Subcommittee on Oversight & Investigations
Louie Gohmert, Chairman
Hearing Memo

June 22, 2015

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Oversight and Investigations (x5-7107)

Subject: Oversight Hearing on "*GAO Report Documents BLM's Chronic Mismanagement of Wind and Solar Reclamation Bonds*"

The Subcommittee on Oversight and Investigations will hold an oversight hearing on "*GAO Report Documents BLM's Chronic Mismanagement of Wind and Solar Reclamation Bonds*" on **Wednesday, June 24, 2015, at 10:30 a.m. in Room 1324 Longworth House Office Building**. The hearing will focus on the Bureau of Land Management's ("BLM") repeated failure to ensure that bonds for renewable energy projects on federal land are sufficient to cover reclamation costs, accurately tracked, and securely stored.

Policy Overview

- The Obama Administration's push to increase renewable energy on federal lands has not been without consequences. Moving forward without establishing effective and responsible policies or internal controls has left BLM – and American taxpayers – at great financial risk. Given the extremely volatile nature of the renewable energy industry, despite the numerous tax breaks and loan guarantees these projects qualify for, it is imperative that BLM ensure that renewable energy projects on federal land are appropriately bonded.

- The Government Accountability Office ("GAO") recently found that BLM has inconsistent policies governing bonds for renewable energy projects, routinely fails to properly track and store such bonds, and has limited assurance that bonds for wind and solar projects on federal lands will cover reclamation costs.[1] BLM has been aware of these problems for at least 3 years but has taken no significant corrective action.

- BLM requires renewable energy developers who hold rights-of-way on federal land to obtain bonds to cover reclamation costs. These bonds cover the costs of returning the land to its pre-developed condition in the event the developer is unwilling or unable to do so. If the bond is insufficient, BLM may have to cover unmet reclamation costs – using taxpayer dollars.

[1] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-520, BLM HAS LIMITED ASSURANCE THAT WIND AND SOLAR PROJECTS ARE ADEQUATELY BONDED (2015) [hereinafter GAO REPORT].

- GAO found 14 renewable energy rights-of-way that were underbonded by nearly $15 million in total. In 2012, the Office of Inspector General for the Department of the Interior found 14 wind projects that were either not bonded or underbonded by $8.5 million total.

- BLM holds approximately $100 million total in reclamation bonds. According to GAO's analysis, these bonds cover 120 renewable energy rights-of-way in 9 western states.

- GAO's report documents systemic problems with BLM's renewable energy bond program, which led GAO to conclude that the BLM has little assurance that renewable energy rights-of-way are appropriately bonded or that adequate internal controls are in place. This uncertainty exposes BLM to financial risk and embarrassing lapses, such as the loss or destruction of bonds.

Witnesses Invited

Ms. Anne-Marie Fennell, accompanied by *Ms. Elizabeth Erdmann*
Director
Natural Resources and Environment Team
U.S. Government Accountability Office
Washington, D.C.

Mr. Steven A. Ellis
Deputy Director for Operations
Bureau of Land Management
U.S. Department of the Interior
Washington, D.C.

Background/Supporting Information/Issues

Increasing the amount of renewable energy generated on federal land has been one of the Obama Administration's foremost priorities. In furtherance of this goal, former Department of the Interior Secretary Ken Salazar signed Secretarial Order No. 3285 on March 11, 2009. This Order established "the production, development, and delivery of renewable energy as a high priority" and "describe[d] the need for strategic planning and a thoughtful, balanced approach to

domestic resource development."[2] Finally, it "outline[d] the Department's role in coordinating and ensuring environmentally responsible renewable energy production and development."[3] However, both the Department of the Interior's Office of Inspector General ("OIG") and the GAO have found systemic problems and serious deficiencies with the development of renewable energy production on federal land – deficiencies that undermine the Administration's commitment to responsible energy production and leave taxpayers at serious financial risk.

