

**TESTIMONY OF
MS. SUSAN REILLY, PRESIDENT AND CEO OF
RENEWABLE ENERGY SYSTEMS AMERICAS INC.**

**COMMITTEE ON NATURAL RESOURCES
1324 Longworth House Office Building
Wednesday, June 1, 2011
10:00 a.m.**

***Oversight Hearing on "American Energy Initiative:
Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters,
Part II – The Wind and Solar Industry Perspective"***

INTRODUCTION

Chairman Hastings, Ranking Member Markey and members of the Committee, thank you for the opportunity to testify before the Committee on Natural Resources Oversight Hearing on "American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters, Part II – The Wind and Solar Industry Perspective".

My name is Susan Reilly. I am the President and Chief Executive Officer of Renewable Energy Systems Americas Inc. ("RES"). RES is one of the leading renewable energy companies in the United States. For more than a decade, RES has developed, constructed, owned, and operated wind farms in North America. RES has constructed or is currently constructing more than 5,200 megawatts ("MW") of wind energy projects, representing some 10% of the operating wind farms in the United States, and has successfully developed more than 2,200 MW of renewable energy projects in the United States and Canada.

RES currently holds a development portfolio of approximately 10,000 MW and maintains ownership in 226 MW of operating projects. RES is headquartered in Broomfield, Colorado, with regional offices in Austin, Texas; Portland, Oregon; and Minneapolis, Minnesota. Our Canadian projects are managed from Montréal, Québec. RES is part of the RES Group, a leading renewable energy developer with offices and projects all worldwide.

RES is somewhat unique in the industry due to the range of activities in which it is involved. RES develops, designs, constructs, and operates renewable energy projects, and focuses not only on wind, but also on solar, biomass, and energy storage projects. This broad scope of activities means that RES has in-house expertise dedicated to understanding the requirements of regulatory agencies, state and local governments, investors, landowners, and other stakeholders, throughout project development, construction, and operation. As such, we are well-positioned to comment on the obstacles facing the development of renewable energy projects on public lands.

UNCERTAINTY: THE GREATEST ROADBLOCK TO RENEWABLE ENERGY DEVELOPMENT ON PUBLIC LANDS

The Committee seeks an industry perspective regarding roadblocks to developing wind and solar energy on public lands. While there are many obstacles to developing renewable energy projects, the number one obstacle our industry faces is uncertainty, including both market uncertainty and regulatory uncertainty.

Like any business, the renewable energy markets are driven by supply and demand. On the demand side, the renewable energy industry faces market uncertainty due to the lack of a consistent national energy policy. Unlike many countries, the U.S. does not have a national renewable or clean energy standard, feed-in tariff or other mechanism for promoting renewable energy; and U.S. tax policy supporting renewable energy development has been inconsistent.

On the supply side, we face both legislative and regulatory uncertainty on many fronts. Developing renewable energy projects is a complicated process, and obtaining permits – the gating item for so many aspects of the development process, including financing – is now particularly challenging. Regulatory uncertainty introduced over the past twelve months – including uncertainty regarding required environmental studies, the “useful life” of permits and regulatory approvals, the risk of permit “re-openers”, and potential requirement to employ undefined adaptive management – has had a profound negative effect on the development of renewable energy projects on public lands.

Of relevance to this hearing is the fact that the level of regulatory uncertainty is much higher when developing projects on public lands, where the process can take twice as long as it would on private lands. As a result, there is a strong incentive to avoid public lands, which is borne out by the fact that only 1.4% of wind farms are currently located on public lands.¹ Projects developed on public lands are subject to many more regulations; compounding the issue, these regulations often overlap and lack clarity as to which should take precedence.

In the immediate term, the biggest obstacle the renewable energy industry is facing when it comes to developing renewable energy projects on public (and private) lands is uncertainty relating to permitting, and in particular, the uncertainty created by the U.S. Fish & Wildlife Service’s 2011 “Draft Eagle Conservation Plan Guidance”, or “Eagle Guidance”.

