ONDA) petitioned the Council to undertake rulemaking to add the Steens Mountain Cooperative Management Area and Protection Area (CMPA) to the list of protected areas in OAR Chapter 345, Division 22, Section 40.

Brent Fenty and Dave Becker

Mr. Fenty, ONDA Executive Director and Mr. Becker, ONDA staff attorney, made a presentation to the Council about the petition on behalf of petitioners, ONDA, the Audubon Society of Portland and the Defenders of Wildlife. The petitioners submitted a proposed rule to amend the energy facility siting standards to protect areas designated for protection by the State and Federal Government. Mr. Fenty and Mr. Becker presented several arguments in support of the proposed rule:

- The proposed rule is within the Council's jurisdiction, including adding an area of mixed private and public lands to the Protected Areas List. The Council has done it already, in 1994, when it added the Columbia River Gorge National Scenic Area.

- What comes out of rulemaking is obviously a matter of give and take, but the important thing here is that the Council is just starting the process today, deciding whether to start the process.
- ONDA submits that the petition is compliant with the Statutory and regulatory regulations for what a petition must contain noting that there hasn't been an update to the protected areas list since 1994, and there has been an intervening act of Congress, the Steens Mountain Cooperative Management Protection Act of 2000 (CMPA).

Tom Stoops, ODOE, explained that he invited Colby Marshall, Stacey Davies, and Harney County Commissioner Dan Nichols to speak about the background and history of the Steens Mountain CMPA.

Dan Nichols

Mr. Nichols served on the working group for the Steens Mountain CMPA. Mr. Nichols asked that Mr. Fred Otley speak on his behalf, due to his in depth knowledge of the property issues involved in negotiations leading to the CMPA.

Colby Marshall

Mr. Marshall resides in Harney County and handled natural resource and energy issues, including the CMPA, in his eight years as a staffer for U.S. Representative Greg Walden. He described how about ten years ago the U.S. Department of the Interior was considering designating the Steens Mountain area as a National Monument, which would have limited potential management, preservation, and ranching options. Representative Walden and Steens landowners were able to get permission from then-Secretary of the Interior Bruce Babbitt to work on a different form of legislation that would preserve both the ecological treasure of the mountain as well as the local way of life. The bill was crafted with so much local and bipartisan support that it was approved by a voice vote in the House of Representatives.

Mr. Marshall continued by saying that in exchange for creating the largest single unit of wilderness in Oregon in several decades, part of this unique Oregon solution was the establishment of a 450,000 acre Cooperative Management and Protection Area, the CMPA. The CMPA incorporates significant Federal landholdings, wilderness area, and thousands and thousands of acres of private lands. Fundamental to this act were the promises made by the authors, which was that the act qualified a clear understanding that private property owners would still be able to access, manage and create economic opportunities on their own holdings within the CMPA as they had prior to the act becoming law.

Mr. Marshall referenced a June 10, 2003 letter signed by Representative Walden and U.S. Senators Ron Wyden and Gordon Smith sent to Congress to clarify the authors of the Act's support for economic opportunities on private property. He also discussed Section 122 of the Act, which provides authority for the Secretary of Interior to enter into non-development conservation easements with private landowners and authorizes \$ 25 million to fund acquisition of land within the CMPA.

Fred Otley

Mr. Otley, from Diamond Valley, was very involved in the negotiations on the Steens Act. He discussed some of the land trades that took place as part of the Act, with an objective of

furthering economic development in Harney County.

Mr. Otley emphasized that, the Steens Act is not intended to be like the Columbia River Act. That proposal was a non-starter for Harney County and all the Congressmen involved. The intent was to ensure that private property would not be subject to the Federal provisions of the Act.

Stacy Davies

Mr. Davies, manager of Roaring Springs Ranch in Capital Valley, discussed how special designation for Steens Mountain had been considered for 100 years, beginning with a proposed national park during the Theodore Roosevelt administration. In 1998 Mr. Davies participated in a federal process to consider National Monument areas in Oregon. He said that if there was an underlying theme in the negotiations for the Act, it was to keep the mountain like it is. That may lead to conflicting interpretations. The Steens Mountain Advisory Council was formed to give advice to the Bureau of Land Management on how to handle the different issues. Wind power was not discussed at all at the time. Ultimately, the Act did not extend to regulation of uses to private land and water rights issues.

