



# **Sample Recommended Changes to Gross Revenue Definition:**

**Presented to:  
BLM WEATS  
August 31 – September 1, 2010**

James C. Hackstaff  
Hackstaff Gessler LLC  
1601 Blake Street, Suite 310  
Denver, CO 80202  
(303)534-4317  
[jh@hackstaffgessler.com](mailto:jh@hackstaffgessler.com)  
[www.hackstaffgessler.com](http://www.hackstaffgessler.com)

“Gross Revenues” means the aggregate total revenues actually received by Grantee for sales ~~to the first purchaser that arise or are~~ derived from the Project.

Gross Revenues shall include, but not be limited to: (i) ~~the sales of electrical capacity, energy, or to the first purchaser of~~ electricity generated by the Project (including test energy); (ii) the sale of any ~~state-based~~ renewable energy credits carbon credits, credits for greenhouse gas reduction and/or generation of green power or renewable or alternative energy directly derived from the Project; ~~and~~ (iii) any amounts paid in lieu of the sale of electrical capacity or RECs (e.g. payment under business interruption insurance, curtailment payments, and manufacturer’s warranty, etc.), and (iv) the proceeds in connection with, under or derived from any agreement, compromise settlement, judgment, or arrangement, relating to the sale, use or other disposition of electricity, capacity, or RECs generated or capable of being generated by the Project (and/or any other related attribute included in the definition of Gross Revenues).

Gross Revenues shall not include any federal tax, production or other credits (including but not limited to PTCs) received by, or paid to, Grantee by any governmental entity or quasi-governmental entity, including without limitation ~~any subsequently created federal renewable energy credits, carbon dioxide credits, emissions credits or any other~~ federal income tax credits (other than any subsequently created federal renewable energy credits, carbon dioxide credits, emissions credits, etc.), or any state or local property tax credits or abatements. Gross Revenues shall not include amounts obtained by Grantee from financing activities, sales, leases, subleases or other dispositions of the Windpower Facilities, or this Agreement or other leases; any amounts recovered from third parties arising out of the construction, repowering or repair of the Windpower Facilities (such as damages for breach of contract or liquidated damages for delays in completion or equipment performance but no amounts paid in lieu of sales of electricity, capacity, or RECs); ~~;~~ amounts received as reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs; or proceeds received by Grantee as a result of damage of casualty to the Windpower Facilities.

**Questions? Contact us:**  
**303-534-4317**

**James C. Hackstaff**

**[jh@hackstaffgessler.com](mailto:jh@hackstaffgessler.com)**

**John T. Show**

**[jsnow@hackstaffgessler.com](mailto:jsnow@hackstaffgessler.com)**

**Ann West**

**[awest@hackstaffgessler.com](mailto:awest@hackstaffgessler.com)**

**Mario D. Nicolais**

**[mnicolais@hackstaffgessler.com](mailto:mnicolais@hackstaffgessler.com)**

**John S. Cutler**

**[jcutler@hackstaffgessler.com](mailto:jcutler@hackstaffgessler.com)**

**[www.hackstaffgessler.com](http://www.hackstaffgessler.com)**

**DISCLAIMER**

- (1) No part of this presentation may be considered or substituted for professional advice, such as accounting, legal, and tax advice. Before considering any project opportunity, landowners should engage professional advisors. To ensure compliance with requirements imposed by the IRS, we inform you that any advice contained in the presentation is not intended or written to be used, and cannot be used for the purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.
- (2) Hackstaff Gessler, LLC practices renewable energy law. Primarily, we represents developers and landowners (both individuals and groups) in wind and solar projects in Colorado, Kansas Nebraska, New Mexico, Texas, and Wyoming.