In summary, the key points I wish to convey regarding the roadblocks to developing renewable energy projects on public lands created by regulatory uncertainty are:

1. The process for developing renewable energy projects is complicated, and critical steps in successfully completing a project hinge on the permitting process.
2. Adding regulatory uncertainty to the permitting process makes project development more complicated, lengthy, and expensive ... and therefore more risky.
3. In the past ten months, the U.S. Fish and Wildlife Service (USFWS) and the Bureau of Land Management (BLM) have issued several documents that significantly increase the regulatory uncertainty associated with permitting wind energy projects.
 - a. Among these documents, the Eagle Guidance is the most immediately problematic.
 - b. The Eagle Guidance is unnecessarily onerous, and unfairly penalizes wind energy.

¹ See Appendix I, “Comparison of the Percentage of Renewable Energy Generation Located on Public and Private Lands”.

4. The Eagle Guidance creates a significant roadblock to developing renewable energy projects on public lands -- RES has some proposed solutions.
5. The Eagle Guidance is the most immediate issue the industry faces, but it is not the only roadblock -- there are other reasons why developing renewable energy projects on public lands is difficult.
6. DOI's "Fast-Track" process is welcome and well-intended, but needs to focus more on successful outcomes for wind projects.
7. This is not a theoretical issue -- some of RES' projects have already been directly impacted by the roadblocks listed above.

1. RENEWABLE ENERGY PROJECT DEVELOPMENT IS A COMPLEX PROCESS

To appreciate the challenges that the wind energy industry faces for development on public lands, it may be helpful to understand the extensive process involved in developing, financing, constructing, and operating a wind energy facility.

In general, the early stage development process follows these steps:

- Identify areas with promising wind or solar resources, compatible land uses, power markets and access to transmission lines with sufficient capacity;
- Conduct preliminary siting and environmental screening, followed by initial environmental assessments and studies;
- Establish and maintain relationships with landowners, and negotiate wind or solar measurement agreements and/or land leases;
- Establish and maintain relationships with local stakeholders, including local government, public agencies, environmental groups, and community groups, among others;
- Commence preliminary project planning and design; and
- Commence permitting discussions and planning with regulators.

The next phase of development usually involves ensuring the project is able to interconnect to the grid and has access to sufficient transmission capacity, selecting turbines, and finalizing permits. These processes often progress simultaneously, which requires complex coordination among multiple parties.

The final, and most critical stage of development revolves around securing a power purchase agreement (PPA), and obtaining financing. The key point to understand is that this critical final phase hinges on the permitting process. This testimony will focus on obstacles to successfully completing the permitting process for renewable energy projects on public lands.

2. HOW REGULATORY UNCERTAINTY AFFECTS PROJECT DEVELOPMENT

Regulatory Uncertainty Further Complicates a Challenging Process

As outlined above, successful development of a commercial-scale wind energy project requires coordination among multiple parties, including landowners, local governments, transmission providers, power purchasers, and investors.

Contractual arrangements among these parties may span 20-30 years, and each of these parties seeks assurances that the project will be constructed and operated in compliance with law during that timeframe. As such, regulatory uncertainty makes the challenging process of coordinating agreements among these parties even more difficult, and may even render it infeasible.

In addition, increased uncertainty, or risk, may also increase the cost of developing, constructing, or operating a project. In doing so, it will almost certainly decrease the profitability of a project and in some circumstances, it may worsen project economics to the point that a project cannot be justifiably developed.

Regulatory Uncertainty Causes Delays, Drives Away Investment Capital and Customers

One of the biggest factors affecting the cost of a wind project is the time required to obtain permitting and ensure regulatory compliance. Commercial-scale wind farms require investments of hundreds of millions of dollars. Currently, there is significant interest in investing in renewable energy, partly due to a belief that the sector is poised for significant growth, and partly because investors are concerned about sustainability.

However, wind energy projects ultimately compete with other investment opportunities for access to development and long-term capital. If development costs make a project uneconomic, or if permitting delays increase the time, cost and risk of projects, development capital will flow elsewhere -- either to other projects or sectors.

Customers – which in the case of the renewable energy industry are often utilities – also seek projects with regulatory certainty, and will typically not sign power purchase agreements if a project's future is in doubt. As described in the case studies provided, RES has experienced firsthand the loss of customer interest due to regulatory uncertainty relating to eagles.