Mr. Davies said that none of the \$25 million authorized by the Act for purchase of conservation easements has been appropriated to date, and that the Act intends to limit restricting development on private land to the purchases from willing sellers.

Presentation by Bureau of Land Management (BLM)

Jo Suther, Field Manager for the Steens Resource Area, Michele Franulovich, Supervisory Natural Resource Specialist and the Lead Recreation Planner for the Burns District, who was also involved in the Steens Act, and Kenny McDaniel, Burns District Manager, were introduced.

Ms. Suther provided some background information on the CMPA, Public Law 106-399. The CMPA is part of the system of BLM lands known as the National Landscape Conservation System. It includes areas such as wilderness, wilderness study areas, wild and scenic rivers, and historic trails.

Ms. Franulovich explained the purpose of the Steens Act, which was signed by President Clinton in 2000. The legislation protected over 420,000 acres and promises cooperative management. The express purpose of the act is a package intended to protect and maintain the cultural, economic, ecological and social health of the Steens Mountain area. An additional purpose was to designate the Steens Mountain Wilderness Area, the first livestock-free wilderness area setting aside over 9,700 acres within a 170,000 acre wilderness.

Ms. Franulovich summarized thirteen purposes listed in the Steens Act, relating to a variety of issues including designation of management and protection areas, authorize the acquisition of private lands, and to establish a Citizens Management Advisory Council to provide for cooperative management and advice the Secretary of the Interior.

The Steens RMP itself, the Resource Management Plan, included specific direction in the transportation, wilderness and wildlife scenic rivers plan. The decisions were finalized in August of 2005. Other federal statutes govern the area, because it contains several different

kinds of properties that all fall in the National Landscape Conservation System, which include wilderness, wild and scenic rivers, and wilderness study areas. All of these have additional policy directions through either the Federal Land Policy Act or the Wilderness Act, the Wild and Scenic Rivers Act, and other statutes.

Ms. Suther pointed out two sections of the Act that appear to be slightly in conflict. One is contained in the policy statement: “Development on public and private lands within the boundaries of the CMPA, which is different from the prior character and uses of the land, is inconsistent with the purposes of this Act;” and the second is in relation to property rights and State and local law, “Nothing in this act is intended to affect rights or interests in real property or supersede State law.” BLM is continuing to implement the Act by writing a Special Recreation plan for the CMPA as well as an Environmental Statement regarding a proposed wind energy development on private land.

Presentation by Judge Steve Grasty, Harney County Judge

Judge Steve Grasty, presented an overview of the County. He stated that the people together form Harney County, not necessarily the land. Judge Grasty referred to the tour the Steens Mountain area taken by Council members the day before, and explained that what the Council saw was the land and the way the people of Harney County have taken care of it. He also reminded the Council that economic opportunity for the ranching communities in Steens is needed.

Council Consideration of the Petition

Janet Prewitt, DOJ, explained the process and the steps of decision making concerning the petition. She explained that Council approval of the petition does not mean the suggested rule is automatically adopted; it means a period of rulemaking and public comment and deliberation will start. She noted that even after the process is started the Council can decide not to adopt a rule after all. The statutory reference is ORS 183.390.

One of the important points in these statutes is that public comment will be asked, about the rule and specifically on options to implement the goals while minimizing negative economic impact on businesses. Thus, business impact is an important part of the Council’s determination of whether to do rulemaking. She recommended to the Council to reduce their eventual decision to writing, and that the resulting order will reflect their discussion and their determination on the issues set forth in the statute.

Ms. Prewitt reminded the Council about and summarized to the public the six considerations that need to be taken into account in deciding whether to grant the petition

As a courtesy to the State Legislature, the Chair recognized State Representative Cliff Bentz, District 60 from Ontario, Oregon. Mr. Bentz spoke to the issue of private property rights and noted that it was his job to listen to the people he represents in Harney County, and then bring that information to the legislature. He said that the folks in the County are supportive of activity on Steens Mountain and asked the Council to deny the petition.

Councilman Bryan Wolfe moved to reopen the public comment period and Trey Senn seconded the motion.

The Council was polled.