Renewable energy development of federal land takes place on rights-of-way ("ROW") granted under the Federal Land Policy and Management Act ("FLPMA") of 1976. ROW holders are authorized to use a specific area of federal land for a set purpose for a certain amount of time. When a ROW terminates, the holder is required to remove any infrastructure and return the land to its pre-developed condition – a process called reclamation.

As the OIG explained, "BLM uses bonds to ensure compliance with ROW stipulations and applicable regulations, and to protect the Government against loss, damage, or injury to human health, the environment, or property."[4]

Bonds for wind and solar projects on federal land are especially important because of the high-risk nature of the renewable energy industry. In 2012, the OIG noted the "'boom' environment created in the wind and solar renewable energy area" due to "Federal and state governments' renewable energy initiatives, the availability of funding with the American Reinvestment and Recovery Act of 2009, Department of Energy loan guarantees, and tax incentives at both the Federal and state level."[5]

The exponential and rapid growth of renewable energy production has contributed to the volatility of the industry. For example, the OIG found that in the BLM's California Desert District, solar applications increased from 2 to 130 in a four year period.[6] The OIG's review also showed that out of "31 authorized wind ROW, 21 have been reassigned or changed their names. Two of those have gone through bankruptcy and subsequent reassignment. Eight of the 21

[2] U.S. DEP'T OF THE INTERIOR, OFFICE OF INSPECTOR GENERAL, CR-EV-BLM-0004-2010, BUREAU OF LAND MANAGEMENT'S RENEWABLE ENERGY PROGRAM: A CRITICAL POINT IN RENEWABLE ENERGY DEVELOPMENT 9 (2012) [hereinafter OIG REPORT].
[3] *Id*.
[4] *Id*.
[5] *Id.* at 12.
[6] *Id*. (the period was from 2004 to 2008).

companies have gone through 3 or more name changes."[7] Multiple development projects have been terminated or put on hold, making clear the need for adequate reclamation bonds.

Reclamation can be extremely costly, depending on the size of the development. Renewable energy projects may cover thousands of acres and require buildings, access roads, wastewater treatment facilities, perimeter fencing, and power lines. Reclamation of these areas can cost tens of millions of dollars. FLPMA authorizes BLM to require ROW holders to obtain bonds to cover the cost of reclamation in the event the ROW holder is unable or unwilling to complete reclamation.

Applicable Federal Laws, Regulations, and Policy

The Federal Land Policy and Management Act authorizes the BLM to grant rights-of-way for the use of federal land for various purposes, including energy exploration and generation.[8] According to the Act, BLM may require the holder of a right-of-way to provide a bond to secure the holder's obligations under the terms of the right-of-way.[9] ROW grant holders agree to "restore, revegetate, and curtail erosion or conduct any other rehabilitation measures BLM determines necessary" and furnish a bond to ensure their ability to do so, if BLM requires.[10] During the term of the ROW, the amount of the bond can be increased or decreased at any time.[11] Reclamation bonds can be accepted in the form of letters of credit, surety bonds, and personal bonds (including cash), among others.

Current BLM policies require ROW holders to obtain bonds for renewable energy facilities on federal land. However, the policies BLM has in place are inconsistent and poorly enforced. For example, BLM has established minimum bond amounts for different types of wind projects – $2,000 per meteorological tower for testing and $10,000 per turbine for wind energy development. In contrast, there is no minimum bond amount for solar projects. The review periods also differ between the two types of projects: bonds for wind energy development ROWs must be reviewed every 5 years, while solar development ROWs are to be reviewed each year. The two policies are summarized in the following table.

[7] *Id.*
[8] Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*
[9] Federal Land Policy and Management Act, 43 U.S.C. § 1764(i) ("Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.").
[10] 43 C.F.R. § 2805.12.
[11] 43 C.F.R. § 2805.12(g).