3. THE USFWS AND BLM HAVE GREATLY INCREASED REGULATORY UNCERTAINTY WITH THEIR RECENT ISSUANCE OF MULTIPLE AND CONFLICTING DIRECTIONS

A large proportion of wind energy projects on public (and private) lands has been significantly delayed and thrown into regulatory uncertainty due to communications and policies recently issued by the BLM and the USFWS aimed at protecting eagles. Significantly, these policies were created without industry or stakeholder input, and seemingly without regard for the realities of renewable energy development.²

² This is despite the fact that the Federal Advisory Committee (FAC) provided substantial input to the DOI on ways to balance renewable energy development and protection for wildlife. The Federal Advisory Committee (FAC) was created by the Department of Interior for the specific purpose of advising the Secretary on wind energy guidelines. The FAC included representatives from state wildlife agencies, conservation organizations, the USFWS and the wind industry. The

On February 18, 2011, the USFWS announced the availability for public comment of draft Eagle Conservation Plan Guidance (“Eagle Guidance”).^{3,4} As described below, the Eagle Guidance creates significant regulatory uncertainty for wind energy project developers.

However, it is important to note that the Eagle Guidance is not the only source of regulatory uncertainty – the USFWS has also issued draft Land Based Wind Energy Guidelines and a White Paper on Avian and Bat Protection Plans, and the BLM has issued an Instruction Memorandum (IM) intended to provide direction to BLM Field Offices for complying with the Bald and Golden Eagle Protection Act, including the implementing regulations. These items are discussed in more detail in section 5 below.

Cumulatively, these actions by the USFWS and BLM have nearly paralyzed what was already a lengthy and difficult process for development on public lands. Moreover the detailed requirements within the aforementioned regulations have substantially increased the regulatory uncertainty of the permitting process.

a. WHY THE “EAGLE GUIDANCE” IS PROBLEMATIC

The Eagle Guidance introduces significant regulatory uncertainty that RES believes will severely impair wind energy development on public lands in the United States. The greatest source of uncertainty is that the fact that the process for obtaining an eagle “take” permit is not yet known, and may not be determined for months if not years.

Further compounding the uncertainty, the Eagle Guidance sets an extremely low threshold for projects that will require an eagle “take” permit⁵. To this end, it is worth noting that the Eagle Guidelines are more stringent than the Endangered Species Act, despite the fact that neither bald nor golden eagles are currently considered endangered.

RES has no doubt that cumulatively, the new regulatory program – as drafted – will:

- (i) Provide little to no certainty that adherence to the Eagle Guidance will enable projects to avoid regulatory “surprises” imposed by the USFWS later in the development and operation of the facility;
- (ii) Significantly, and unjustifiably, increase the time and costs required to develop a wind energy facility, thereby increasing development risk/uncertainty;
- (iii) As a result of (i) and (ii) above, create significant barriers to obtaining acceptable project financing.

FAC met regularly for more than two and a half years and produced a set of recommendations that relied on peer-reviewed, sound science. The FAC submitted these broadly agreed upon recommendations to Secretary Salazar in March 2010.

³ 76 Fed. Reg. 9529 (Feb. 18, 2011). *See also* U.S. Fish and Wildlife Service, “Draft Eagle Conservation Plan Guidance” (Jan. 2011), available at http://www.fws.gov/windenergy/docs/ECP_draft_guidance_2_10_final_clean_omb.pdf

⁴ RES, the American Wind Energy Association (“AWEA”) and many other interested parties filed detailed comments on the Eagle Guidance. I encourage the members of this Committee to consider the detailed comments filed by industry participants.

⁵ In addition to very low thresholds for requiring a “take” permit, the draft Eagle Guidance defines “take” as including “disturbance” – this is problematic, because a lot of things count as “disturbance”, and if you “take” a golden eagle, it may trigger a permit violation that causes the whole project to be shut down. Such an onerous restriction makes it exceedingly difficult for the wind industry to operate, much less continue to grow.

For example, the Eagle Guidance:

- Imposes a five-year permit term for eagle “take” permits, which is far too short to cover the 20-30 year life of a typical wind energy project. As a result, an eagle take permit for a project would need to be renewed multiple times over the life of the project.

