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Memo to Reporters:

Solar Development Train is Leaving the Station, Without Congress

Dear Kent Brockman:

Congress' failure to make any progress on energy policy this session is costing taxpayers. In the rush to bring more renewable energy on-line, the government is quickly approving large-scale projects on public land under a system created during the Ford Administration. While the Bureau of Land Management (BLM) deserves credit for working to overcome this handicap, taxpayers should be getting a better deal.

Yesterday, Interior Secretary Ken Salazar celebrated the approval of the fifth solar project to be sited on public lands, roughly two weeks after approving the first-ever solar project on federal land. And while it may be encouraging that these new projects will increase the amount of energy generated from renewable sources, none of these projects were bid competitively, and we are now locked into 30 year development approvals. And each of these projects will occupy portions of the limited stock of federal land with significant solar potential.

BLM recently released another Instructional Memorandum (IM) that provides more guidance on processing Right of Way (ROW) applications for solar energy, the current process for approving solar energy projects on public land. Among the changes the IM makes, BLM will now require a Performance and Reclamation bond that will be reviewed on an annual basis to ensure adequacy of amount, which may also be changed at any time. This is essential to ensure taxpayers are not stuck with the bill for someday taking down these projects.

Nevertheless, ROW authorizations are the wrong instrument for the government to be using to site these projects, but it appears BLM will continue to use them until Congress establishes a more appropriate system. While Congress has encouraged the commercial development of wind and solar energy on federal lands, it has not yet enacted a statutory framework for that development. In the absence of statutory direction, BLM has elected to approve renewable energy projects through ROW authorizations established by the Federal Land Policy and Management Act of 1976.^[1] ROW authorizations are traditionally

^[1] Pub. L. No. 94-579, 90 Stat. 2744, 43 U.S.C. §§ 1701, *et seq.* 43 U.S.C. § 1701(a)(1) states that it is the policy of the United States that lands be retained in federal ownership unless the planning processes indicate that disposal of a particular parcel would serve the national interest, and § 1701(a)(7) provides that they be managed for multiple use and sustained yield.

used by BLM to locate power lines, pipelines, and communications towers and lines on federal land. ROW are really about permitting for the *use of land* rather than for the *commercial development* of a resource from the land—other forms of commercial energy development are leased.

Other renewable energy systems, such as geothermal and offshore wind and solar, already use a competitive leasing framework where a competitive interest exists. We know it exists for solar projects as demonstrated by applications for overlapping land areas. The Minerals Management Service has managed a competitive leasing system for Outer Continental Shelf renewable energy sources and has stated it “believes that a competitive lease process is compatible with assuring that the United States receives a fair return for issuance of a renewable energy lease.”^[2]

The Department of Interior has made progress toward a 21st century policy framework for 21st century technologies, and the recent Instruction Memorandum is a step in the right direction. But Congress must still establish a more formal system to administer these new projects. It must establish a fiscally responsible and sustainable system for developing renewable energy on public lands, and not repeat costly mistakes made in the development other energy sources. The federal government must aggressively address our new energy reality or taxpayers will pay the price.

^[2] Minerals Management Service, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Final Rule