Additionally, BLM recommends that staff use the regulations and policies for bonding mining operations on federal land as a reference tool when bonding solar projects. However, the same recommendation is not made for wind projects.

Table 1: Differences between Provisions Contained in the Bureau of Land Management's Wind and Solar Bonding Policies

Policy provision	Wind	Solar
Minimum bond amount	$2,000 per meteorological tower; $10,000 per wind turbine.	None.
Basis for determining bond amount	For wind energy development, BLM is to consider "site-specific and project-specific factors," but no details on these factors are provided. BLM can consider salvage value of turbines and towers.[a] For wind site-specific and project area testing, bond amount may include potential reclamation and administrative costs to BLM.	BLM is to determine the bond amount based on a reclamation cost estimate that consists of three components, including (1) environmental liabilities; (2) decommissioning, removal, and disposal of improvements and facilities; and (3) reclamation, revegetation, restoration, and soil stabilization.
Reclamation cost estimate[b]	None required of the right-of-way applicant.	Required of the right-of-way applicant.
Calculation of bond amount	No guidance provided.	BLM guidance for mining operations can be used.
Acceptable bond instruments	Excludes letters of credit.[c]	Includes irrevocable letters of credit and insurance policies.[d]
Frequency of bond adequacy review[e]	At least once every 5 years.	Annually.

Source: GAO analysis of BLM's wind and solar policies. | GAO-15-520

[a]Salvage value means the estimated resale value of the towers' and turbines' structures, equipment, and material.

[b]A reclamation cost estimate is an estimate of what it would cost a third party to reclaim the site.

[c]A letter of credit is a written guarantee from a financial institution to pay BLM a specified sum of money if the terms, conditions, and stipulations of the right-of-way are not met.

[d]An irrevocable letter of credit cannot be changed or cancelled by the issuing financial institution without the approval of BLM.

[e]A bond adequacy review is a review to determine whether the bond amount is sufficient to cover the cost of reclamation.

On September 30, 2014, BLM issued a proposed rule for solar and wind energy development.[12] The rule is intended to standardize bonding requirements for wind and solar projects, among other things. It is unclear how much of an effect the new rule will have on BLM's renewable bonding program, since BLM routinely ignores the policies it already has in place. Moreover, the proposed rule does not institute common sense measures such as periodic adequacy reviews – a requirement that is included in the regulation that covers mining bonds.

BLM Has Long Been Aware of its Renewable Bonding Program Deficiencies

Nearly 17 years ago, the BLM's California state office identified concerns about proper security and tracking of reclamation bonds. An Information Bulletin ("IB") disseminated to all California field offices on August 17, 1998, warned that some bonds were being improperly

[12] Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections, 79 Fed. Reg. 59,022 (proposed Sept. 30, 2014).

stored in case files or unlocked filing cabinets.[13] The IB directed the field offices to locate and record all bonds and ensure they were handled and stored securely.

In June 2012, the Office of Inspector General ("OIG") for the Department of the Interior ("DOI") released a report that found "BLM's focus on increasing the number of renewable energy projects . . . has exposed some weaknesses in its management of these projects." The OIG also found:

- BLM did not comply with ROW stipulations and regulatory requirements;
- BLM had an incomplete and inaccurate inventory of bonds for wind projects;
- Inaccuracies in BLM's database, including incorrect bond amounts and incorrect numbers of meteorological towers and wind turbines; and
- Multiple instances where projects were underbonded or not bonded at all.

The OIG summarized its findings as follows:

> We found that BLM is not effectively managing the bond process on wind projects. BLM has an incomplete and inaccurate inventory of bonds for wind projects. We found examples of inaccurate bond information in BLM's land and minerals database Legacy Rehost System, called LR2000, at the field offices we visited. The inaccuracies included incorrect bond amounts and incorrect numbers of meteorological towers and wind turbines.[14]

In its conclusion, the OIG recommended that BLM (1) issue updated guidance clarifying that bonds are required for all wind projects, (2) reassess the minimum bond requirements for

[13] Instruction Memorandum No. CA-98-144 (Aug. 17, 1998), *available at* http://www.blm.gov/ca/dir/pdfs/2002/ib/CAIB2002-056.pdf.
[14] OIG REPORT, *supra* note 2, at 15.

wind projects, and (3) track and manage bond information on all renewable energy projects, among other things.

