WRITTEN TESTIMONY OF

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FIRST SOLAR

HOUSE NATURAL RESOURCES COMMITTEE

OVERSIGHT HEARING

American Energy Initiative:

Identifying Roadblocks to Wind and Solar Energy on

Public Lands and Waters Part II

The Wind and Solar Industry Perspective

JUNE 1, 2011

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify.

Introduction and FS Background

I am Frank De Rosa, First Solar Senior Vice President for North American Project Development. Our mission is to deliver clean, affordable and sustainable energy. We developed the technology here in the U.S. that has made us one of the largest photovoltaic (PV) panel manufacturers and developers of solar energy in the world.

We are headquartered in Tempe, Arizona, and manufacture solar modules in Perrysburg, Ohio. We will soon begin constructing a second U.S. manufacturing facility in Mesa, Arizona that will employ 600 people, which will bring our U.S. employment to over 2,000 employees. This is part of a global workforce of approximately 7,000. We are a net U.S. exporter of our solar energy modules.

Solar energy generated by First Solar's technology keeps dollars here in the U.S. by using American technology, equipment built by U.S. workers, and the "fuel" from the sun. Jobs are created and dollars stay in our economy.

First Solar has three large solar projects in advanced development on BLM land.

Achievements

The Committee asked about roadblocks, but I would like to start with some successes.

Congress, the Department of the Interior, and the Bureau of Land Management have adopted policies over the last few years that are expediting permitting, removing obstacles, and streamlining interagency coordination, without sacrificing thoroughness.

First Solar's 50 megawatt Silver State North Project in Primm, Nevada is a good example. BLM's Las Vegas field office dedicated qualified staff and resources to the project. Greg Helseth, in particular, kept the project on schedule. We are mobilizing our crew to start construction for this project which is the first solar project on federal land in Nevada.

BLM took another significant step in April to support solar development on public lands with its rule proposing to allow the temporary segregation of lands in a pending or future solar generation right of way (ROW) application. This much needed rule will prevent the use of specious and speculative mining claims to slow down or prevent the development of solar energy projects on public lands.

Areas of Concern

But I'll raise two primary areas of concern as well as several areas of regulatory oversight that require continued consultation with industry. Of primary concern, the BLM's Programmatic Environmental Impact Statement for solar energy development, or PEIS, and the impact of the Endangered Species Act (ESA) on solar development on private lands.

PEIS

In March 2011, BLM released the PEIS for public comment. It lists "Solar Energy Zones" that could receive expedited environmental review. The "preferred alternative" of the PEIS encourages development in the Zones but does not prohibit development in other BLM areas. Not restricting development to just the Solar Energy Zones (which comprise less than 1% of the land under federal management) is important because there are many projects that began development well before BLM instituted its PEIS process. Plus, it is not clear how many of the Zones have all of the necessary attributes for a successful project, such as transmission capacity.

We strongly urge the BLM to:

1. Revisit the Zones not for just land use compatibility but for technical and economic feasibility of solar development, with particular

attention to factors such as proximity to transmission and the needs of the local electric utility buyer;

2. Adopt a policy that allows development outside the Solar Energy Zones. Such development would still be subject to the stringent requirements of NEPA, so environmental oversight will be maintained.
3. Grandfather existing projects that are in advanced development. For example, First Solar's Silver State South Project was not included in a Zone but has a Power Purchase Agreement and a transmission interconnection position.

Businesses require a predictable, transparent set of rules when making multi-hundred-million dollar decisions. The BLM must not undermine viable, near term projects that were sited several years ago and remain subject to rigorous scrutiny under NEPA.

Endangered Species Act

I would also like to address a second federal policy issue that seriously impedes development of utility-scale solar projects on *private* land. If a proposed solar project on *private* land has the potential to adversely affect a listed (endangered) species or critical habitat, the U.S. Fish & Wildlife Service requires the solar developer to prepare a

Habitat Conservation Plan prior to the Service preparing a Biological Opinion and issuing an Incidental Take Permit. Unfortunately, for projects with no Federal nexus (Federal funding, license or permit) under the current process it can take from three to five years to receive the required permits versus four to six months to complete the permitting process for either projects on Federal land or with a Federal nexus. As a result, projects with no Federal nexus are typically abandoned or not undertaken at all.

