

MEMO

To: Wyoming Public Lands Initiative
Advisory Committee Members
From: Pete Obermueller
Date: April 11, 2018
Re: WPLI next steps



Summary:

As WPLI advisory committees in participating counties near completion of work, the process will begin to shift away from local negotiations toward drafting legislation and working through the Congressional legislative process. This memo is intended to remind committee members, Commissioners, and others about the process and timeline as WPLI moves into this next stage.

The memo covers a rough timeline for completion of advisory committee and county work; a description of the likely federal legislative timelines, including the potential for legislation for counties that are not participating in WPLI; a reminder of what the WCCA's Principles and Guidelines and county charter documents state regarding consensus; clarification on terms related to "hard" and "soft" release; and an explanation of how legislative drafting is intended to proceed.

WPLI Timelines:

The purpose of WPLI is to create ground-up recommendations for Wilderness Study Areas (WSAs) in counties that have chosen to participate and move those recommendations to Congress. As advisory committees near completion of work, it is important to consider the timeline for completion to allow for the development and dissemination of draft legislation.

The WPLI Principles and Guidelines issued in 2016 established "early 2018" as the initial target for recommendations to be advanced to the WCCA for legislative drafting. By the convening of the Lander 2 conference in 2017, it was clear that more time was necessary for the completion of committee work, but also that committee work could not continue indefinitely.

The Principles and Guidelines asked that advisory committees allow for a public comment period on their final recommendation prior to the approval of the Board of County Commissioners (BOCC). BOCC meetings are open, and the public can always attend and comment at that level. Additionally, BOCCs may ultimately remand recommendations back to committees for further work. Finally, once approved by a BOCC — and only after BOCC approval — the WCCA will begin drafting legislative language in close coordination with the federal delegation and their staff. After legislation is drafted, the text will be sent back to the counties and counties' advisory committees for further review. If language does not meet the goals of the committee and/or county as recommended, the committee, county, WCCA and the appropriate delegation staff will attempt to draft alternative language.

Introduction of legislation resulting from recommendations advanced by WPLI participating counties is anticipated to occur at the beginning of the 116th Congress (the first quarter of 2019), pending delegation member(s) approval. To accomplish that timeline and allow for the completion of all tasks outlined in this memo and the Principles and Guidelines, advisory committees in participating counties should complete their work no later than mid to late summer of 2018. The earlier advisory committee work is complete, the easier it will be to draft legislation.

Additionally, legislation addressing WSAs in counties that did not participate in the WPLI process is likely on an earlier timeframe with introduction possible this spring as outlined in an open letter to Commissioners sent on April 9, 2018 from U.S. Representative Cheney. Boards of County Commissioners in these counties have requested separate legislation dealing with these areas. Other BOCC's may officially request to be added to this legislation pending the outcome of WPLI related work. It is important to remember that the WCCA established a voluntary process — the WPLI — that respects the wishes of every county, participating or otherwise. The WCCA represents all counties, regardless of their WPLI participation.

Consensus Decisions:

WPLI is an experiment in collaborative decision-making between sometimes competing interests; it is not a dictatorial process demanding unanimity. The WPLI set forth an open and fair process for all interested parties to participate. Participation does not necessarily mean agreement, and the purpose of WPLI is to move a recommendation forward. The closer to consensus a county can be, the more likely the outcome will be successful, which is why consensus was encouraged in the Principles and Guidelines and the WPLI Frequently Asked Questions (FAQ). However, consensus may not be possible and a committee and county BOCC may need to move ahead without it.

To that end, the Principles and Guidelines intentionally avoided requiring 100 percent consensus on recommendations as a prerequisite to advancement to the BOCC for approval. The Principles and Guidelines read: "Seek, to the maximum extent practicable, to make consensus-based decisions." Each individual county can determine what is practicable. Further, the WPLI FAQ document clearly indicates that "consensus among every interested person...is an unrealistic expectation." Suggesting that the FAQ implies consensus is required, some committee members have pointed to language in the FAQ that provides, "[i]f disagreements are too vast for an Advisory Team to reach an agreement, first every effort will be made to bridge those disagreements; if those efforts are unsuccessful, that county will not be included in the final legislative package." This language does not demand consensus, it only provides that, where efforts to forward a recommendation are entirely unsuccessful because of disagreement too vast to allow for forwarding any recommendation, then no recommendation will be included in the legislative package. The FAQ should not be used to imply consensus is required. Rather, it should be viewed in the context of the entire body of WPLI work that for more than 2 years has consistently repeated that consensus is encouraged but is unrealistic and unreasonable to require.