BLM generally concurred with the OIG's recommendations. Specifically, BLM stated it would:

> . . . establish an implementation plan to ensure that existing procedures and policy guidance to the BLM States are followed, that there is a complete understanding of the policy, that bond information is promptly and accurately entered into the [computer database], and that the annual certification required by IM 2011-096 is received from each BLM State Director. The implementation plan will include a suite of actions such as regular conference calls, video broadcasts, and a targeted Washington Office internal review of records to ensure bonds are received on all wind energy authorizations.[15]

BLM referred the recommendations to Michael D. Nedd, Assistant Director for Minerals and Realty Management, who was the designated responsible official. Mr. Nedd currently serves as the Assistant Director for Energy, Minerals, and Realty Management.

GAO Findings

Despite the OIG's 2012 evaluation of BLM's renewable energy program and BLM's pledge to take corrective action by April 2013, the GAO recently issued a report thoroughly detailing many of the same shortcomings the OIG identified three years ago. The GAO's exhaustive and meticulous report documents BLM's repeated failure to ensure that the bonds it accepts for wind and solar projects are sufficient, accurately tracked, and stored securely.

The scope of GAO's review was threefold, examining (1) BLM's policies for the bonding of wind and solar projects on federal land; (2) the amount and types of bonds held by BLM for the reclamation of renewable projects and how BLM tracks these bonds; and (3) the extent to which BLM ensures that bonds for wind and solar rights-of-way are adequate to cover reclamation costs.

The GAO's report provides an in-depth analysis of BLM's management of reclamation bonds for 120 wind and solar rights of way – bonds that are valued at approximately $100 million in total.[16] As shown in the table below, the majority of bonds are held as letters of credit,

[15] Response to the Recommendations included in the Office of Inspector General Report, BUREAU OF LAND MANAGEMENT'S RENEWABLE ENERGY PROGRAM: A CRITICAL POINT IN RENEWABLE ENERGY DEVELOPMENT 4 (2012), http://www.doi.gov/oig/reports/upload/CR-EV-BLM-0004-2010Public.pdf.

[16] The GAO's review covers all 12 solar rights-of-way and 108 wind rights-of-way that required bonds as of April 15, 2014.

surety bonds, and personal bonds (including cash). BLM could not determine the type of one bond, worth almost $50,000.

GAO concluded that BLM's systems for tracking bonds are unreliable and inconsistent. While BLM has two separate computer databases, bond information is not entered promptly or, in some cases, at all. The information in the two systems is inaccurate, out of date, and incomplete.

Table 3: Types of Bonds Held by the Bureau of Land Management for Wind and Solar Projects as of April 15, 2014

Bond type	Amount	Percentage
Letter of credit	$49,177,596	48.9
Surety	$39,361,443	39.2
Personal, including cash	$10,839,677	10.8
Treasury security	$900,000	0.9
Guaranteed remittance	$139,963	0.1
Undetermined[a]	$47,600	<0.1
Time deposit	$12,000	<0.1
Total	**$100,478,279**	**99.9**

Source: GAO analysis of BLM bonding data. | GAO-15-520

Notes: Percentage does not equal 100 because of rounding.

[a]"Undetermined" means that BLM could not provide the bond type.

Additionally, the two databases are not capable of communicating with each other, so BLM staff must separately enter bond data into each system. However, this is done haphazardly leading to chronic inconsistencies between the two systems. Neither system is consistent with the project files kept by the managing field office. In one example GAO documented, BLM staff had to drive to a project site to count the number of turbines on the right-of-way because the databases and project differed.