This is problematic because it creates regulatory and compliance uncertainty that could make it impossible for projects to secure long-term financing, given the risk that the project’s permit might not be renewed.

Permit renewal could also require environmental analyses under NEPA, which would require the investment of substantial time and money by both the USFWS and wind project operators. In fact, this could trigger NEPA for wind projects on public and private land.

- Provides that after a project is permitted, project operators may be required to modify operations or introduce additional mitigation measures with no certainty that any such requirements will be reasonable, practical, economical or technically feasible.

This is problematic because such modifications or mitigation may abrogate existing contractual requirements, thereby putting a project into default. As such, this has the potential to render project financing infeasible.

- Provides no “grandfathering” or phase-in period for projects that are in the middle of the permitting process or are already operational.

This is problematic because it may abrogate existing contractual requirements and put projects into default.

- Requires unjustifiably lengthy pre-construction surveys in addition to lengthy NEPA and permitting processes, and categorizes sites as risky before proper analysis has been performed.

This is problematic because it causes delays, greatly increases costs, and may drive away investors.

b. THE EAGLE GUIDANCE IS UNREASONABLY ONEROUS AND UNFAIR TO WIND

Importantly, the Eagle Guidance and the 2010 BLM IM appear to have been issued without any regard for the magnitude of impact they would have on the renewable energy industry. The negative effects of the new regulatory program on renewable energy development are appreciably disproportionate to any anticipated benefit on eagle populations.

As described in AWEA’s filed comments on the Eagle Guidance, Tetra Tech, Inc. (a prominent environmental and wildlife consulting company) reviewed all known eagle mortality data sources and found that 1% or less of all documented eagle fatalities caused by human activity are attributable to modern wind energy facilities.⁶

⁶ This analysis excludes data from a few specific projects (such as those in the Altamont region) that utilize obsolete equipment, were constructed many years ago, and where unusual conditions exist.

For example, Tetra Tech, Inc. found that the leading human causes of eagle mortality are:

- electrocutions on power lines (with a significant portion of those occurring at distribution lines) – 50%
- direct and indirect poisoning – 13%
- shooting and trapping – 7%
- vehicle strikes – 6%

Disproportionate Burden on Wind Industry

Despite the fact that wind energy accounts for 1% or less of human-caused eagle fatalities, the USFWS has proposed eagle-related project criteria, permitting procedures, and mitigation measures that are specific to the wind energy industry while failing to propose similar regulatory measures for other industries and practices resulting in significantly greater eagle take. Simply put, regulations comparable to the Eagle Guidelines have not been proposed for other industries or sources of eagle mortality.

This approach demonstrates a lack of perspective and proportionality, and it is also inconsistent with the stated renewable energy objectives of the Administration. Moreover, it ignores the fact that increased deployment of renewable energy resources can help lessen our impact on climate change, which the USFWS itself has called one of the greatest threats to our nation's environment and wildlife.⁷

4. PROPOSED SOLUTIONS TO THE EAGLE GUIDANCE PROBLEM

RES suggests the following steps to address the significant roadblock to renewable energy development on public lands created by the Eagle Guidance:

- Request that the DOI suspend the Eagle Guidance and the associated regulatory program that began in 2009. RES suggests that the USFWS open a new formal rulemaking that is open to the public. New regulations would be developed in cooperation with the wind and solar industries to sensibly address permitting under the Bald and Golden Eagle Protection Act.
- Direct USFWS to work with industry to develop a permit program that imposes regulatory requirements that are proportional to the impact of the wind energy industry on eagle populations. Such a program must include certain core elements necessary for successful project development, including:
 - (1) Timely, clear and efficient processes for obtaining a permit;
 - (2) Permits for the life of a facility;
 - (3) “No surprises” assurances for the life of the project;
 - (4) Phase-in periods for projects currently under development; and
 - (5) “Grandfathering” for operating facilities.

⁷ USFWS Strategic Plan for Responding to Accelerating Climate Change, September, 2010.

As explained above in 3.a., many of these permit provisions are found in other regulatory regimes like the Endangered Species Act, which is considered the “gold standard” for regulation of impacts on protected species.

