

DOING PUBLIC LAND POLICY: *THE SOLAR EXAMPLE*



Rebecca W. Watson
Welborn Sullivan Meck & Tooley, P.C.
Sturm College of Law, University of Denver
Distinguished Natural Resources Practitioner-in-Residence Seminar
April 24, 2017

Introduction

How do you make policy?

- First Lesson: policy change is additive
- Second Lesson: policy change is mostly incremental
- Third Lesson: policy change is problem solving and political



Public Land Solar Development

Bush Era

➤ 2001 Bush National Energy Policy

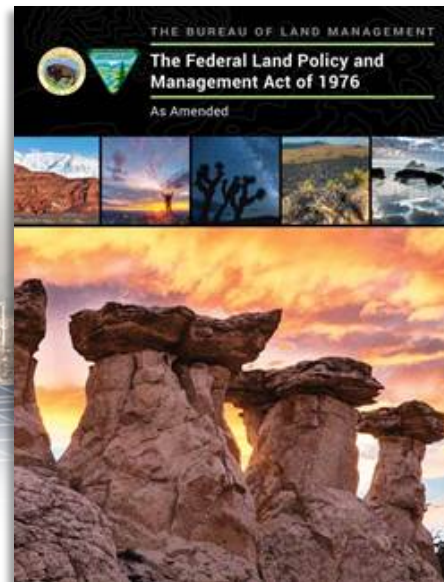
- Develop renewable energy (RE)
- Expand RE tax credits
 - 15% tax credit rooftop solar
- Use ANWR O&G royalties
 - RE research



Public Land Solar Development

BLM's Challenge

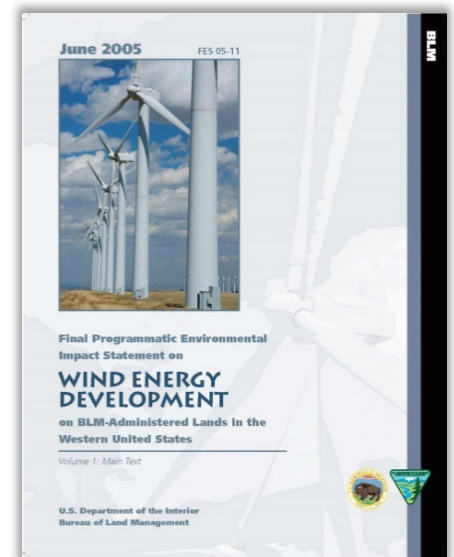
- How to permit RE on public lands?
- Options:
 - FLPMA Title V rights-of-way (ROWs)
 - FLPMA “catch-all” regulation, 43 CFR § 2920



Public Land Solar Development

Choice: FLPMA Title V ROW

- 2002 Wind Energy Development Policy
 - IM No. 2003-020
 - Wind permitting guidance
 - Wind PEIS (June 2005)
 - The planning component



Public Land Solar Development

Solar Permitting

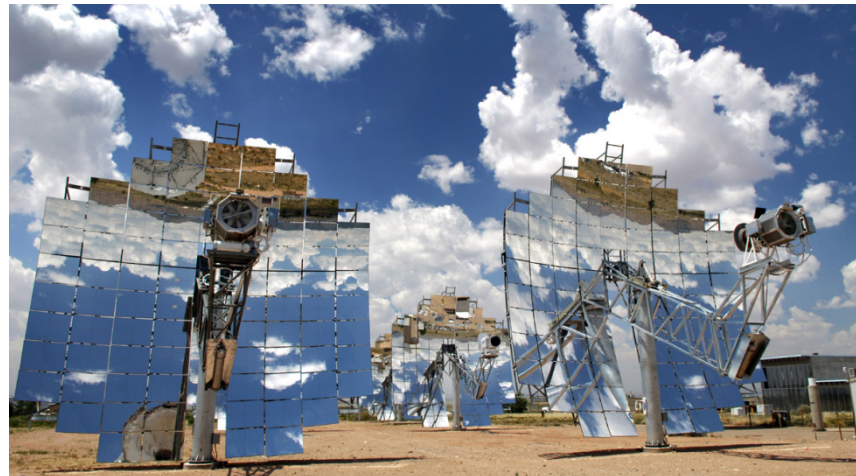
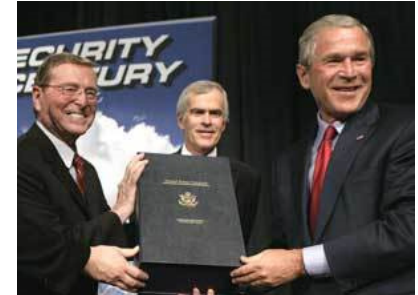
- No requests to develop solar on public lands
- Nat'l Energy Policy directive to facilitate RE
- Political driver: 2004 re-elect
- October 20, 2004: Solar policy announced
- 2004 Solar Energy Development Policy
 - IM No. 2005-006
 - Solar permitting guidance (updated IM 2007-97)