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|---------------|-----|-----------------|-----|
| Trey Senn: | Yes | Lori Brogoitti: | Yes |
| Bryan Wolfe: | Yes | Barry Beyeler: | Yes |
| Bob Shiprack: | Yes | | |

2. Petition for Rulemaking Public Comments

Mr. Stoops, ODOE, explained the procedure of the public comment period to the public. Cathy Shinn, the facilitator for the meeting, introduced herself and explained that her role to ensure that everyone who signs up will get the opportunity to speak. She explained the procedure of the public comment period further and asked the public specifically to let the Council know which of the six questions they are addressing with their comments.

Note: The general positions taken on the petition for rulemaking were 34 in opposition and 10 in support. The names of those who provided public comment and a general transcription of their comments is provided in Appendix A, attached.

In addition to spoken comments, many written comments were also submitted, including a letter from 1,000 Friends of Oregon and a copy of a letter signed by U.S. Senators Gordon Smith and Ron Wyden and U.S. Representative Greg Walden. The Council also received a letter from State Senator Ted Ferrioli.

The Chair read Senator Ferrioli’s letter, in which he states that the petition brought forth by ONDA is not in the collaborative spirit that led to the creation of the Steens Mountain Cooperative Management and Protection Area.

Lori Brogoitti moved to close the public comment period on ONDA’s petition, and Bryan Wolfe seconded it. The council was polled.

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|-----------------|-----|--------------|-----|
| Barry Beyeler: | Yes | Bryan Wolfe: | Yes |
| Lori Brogoitti: | Yes | Trey Senn: | Yes |
| Bob Shiprack: | Yes | | |

3. Council Action on Petition for Rulemaking

Mr. Stoops, ODOE, explained the procedure for deliberation to the public.

Ms. Prewitt, DOJ, explained that the statute concerned is ORS 183.390 and reviewed the statutory requirements for determining whether to grant the petition for rulemaking. Ms. Prewitt noted that the rule that is proposed by the petition is not necessarily the rule that would be adopted after the rulemaking process and that the proposal here is a starting place, it is not the ending place of the conversation. Ms. Prewitt noted that at this stage the Council is reviewing options, and specifically looking at options that reduce negative economic impacts on businesses.

Mr. Stoops read the statutory requirements and the Council discussed the comments on each:

(1) The continued need for the rule:

- Barry Beyeler stated that based on spoken and written testimony, he felt that the CMPA establishes a Federal process that could be applied to the issue.

- Lori Brogoitti agreed with Mr. Beyeler that there is no need for a rule, and the CMPA includes an adequate process.
 - Bob Shiprack agreed and added his belief that it was not the intent of the drafters of this legislation to impact property owners, and that the Management Area creates a unique problem.
 - Bryan Wolfe concurred and stated that he would like to see the SMAC become more active and be involved in continuing their work for which they were set up.
 - Trey Senn agreed that it would probably be a good idea for the SMAC to meet more regularly and that they had not come to an agreement with ONDA.
- (2) The nature of complaints or comments received concerning the rule from the public:
- Bryan Wolfe stated that most of the comments were pretty diverse and generally divided into two camps.
 - Barry Beyeler state that the Council heard from a wide range of people from Harney County and elsewhere.
 - Bob Shiprack discussed the difference between a site certificate application, where economic conditions are not considered, versus a petition for rulemaking where they are considered prominently. He said that the rule would impact anything that came before EFSC.
 - Lori Brogoitti added that the overwhelming majority of commentators spoke to economic concerns.
- (3) The complexity of the rule.
- Barry Beyeler stated that the rule would be complex in light of the existing Federal law and process that formed the CMPA. He also mentioned wanting to follow the intent stated by members of Congress.
 - Lori Brogoitti agreed that the rule would be complicated, and that private landowners do not need to face any additional regulation.
 - Bob Shiprack did not think the rule would be complicated, it involves a pretty clear policy to preclude EFSC from siting energy projects in the Steens area.
 - Bryan Wolfe agreed that the proposed rule is not complex and that he is not in favor of forbidding development on private property.
 - Trey Senn mentioned the difficulty of economic development in counties with small populations, and this regulation would make that even more difficult.
 - Bryan Wolfe agreed and stated that although the Act seems to contradict itself on the subject, he feels that Congress specifically meant to protect private property rights.
 - Lori Brogoitti stated that she was impressed by the efforts of people in Harney County to develop a plan that helps the County, the poor, and the environment.
- (4) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations.
- (5) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule.
- Bob Shiprack stated that the tough economic times seem to be especially difficult in Harney County because of its dependence on natural resources.
 - Lori Brogoitti stated that the economic factor is one of the biggest issues, and that jobs and technology are needed to keep communities going.