- Beginning immediately and continuing throughout the period while new industry-specific eagle regulations are being developed, provide the renewable energy industry with written assurances that adherence to the Federal Advisory Committee (FAC) Recommendations is sufficient for compliance with the Bald and Golden Eagle Protection Act.

Use of the FAC Recommendations as a “bridge” would provide an urgently needed solution by removing the current significant regulatory uncertainty and permitting delays that have impacted the development, financing and construction of wind energy projects on public lands. The FAC Recommendations would also seem to be a strong foundation upon which to develop a new eagle regulatory program.

5. THE EAGLE GUIDANCE ISN'T THE ONLY PROBLEM

The Eagle Guidance illustrates a major impediment to renewable energy development on public lands, but it is just one of several recent regulations promulgated by BLM and USFWS that contribute to the existing level of regulatory uncertainty.

July 9, 2010 – BLM’s Instruction Memorandum 2010-156 and August 3, 2010 – USFWS’ White Paper on Avian Protection Plans (APPs)

The new approach to eagle regulation began when the BLM issued Instructional Memorandum 2010-156 on July 9, 2010 (the “2010 BLM IM”). The purpose of the 2010 BLM IM was to provide direction to BLM Field Offices for complying with the Bald and Golden Eagle Protection Act, including the implementing regulations, for projects on public lands.

The 2010 BLM IM primarily addressed golden eagles and requires USFWS approval of wind and solar projects prior to BLM issuing a Record of Decision. Specifically, the IM declared that if a proposed project has the potential to impact golden eagles or their habitat, an APP is required as a condition of the right-of-way grant.

The introduction of this policy created significant uncertainty for renewable energy on public and private lands, including two RES projects as further documented below. Projects which were on track to begin construction in 2010 or 2011 were delayed, thereby rendering them unable to take advantage of grant funds available under American Reinvestment and Recovery Act (ARRA). Moreover, some USFWS field staff began to impose the new requirements on projects on private land.

On August 3, 2010, the Service issued a white paper on the development Avian Protection Plans for renewable energy facilities.⁸ The white paper attempts to provide considerations for APPs as required by the BLM’s July 9, 2010 Instruction Memorandum while the national APP guidance and template are under development.

⁸ See Memorandum from Director, Fish and Wildlife Service, to Service Directorate, regarding “Service White Paper Providing Guidance for the Development of Project-Specific Avian and Bat Protection Plans for Renewable Energy Facilities” (Aug. 3, 2010).

As wind developers began to work with USFWS and BLM staff to work towards mutually acceptable APPs, the USFWS issued the 2011 Eagle Guidance, which further changed the regulatory environment.

February 18, 2011 – USFWS’ Land Based Guidelines

Simultaneously with the USFWS’ issuance of the Eagle Guidance, USFWS announced the availability for public comment of another layer of regulatory requirements in the form of draft Land-Based Wind Energy Guidelines (“Land-Based Guidelines”).⁹ The Land-Based Guidelines were intended to provide developers and agency staff with guidelines for selecting sites to avoid and minimize negative effects to fish, wildlife, and their habitats resulting from construction, operation, and maintenance of land-based, wind energy facilities.

The NEPA Process

On public lands, the “gating issue” for the development of renewable energy is completion of the National Environmental Policy Act (“NEPA”) process and obtaining appropriate federal rights-of-way. While the NEPA process is not new, many BLM field offices have been ill-prepared to manage the multitude of renewable energy right-of-way applications submitted over the past ten years. NEPA regulations prohibit project proponents from preparing their own environmental analysis and project proponents are invariably subject to the cost of paying for their internal staff, BLM staff time, and BLM’s third-party consultants.

These challenges combine to create an unbalanced risk-benefit profile to those involved in renewable energy development on public lands, relative to projects on private land. The Eagle Guidance – as proposed – will only exacerbate these BLM resource issues by creating a “federal nexus” for all wind projects, regardless of whether they are sited on public or private lands. Dedication of greater resources to BLM state, district and field offices is sorely needed to address these issues.