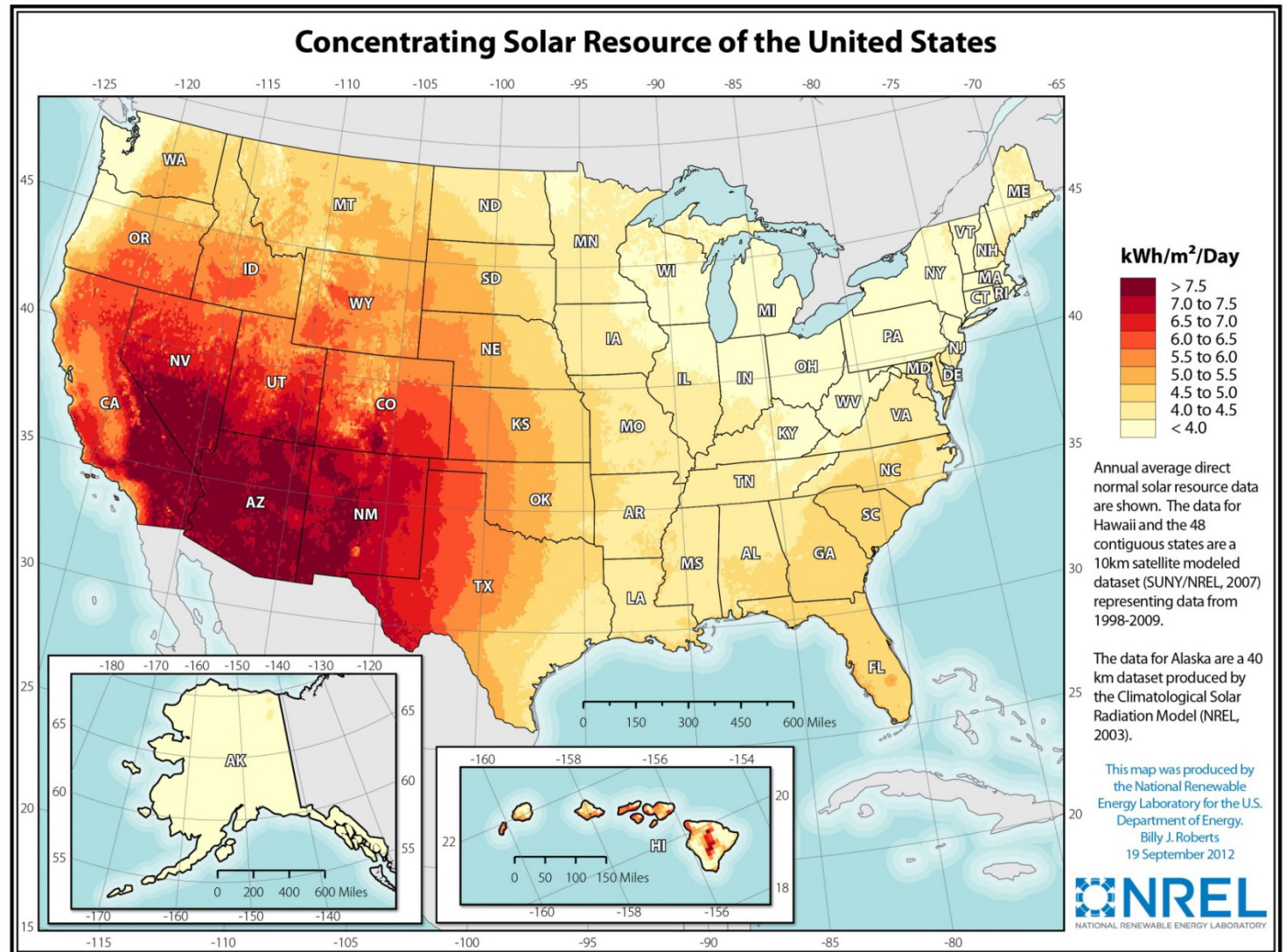
Public Land Solar Development

Legislative Action

- 2005 Energy Policy Act
 - Tax credits for solar energy
 - Identify potential for RE
 - Interior permit 10,000 MW RE 2015
 - BLM Solar PEIS



Public Land Solar Development



Public Land Solar Development

2005 EPAAct

➤ Result – 2006:

- Solar “land rush” for permits
- 78% increase in solar applications by 2009

➤ Problem:

- BLM wasn't ready



Public Land Solar Development

Obama Era

- 2009 – BLM’s “policy tools” inadequate
 - IM-2007-097
 - Solar PEIS ongoing
- Issues:
 - Permitting backlog
 - Land use conflicts
 - Speculation
 - Lack of due diligence



Solar Development Policy

Obama Era

➤ 2009: Obama Administration

- “Transform American Energy”
- Address Climate Change



➤ Interior Secretary Salazar

- Secretarial Order No. 3283, “Enhancing Renewable Energy Development on Public Lands” (Jan. 2009)
- Secretarial Order No. 3285, “Renewable Energy Development by Department of the Interior” (Mar. 2009)
- RE one of “highest priorities”

Solar Development Policy

Legislative Component

- American Recovery and Reinvestment Act (2009) (“Stimulus Bill”)
 - \$41 million to reduce RE backlog
 - 4 Renewable Energy Coordination Offices
 - Expedite RE development