- Mr. Shiprack stated that he has seen the awful impacts of thousands of construction workers being out of work.
- Bryan Wolfe and Trey Senn added their agreement with what had been said previously.

(6) Statutory citation or legal basis for the rule. Council discussion:

- Barry Beyeler stated it would be tough to develop a rule that was not in conflict with the statutes.
- Bryan Wolfe stated that existing rules and regulation are not totally consistent regarding development on private lands, but was not sure of EFSC’s jurisdiction and did not want to take up that issue.
- Bob Shiprack stated that there would be interesting constitutional issues to resolve between state and local government.
- Lori Brogoitti expressed concern about the legal basis for the proposed rule and felt that other avenues might be better to pursue.
- Barry Beyeler was concerned that any change would involve untangling complicated state and federal policies.

Lori Brogoitti moved to have the Council direct the Department to write a letter denying the petition by ONDA. Barry Beyeler seconded the motion. The Council was polled:

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|----------------|-----|-----------------|-----|
| Trey Senn: | Yes | Lori Brogoitti: | Yes |
| Barry Beyeler: | Yes | Bob Shiprack: | Yes |
| Bryan Wolfe: | Yes | | |

The motion was unanimous and was passed. Mr. Stoops, ODOE, explained that the Consent Calendar of the Council was next on the agenda, and that the public was free to leave.

IV. Consent Calendar:

A. Cascade Crossing Transmission Line

Bryan Wolfe, in accordance with Oregon Revised Statute 469.483, moved to appoint the governing bodies of Morrow, Gilliam, Sherman, Wasco, Clackamas and Marion County to be the Special Advisory Groups for the proposed of the Cascade Crossing Transmission Line. Trey Senn seconded the motion. The Council was polled:

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|----------------|-----|-----------------|-----|
| Trey Senn: | Yes | Loti Brogoitti: | Yes |
| Bryan Wolfe: | Yes | Bob Shiprack: | Yes |
| Barry Beyeler: | Yes | | |

The motion was passed.

B. Shepherds Flat Central

Bryan Wolfe moved to approve the Shepherds Flat Central letter of credit of May 20th for a dollar amount of 90,120,000 dollars. Trey Senn seconded the motion. The Council was polled.

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|-----------------|-----|----------------|-----|
| Lori Brogoitti: | Yes | Barry Beyeler: | Yes |
| Bryan Wolfe: | Yes | Trey Senn: | Yes |

Bob Shiprack: Yes

The motion was passed.

C. Shepherds Flat North

In accordance with Site Certificate Condition 30, Shepherd’s Flat North offers a financial assurance in the amount of 7,286,000 dollars. The letter of credit, issued by JPMorgan Chase, has been reviewed by the Oregon Department of Energy and Department of Justice. Staff recommended that the Council approve the form, issuer and amount of the Letter of Credit.

Bryan Wolfe moved to approve the Shepherds Flat North Letter of Credit for 7.286 million dollars. Trey Senn seconded the motion. The Council was polled:

| | | | |
|-----------------|-----|--------------|-----|
| Barry Beyeler: | Yes | Bryan Wolfe: | Yes |
| Lori Brogoitti: | Yes | Trey Senn: | Yes |
| Bob Shiprack: | Yes | | |

The motion was passed.

D. Shepherds Flat South

Shepherds Flat South, in accordance with Site Certificate Condition 30, offers financial assurance for the Shepherds Flat South in the amount of 8,616,000. The Letter of Credit, issued by JPMorgan Chase, has been reviewed by the Oregon Department of Energy and the Department of Justice. Staff recommended that the Council approve the form, issuer, and amount of the Letter of Credit.

Bryan Wolfe moved to approve the Shepherds Flat South letter of Credit for 8,616,000 dollars for JP Morgan and Chase Bank. Lori Brogoitti seconded the motion. The council was polled:

| | | | |
|-----------------|-----|----------------|-----|
| Trey Senn: | Yes | Barry Beyeler: | Yes |
| Bryan Wolfe: | Yes | Bob Shiprack: | Yes |
| Lori Brogoitti: | Yes | | |

The motion was passed.

V. Conclusion of Meeting

Mr. Stoops, ODOE, stated that the next meeting would take place on July 30, at a location to be determined, varying on the status of several projects.

The council meeting was adjourned