Most counties that included consensus decisions as a goal in their charter also established a process for inclusion of minority opinions if consensus could not be reached, rather than ending the process entirely in the absence of consensus. If a recommendation is advanced by anything

other than consensus, both the majority and minority opinion of the advisory committee should be submitted to the BOCC. As the first elected line of review, the BOCC is tasked with deciding if the recommendations should or should not be advanced for legislative drafting based on the body of work from the committee and the opinions of the majority and minority.

Hard Release, Soft Release and Directed Management:

The terms “hard release” and “soft release” were used in the Principles and Guidelines as descriptive terms to help define the varied ways a committee could approach its work and recommendations. Importantly, those words are not used or defined in federal statute and should not be confused with Congressionally directed management of an area.

Hard release could be defined in one of two ways: 1) A Congressional mandate that a WSA be managed for multiple use under the agencies’ land use plan and will not be congressionally considered for any special designation in the future; or 2) A Congressional mandate that the agency will not impose additional administrative restrictions on a released WSA beyond the agencies’ multiple use mandate. The first is impossible to enforce as no Congress can bind a future one. The second is enforceable (though could also be changed by Congress in the future) but likely unnecessary if an advisory committee recommendation includes directed management of that area.

By contrast, a “soft release” removes the WSA designation, mandating multiple use management per the agency’s statutory obligations and discretion, but it does not preclude future Congressional or administrative consideration of the area for wilderness designation.

Directed management of an area (For an example, see Johnson County’s WPLI recommendation) is both a release of the WSA designation, but also a Congressionally mandated management regime. This is not a soft release, as it directs management rather than leaving management decisions completely in the hands of the agency’s administrative process. It is not a hard release as originally discussed in the Principles and Guidelines, as it does not mandate multiple use forever. However, and very importantly, complete directed management accomplishes the same goal of a hard release in that the agency cannot change that management regime without Congressional approval.

If your committee is considering directed management but also is interested in a “hard release” outcome that prevents the agency from doing something other than your direction, then specific legislative language that leaves little discretion for the agency is necessary. Directed management can prevent future action by the agency contrary to the direction included in the recommendation without further Congressional approval.

If your committee is considering a directed management that favors any type of management (limited motorized use, snowmobile access, grazing, etc.), but you do not want that to be set in statute, then legislative language that directs certain management priorities but leaves decisions to the agency in the usual Resource Management Plan process is necessary. Keep in mind, however, that under this approach, the county’s direction and input regarding future use will be limited to the usual cooperating agency/public comment process, and the agency retains certain

discretion regarding management. Management decisions may not be consistent over time or administrations.

Legislative Drafting Process:

No WPLI related bill drafting will occur until a BOCC has approved a committee's recommendations. Once approved by a BOCC, the legislative drafting will begin. Assuming that more than one county presents an approved recommendation, each county will have its own section, or title, combined to make one bill. This approach will allow drafting to begin immediately upon the recommendations' approval, while other counties continue to work on their recommendations.

If committees have reached an agreement on some WSAs but not others, and the BOCC approves the partial recommendations, legislative drafting could begin on approved areas while that committee and county continues work on the other WSAs in their county. A rolling draft will allow continuous work on drafting, public review and redrafting while adding on to the draft other approved county recommendations that advanced in later months of the summer and fall of 2018.

Drafted legislation will be released to the public in draft form before formal introduction. It is customary practice in federal legislation to release "discussion drafts" or "staff drafts" so that text can be reviewed, and changes made if necessary prior to the committee and floor consideration. Formal bill introduction and work on navigating the legislative process will occur after this second discussion draft review, and only if a member or members of the federal delegation agrees to formally introduce the bill.