ARRA

American Recovery and
Reinvestment Act of 2009

Solar Development Policy

Legislative Driver

➤ Adjust Solar PEIS

- De-conflict solar
- Focus solar in the “right places” – SEZs
- Fast-track NEPA
- BLM/not applicant-driven

➤ Why? ARRA \$\$

- Tax credits = 30% construction grants (\$\$)
- December 31, 2010 (extended 1 year)

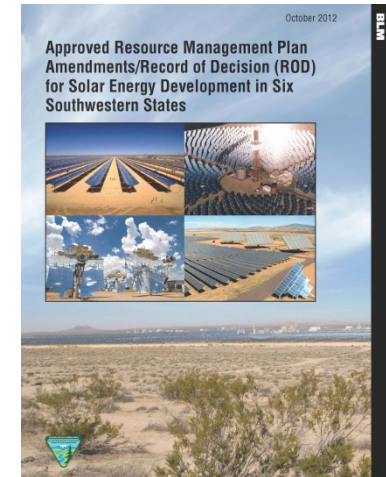
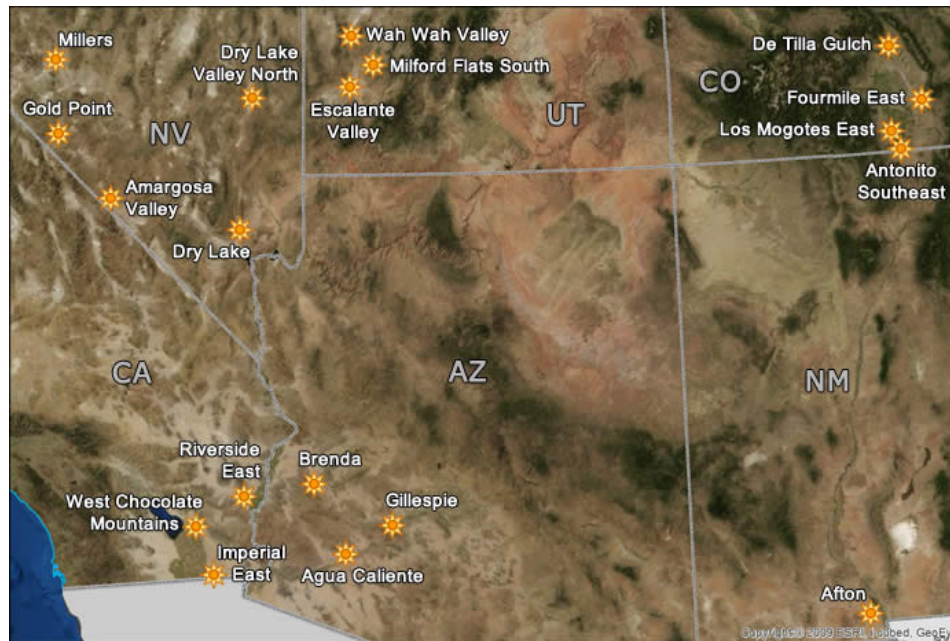
➤ Result:

- Fall 2010: 9 “fast-track” solar projects permitted

Solar Development Policy

➤ Solar PEIS/Western Solar Plan (2012)

- 17 SEZs (285,000 acres)
 - 2 more added later
- Closed 79 million acres to solar
- 89 RMPs in 6 states amended



Solar Development Policy

Fixing the Policy Challenges

➤ January 2011 – Lessons Learned Workshop

■ Guidance:

- NEPA Compliance for RE ROWs – IM-2011-059
- RE Due Diligence – IM-2011-060
- RE Pre-Application/Screening – IM-2011-061
- Grazing Conflicts and RE – IM-2011-181
- Mining Conflicts and RE – IM-2011-183

■ Rule:

- Segregation from mining entry for RE, *78 Fed. Reg.* 25,204 (April 2013)

Solar Development Policy

Solar Policy Results

- Over 52 RE projects permitted
 - 29 solar projects
- 2015:
 - 2 of world's largest solar plants in CA
 - 1st competitive solar sale in NV
- Permitting time reduced from 4 yrs to 1.5 yrs
- Met EPA 2015 goal in 2012
 - 20,000 by 2020 – new Obama goal



Solar Development Policy

Making Policy “Stick”

- RE rulemaking to solidify 2011 guidance
 - 2011: ANPR for competitive leasing
 - 2014: Proposed Rule
 - 2016: Final Rule, 81 *Fed. Reg.* 92,122 (12/19/16)
 - Effective date: January 18, 2019
 - RE zoning – “designated leasing areas” (DLAs)
 - Financial incentives to locate in DLAs
 - Screen out conflict/prioritize low-conflict projects
 - Due diligence requirements
 - Rents include electricity generation component

Solar Development Policy

Next Steps

- Legislation: 2017 – “Public Land Renewable Energy Development Act” (S.282)
- Trump RE policy?



Questions?

Rebecca W. Watson
rwatson@wsmtlaw.com

WELBORN SULLIVAN
MECK & TOOLEY, P.C.
ATTORNEYS AT LAW



LAW OF THE LAND