In order to encourage solar development on private land, we recommend an approach that provides similar review timelines as followed for projects with a Federal nexus. One way to harmonize deadlines for preparing a Habitat Conservation Plan, Biological Opinion and issuance of an Incidental Take Permit would be to give the Service authority to enter into cost reimbursement agreements to augment its staff who review solar projects. Cost reimbursement agreements would allow the Service to hire third party resources to work under its direction to prepare the Habitat Conservation Plan and could also include provisions to augment funding for preparation of the Biological Opinion and Incidental Take Permit. Congress previously authorized BLM to enter into cost reimbursement agreements under the Federal Land Policy and Management Act. This authority has been very successful in improving the processing of BLM right of way grants.

Finally, I recommend that the Committee consider a recommendation put forth by Senator Feinstein that Secretary Salazar establish a group of Service staff dedicated to permitting renewable energy projects on private land.

Stakeholder Engagement

Before concluding, I would like to make an observation related to stakeholder engagement by the BLM and the Service. Whether the topic is solar zones, solar rental policy, mitigation fees, reclamation bonding or a host of other regulated areas, the industry should be brought to the table as early as possible in the development of rules and regulations the impact solar development. The track record on early engagement in the rulemaking process is mixed, but we believe that improving transparency and predictability in the regulatory process should be a goal we work toward together.

Several recently released policies illustrate why industry involvement in the formation of guidance documents and policies applicable to solar projects is absolutely critical. The reclamation bonding policy released by BLM in October, 2010 provides an example.

The bonding policy requires the solar industry to comply with many of the bonding requirements designed for mining projects even though they are not directly application to solar development. For

example, provisions to address mine clean-up when mines are abandoned because they are no longer profitable. Solar projects are secured over their lifetime by a valuable power purchase agreement and constructed using recyclable materials that have recognized reclamation value. If the solar industry had been involved earlier in the development of the bonding policy, we believe we could have created a better policy that offered a broader set of bond instruments and required more reasonable bond amounts.

We would welcome the opportunity to review the bond instruments currently accepted by BLM and expand the policy to include financial assurance mechanisms that are accepted for decommissioning other types of industrial projects.

The Solar Energy Interim Rental Policy issued by BLM on June 10, 2010 was likewise developed without sufficient industry involvement. The rents established by the policy appear to have been based largely on the value of irrigated agricultural lands, which have a higher value than the non-irrigated lands on which most projects are proposed. Inflated rents are obviously an obstacle to development. Additionally, to the extent that rents on BLM lands are higher than rents on similar private lands, the rental policy may inflate the costs of mitigating project impacts on special-status species as the value of private lands will increase.

As a final example, BLM's 2010 memorandum on golden eagle protection measures for renewable energy projects could have also benefited from industry involvement in its development. The policy requires the Service's approval of an Aviation Protection Plan as a precondition to the issuance of a Record of Decision and places no conditions on the rationale of the Service in the event that it decides to reject such plans. Given that the rejection of a plan can result in a requirement to redesign the site late in the project approval process, the Service's unfettered discretion on this topic creates significant uncertainty for developers.

Some of this uncertainty should soon be resolved. BLM's golden eagle policy is a temporary measure and will be replaced when the Service establishes criteria for programmatic golden eagle take permits. The Service recently issued Draft Eagle Conservation Plan Guidance for wind projects, which is expected to serve as a model for programmatic golden eagle take permits in other contexts. We look forward to working with the Service when it turns to the development of eagle conservation guidance for solar projects because the protection measures needed at wind farms, where even temporary contact with the facility operations could result in a take, are not necessarily required for utility scale solar projects. If structured

correctly, these proceedings could serve as a model for how to engage industry stakeholders in other policy-making proceedings.

Conclusion

Thank you for allowing me to testify today. To summarize:

- We appreciate DOI's and BLM's commitment to opening federal lands to American renewable energy supplies that will reduce imports and create jobs. We applaud their progress.
- We urge BLM not to restrict solar development to specified Solar Energy Zones and to recognize the considerable effort and expense that companies have invested in existing projects.
- We ask the Committee to address the inconsistency in the treatment of private lands with and without a federal nexus.
- We look forward to partnering with Congress, the Department of the Interior and related agencies as solar policies evolve to meet the needs of a growing industry.

I ask that my written testimony and a copy of Fist Solar's formal response to the PEIS be added to the record.