BLM also does not adequately bond some rights-of-way. GAO found 14 ROWs that were underbonded by $15 million in total – over 10% of the total value of all renewable bonds held by BLM. In 10 of those 14 cases, BLM held bonds that did not even meet the $10,000-per-turbine minimum established by BLM. Nine of the ten underbonded wind ROWs were authorized prior to the implementation of the current policy, though the policy was retroactive and BLM directed staff to ensure all bonds met the minimum amount. However, one ROW was authorized after the minimum bond amount policy was established, so BLM's violation of the bond minimum policy in that case is particularly inexplicable.

The remaining 4 underbonded ROWs were for a single solar project. While the total estimated reclamation cost for this solar project is almost $30 million, GAO found that it was underbonded by approximately $9 million (about 30%). GAO summarized the problem with underbonding by concluding, "When wind and solar rights-of-way are underbonded, BLM is at risk of having to assume responsibility for reclamation costs not covered by a bond if the right-of-way holder does not meets its obligations."[17]

[17] GAO REPORT, *supra* note 1, at 26.

BLM also does not consistently document how it makes bond amount decisions. For many wind bonds, BLM staff said they defaulted to the minimum bond amount under the policy because they were not sure how to accurately bond the ROW. In other cases, the documentation included cost estimates for decommissioning and removing structures but not revegetation. Some did not include cost estimates at all. In another case, the developer did not submit a reclamation cost estimate, which forms the basis of the bond amount, so it was unclear how the bond amount was actually determined.

BLM's physical handling and storage of bonds is also deficient. In fact, the national office that oversees wind and solar projects does not have any policies or guidance regarding the proper handling and storage of bond instruments – even though the 1998 IB and the 2012 OIG evaluation identified problems with the handling and storage of bonds. BLM staff in multiple offices told GAO that bonds were stored in the project files instead of in a secured cabinet or safe. Failing to securely store bonds exposes BLM to the risk of losing bonds. At one field office, a BLM employee who was conducting a bond inventory discovered that some bonds were missing and later advised GAO that bonds were accidentally shredded.

Source: National Renewable Energy Laboratory. | GAO-15-520

Solar photovoltaic technologies convert energy from sunlight directly into electricity, using arrays of solar panels.

Unlike mining bonds, which must be reviewed periodically per regulation, wind and solar bonds are subject to a review policy that BLM follows inconsistently. Solar bonds are supposed to be reviewed annually, while wind bonds are supposed to be reviewed every 5 years. These reviews ensure that if a project changes over time, the bonds BLM holds are sufficient to cover

any additional reclamation costs. BLM officials who were responsible for conducting the bond reviews had various excuses for not doing so: some said they were not aware that the bonds were supposed to be reviewed, some said they had been too busy to do so, and some said they did not conduct the adequacy reviews because the computer system did not automatically remind them when it was time for a review.

Conclusion

The Bureau of Land Management's rapid expansion of renewable energy generation on federal land has caused systemic problems throughout its renewable energy bonding program. In the absence of strong leadership and consistently enforced policies, bonding of solar and wind projects has remained chaotic, haphazard, and inadequate for years. As the OIG noted, "BLM has taken aggressive action to increase its processing of renewable energy rights-of-way (ROW) grants. BLM's focus on increasing the number of renewable energy projects, however, has exposed some weaknesses in financial accountability and resource protection including obligations to protect the Government's financial interests by collecting rental revenues, managing the bond process, and by appropriate monitoring and enforcing ROW requirements."

The Obama Administration's push to increase renewable energy production on federal lands has not been without consequences. Moving forward without establishing effective and responsible policies or internal controls has left BLM – and American taxpayers – at great financial risk. Given the extremely volatile nature of the renewable energy industry, it is imperative that BLM ensure that renewable energy projects on federal land are appropriately bonded.