6. ADDITIONAL COMMENTS ON “FAST-TRACK” PROJECTS

RES supports the renewable energy goals announced in the Energy Policy Act of 2005 and by Secretary Salazar. In particular, the 2009 Department of Interior Renewable Energy Fast-Track project list was a well-founded effort by the BLM to foster the economic development goals associated with ARRA through renewable energy development.

As BLM Director Bob Abbey testified on May 13th, the DOI Fast-Track process completed permitting of nine solar projects, but only one wind project in the 2010 calendar year. While we commend the DOI and BLM for their efforts, there is substantial opportunity for improvement particularly with regard to wind energy development.

In RES’ experience, the roadblocks described in this testimony have played a significant role in the failure of fast-tracked (and other) wind projects to successfully complete the permitting process. RES therefore submits that in order to reduce the roadblocks to renewable energy development on public lands, there must be a strong federal commitment to completing renewable energy projects on public lands.

⁹ As with the Eagle Guidance, RES, AWEA, and many other interested parties filed detailed comments on the Land-Based Guidelines. I encourage the members of this Committee to consider the detailed comments filed by industry participants.

Such a commitment would involve not only ensuring a streamlined permitting process, but providing regulatory consistency and certainty that is necessary for all phases of renewable energy development, including project financing. Just as renewable energy developers partner with local governments, land owners and other stakeholders during the entire life of a project on private lands, renewable energy development on public lands needs cooperation and coordination with applicable federal agencies that will be sustained for the life of the project.

This would include directives to all applicable federal agencies prioritizing renewable energy development and imposing appropriate perspective and proportionality on conflicting regulatory programs. Further, the industry would benefit from federal leadership in identifying and prioritizing lands for wind and solar energy generation and transmission corridors.

RES suggests the active engagement of top leadership within the DOI, BLM, and USFWS to seek efficient and effective approaches to permitting that will allow projects to be developed, permitted, financed, constructed and placed into operation on public lands.

7. CASE STUDIES: RES AMERICAS' PROJECTS

The roadblocks I have described are not theoretical. RES is developing projects on public *and private* lands that are grappling with inconsistent permitting pathways and the lack of compliance certainty.

Granite Mountain Wind Project (CA)

A case in point is our 60 megawatt Granite Mountain Project located on BLM lands in San Bernardino County, California, which has been significantly impeded by these roadblocks. Granite Mountain was put on the DOI 2009 Fast-Track project list, and RES was encouraged to hasten development of the project so that it could qualify for ARRA/Treasury Grant funding.

RES has been developing the Granite Mountain project for more than 8 years and has spent more than \$6.1M in developing the project.¹⁰ The original right-of-way for wind testing and monitoring was executed by RES in July 2003. RES filed a right of way application for wind development with the BLM in December 2006. The NEPA process was started in earnest in 2007.

It is important to note that this project has many of the key ingredients of a successful development, including an executed power purchase agreement, an executed interconnection agreement, and a completed Draft Environmental Impact Statement. The sole missing development asset required to finance the project RES was a Record of Decision from BLM ... which was scheduled to be received by December 2010.

However, in late summer 2010, we were notified by the USFWS of a concern regarding potential golden eagle issues. The notification came as a direct result of BLM's July 9, 2010 Instructional Memorandum. Given the new USFWS eagle regulatory program and BLM policies, this left RES in a state of regulatory and permitting uncertainty as to how to advance the project, comply with the new eagle regulations, and BLM policy.

¹⁰ In stark contrast to the 8 years (and counting) needed to develop the Granite Mountain Wind Farm on public lands, consider that RES is about to complete construction of a 227 MW project on private land in Oklahoma that started the permitting and development process in late 2008. That said, developing projects on private land is in no sense "easy", and involves complex permitting and the involvement of multiple governmental entities and stakeholder groups.

As a result, this project did not qualify for the Treasury Grant and is clearly a missed opportunity for RES and for economic stimulus and job creation.

While RES is working with USFWS and BLM to conduct additional eagle surveys intended to support an ABPP and the project's Final EIS, the construction of the project has been set back by a minimum of twelve months and development costs have increased on the order of hundreds of thousands of dollars. The February 2011 Eagle Guidance casts further uncertainty on the project and will likely result in further delays and additional costs.

Rock Creek Wind Project (OR)

The USFWS' new eagle program has impacted project development beyond just public lands. Throughout the spring of 2010, RES negotiated the sale of a 400 MW wind energy project with a regulated utility in the Pacific Northwest. The project is/was sited entirely on private lands and is adjacent to multiple operating wind projects. The investor-owned utility had requested regulatory hearings and petitioned its regulatory authorities to review the transaction.

Shortly after issuance of the BLM's July 2010 Instruction Memorandum, local USFWS field offices began to provide feedback to developers regarding their projects on public as well as private lands. This feedback included the need for additional eagle surveys as well as the prospect that proposed projects – if constructed – would be at risk under the Bald and Golden Eagle Protection Act.

Given the concerns raised by USFWS as well as the uncertainty regarding the outcome of the USFWS dialogue, the utility withdrew its petition to acquire the project and negotiations of the transaction were cancelled. RES continues to develop the Rock Creek site, albeit at significantly greater risk and expense.

Both the Granite Mountain project and the Rock Creek project demonstrate that these roadblocks to development have a profound and demonstrable impact on renewable energy development on both public and private lands. It is critical that the underlying causes of these roadblocks be addressed as quickly and as efficiently as possible so as not to result in further missed opportunities for renewable energy development in the United States.

CONCLUSION

RES has been and continues to be a strong advocate for responsible development of renewable energy projects on public and private lands. Renewable energy development, construction and operation is our focus, and our corporate ethos is grounded in sustainability and environmental responsibility. We have enjoyed a cooperative relationship with the federal agencies that administer public lands and look forward to improving that relationship in the future.

We appreciate the tireless efforts of the BLM and USFWS field office staff and appreciate their efforts to process the multitude of applications for right-of-way grants for renewable energy projects on federal land as well to comply with regulations promulgated from Washington, DC.

But there are currently significant roadblocks to renewable energy development on public lands that should be rectified before further delay and uncertainty impedes the industry. In RES' experience, the three biggest roadblocks to development of renewable energy projects on public lands are that:

- (i) There is no "clear path" for permitting development on public lands;
- (ii) Issues and concerns in the permitting process lack perspective and proportionality; and
- (iii) Completion of development requires dedicated BLM resources and direction that is currently lacking.

Collectively, these three problems can be summarized as "regulatory uncertainty", which as explained above, is anathema to project developers and investors. The cumulative impact of this regulatory uncertainty on the wind industry is severe. In the case of the Eagle Guidance and the Land Based Guidelines, AWEA estimates that these USFWS policies jeopardize:

- More than **34,000 megawatts** of wind power projects;
- More than **27,500 jobs**;
- **\$103 million** in potential landowner revenue per annum; and
- **\$68 billion** in investment.

On behalf of RES, I would like to thank Chairman Hastings, Ranking Member Markey and members of the Committee for the opportunity to testify in the Committee on Natural Resources Oversight Hearing on "American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters, Part II – The Wind and Solar Industry Perspective".

APPENDIX I: COMPARISON OF THE PERCENTAGE OF RENEWABLE ENERGY GENERATION LOCATED ON PUBLIC AND PRIVATE LANDS

RES is currently pursuing rights-of-way for the development of renewable energy projects on public lands, but such projects are a small portion of our entire development portfolio. In fact, other than a re-powering project over a decade ago, RES has never completed the development and construction of a renewable energy project on public lands. Only 9% of RES’ current development portfolio is on public lands. I submit that RES’ experience is not unique.

As the tables below demonstrate, only 1.4% of all installed wind capacity and 2.1% of all wind capacity under construction in the United States from any renewable energy developer is on public lands. These numbers dramatically illustrate that public lands is clearly a less attractive option for renewable energy developers.

NATIONAL FIGURES FOR RES

TOTAL RES MW UNDER DEVELOPMENT IN THE UNITED STATES

	CAPACITY (MW)	PERCENTAGE
PRIVATE LANDS	6,933	91.0
PUBLIC LANDS	683	9.0
TOTAL	7,616	100

NATIONAL FIGURES FOR ALL DEVELOPERS¹¹

Total MW Under Construction in the United States in 2010

	Capacity (MW)	Percentage
Private Lands	5,888 MW	97.9%
Public Lands	128 MW	2.1%
Total	6,016 MW	100%

Total Installed Wind Energy in the United States

	Capacity (MW)	Percentage
Private Lands	39,621 MW	98.6%
Public Lands	560 MW	1.4%
Total	40,181 MW	100%

¹¹ Source: AWEA’s 2010 U.S. Wind Industry Market Report.

APPENDIX II: RES AMERICAS PROJECTS IMPACTED BY USFWS EAGLE DOCUMENTS

STATE Status (Land Ownership)	Project Size (MW)	Project Impacted by USFWS Eagle Conservation Plan Document	Additional 2011 Development Costs Incurred from USFWS Eagle Conservation Plan Document	Federal Government Entities Involved
ARIZONA				
Arizona #1 (Private & State Land)	150	Yes. Documented GOLDEN eagle NEST and activity within 10 mile proximity of project area.	\$50,000	USFWS - Region 2, Phoenix Field Office
CALIFORNIA				
California #1 (BLM and Private Land)	80	Yes. Documented GOLDEN eagle NEST and activity within 10 mile proximity of project area.	\$284,000	USFWS - Region 8, Ventura Ecological Services Office, BLM - Barstow Field Office, Desert District Office, Sacramento State Office
California #2 (BLM Land)	80	Yes. Very limited documented GOLDEN eagle use activity within 10 mile proximity of project area.	\$110,000	USFWS - Region 8, Carlsbad Fish and Wildlife Office, BLM - El Centro Field Office, Sacramento State Office
COLORADO				
Colorado #1 (Private & State Land)	80	Yes. Documented GOLDEN eagle NEST within 10 mile proximity and use activity in project area. (2011 studies have NOT been initiated to date)	\$0	USFWS - Region 6, Colorado Field Office
Colorado #2 (Private Land)	200	Yes. Documented GOLDEN eagle NEST within 10 mile proximity and use activity in project area.	\$87,000	USFWS - Region 8, Colorado Field Office
Colorado #3 (Private Land)	250	Yes. Documented GOLDEN eagle NEST within 10 mile proximity and use activity in project area. (additional 2011 monitoring will likely be required)	\$30,000	USFWS - Region 8, Colorado Field Office
IDAHO				
Idaho #1 (BLM, Private, and State Land)	400	Yes. Documented GOLDEN eagle NEST within 10 mile proximity and use activity in project area.	\$500,000	USFWS - Region 1, Idaho Fish and Wildlife Office, BLM - Jarbidge Field Office, Twin Falls County, Idaho Wells Field Office, Elko County, Nevada
Michigan				
Michigan #1 (Private Land)	250	Yes. Documented BALD eagle NEST within 10 mile proximity and use activity in project area.	\$64,000	USFWS - Region 3, East Lansing Field Office
Michigan #2 (Private Land)	250	Yes. Documented BALD eagle NEST within 10 mile proximity and use activity in project area. (2011 studies have NOT been initiated to date)	\$0	USFWS - Region 3, East Lansing Field Office
MINNESOTA				
Minnesota #1 (Private Land)	300	Yes. Documented BALD and GOLDEN eagle use activity in the project area. (2011 studies have NOT been initiated to date)	\$0	USFWS - Region 3, Twin Cities Field Office
OKLAHOMA				
Oklahoma #1 (Private Land)	200	Yes. Documented BALD eagle use activity in the project area.	\$225,000	USFWS - Region 2, Tulsa Field Office
OREGON				
Oregon #1 (Private Land)	400	Yes. Documented GOLDEN eagle NESTS within 10 mile proximity and use activity in project area.	\$350,000	USFWS - Region 1, Bend Field Office
Oregon #2 (Private Land)	320	Yes. Documented GOLDEN eagle use activity within	\$82,000	USFWS - Region 1, Bend Field Office
TEXAS				
Texas #1 (Private Land)	150	Yes. Documented BALD eagle use activity within 10 mile proximity of project area.	\$165,000	USFWS - Region 2, Corpus Christi Field Office
TOTAL MWs IMPACTED	3,070	2011 TOTAL INCREASED DEVELOPMENT COSTS	\$1,937,000	