



September 27, 2021

**Comments Regarding the August 31, 2021
Bureau of Land Management Request
For Public Input on Updating Regulations
for Rights-of-Way and Renewable Energy**

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:
Bureau of Land Management
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The Energy and Wildlife Action Coalition (“EWAC”) submits these comments in response to the Bureau of Land Management’s (“BLM”) August 31, 2021 request for public input on updating regulations related to renewable energy permitting and linear rights-of-way on public lands (“BLM Request”).¹

EWAC is a national coalition formed in 2014 whose members consist of investor-owned electric companies, rural electric cooperatives, public power entities, independent power producers, electric transmission providers, renewable energy developers, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of safe, reliable, affordable, and increasingly clean electricity. EWAC supports public policies based on sound science that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner.

By the end of the second quarter of 2021, 127.8 GW of wind and 108.7 GW of solar capacity have been installed in the United States and its territories. Additionally, approximately 200,000 miles of high voltage transmission lines and 5.5 million miles of distribution lines have been installed throughout the continental United States. EWAC member assets comprise a significant portion of this renewable energy generation and transmission and distribution infrastructure across the country, and as a result, will play a significant role in developing, building, and operating land-based and off-shore wind, solar, and storage, and expanding or modernizing electric transmission and distribution infrastructure in the coming decade in accordance with the Biden Administration’s clean energy and climate change initiatives.²

EWAC provides these comments, informed by the knowledge and experience of its membership, to assist BLM as it begins to consider changes to its renewable energy and linear rights-of-way permitting regulations (“Permitting Regulations”). These comments: (1) provide insight on the various practical, regulatory, and other constraints faced by the renewable energy and transmission industries in bringing clean energy to market and distributing the same with a focus on deployment on BLM-administered lands; and (2) provide recommendations to enable and facilitate deployment and transmission of clean energy on federal lands.

Renewable Energy Deployment and Distribution Faces Significant Competing Constraints

1. Permitting timelines. Electric generation and transmission and distribution project proponents often must obtain multiple, overlapping authorizations, including those relating to the Endangered Species Act, Clean Water Act, Federal Aviation Administration, and myriad state and local requirements. For projects spanning multiple jurisdictions, project development also includes a patchwork of federal, state, and privately-owned lands and lands designated as wilderness, wilderness study areas, and areas of critical environmental

¹ BLM Press Release found at: <https://www.blm.gov/press-release/bureau-land-management-solicits-initial-public-input-updating-regulations-rights-way>.

² See, e.g., Executive Order 14008: Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619 (Jan. 27, 2021); Executive Order 13990: Protecting Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

concern. This multi-layered planning and permitting is complex and often very lengthy – at times spanning many years and in some instances taking over a decade to finalize.

2. Financing and Power Obligations. Financing renewable energy and transmission and distribution projects is often exceedingly complex, and project development decisions must take into account commitments to financing parties and power purchasers – with the success of a project hinging on a very competitive market with contracts awarded often times to the lowest-cost project.
3. Avoidance of sensitive resources. Project proponents often choose for various reasons to avoid conflicts with sensitive resources when they can. Sometimes, federal and state agencies strongly suggest avoidance as a measure to limit the impact of these projects. However, avoiding impacts to these resources in some instances is not possible or, even if technically *possible*, would make the projects *infeasible* and economically unviable.

Recommendations

1. BLM should work with affected industry to formulate regulations, guidance, and policy that will encourage predictability and efficient review of proposed approvals.

Given the multiple constraints that must be reconciled for a successful project, certainty, predictability, and timeliness in BLM (and other federal agency) decision-making is critical to ensuring renewable energy may be generated and delivered with the speed necessary to address the catastrophic effects of climate change.

EWAC encourages BLM to work closely with renewable energy generation and transmission and distribution project proponents so that these constraints can be taken into consideration as BLM formulates regulations, policy, and guidance relating to right-of-way permitting. BLM should revise its regulations to achieve the following:

- Provide clear timeframes for review of and decisions on right-of-way applications;
- Include guidance requiring BLM to focus on issues of significance and achieving greater uniformity in documents and approvals coming from various field and regional offices;
- Prioritize consistent and efficient application processing, including providing for project proponent input and review throughout the approval and compliance process in order to ensure project and associated actions are described accurately and that questions can be resolved quickly;
- Limit circumstances where applications are delayed as a result of considerations not required by statute or regulation (e.g., vegetative management recommendations that do not take into consideration safety or reliability standards);
- Require that any BLM-recommended conservation measures be developed in coordination with and expectations made clear to the project proponent, and above all else be reasonable, achievable, and limited to agency jurisdiction; and
- Provide clear guidance on efficient inter-agency coordination, including a clear process to resolve issues that may arise during the right-of-way process.

2. Sufficient staffing is critical to meet Administration’s climate change goals.

EWAC recommends BLM focus on providing sufficient staffing both in number and in training so these projects can move forward and contribute to meeting the Biden Administration’s climate and clean energy goals. BLM should specifically focus on installing well-trained project managers that are empowered to coordinate the application and approval and compliance process, and who have the explicit authority to efficiently escalate and resolve issues, including conflicting standards among resource specialists, districts, or states.

To that end, BLM should consider establishing for the first time a centralized permitting office focused on renewable energy generation and electric transmission and distribution at BLM’s national headquarters that can encourage timely and consistent decision-making and provide support to decisions made at the state and field office levels. A central permitting office should coordinate amendments to existing resource management plans to prioritize renewable energy development and provide consistent methods and procedures for addressing conflicts between renewable development and other resources and uses. Any ultimate BLM regulations should provide that the purpose of the centralized permitting office is to assist BLM field offices and project proponents in getting projects approved and/or review processes completed. BLM regulations could provide a number of tools toward this goal, including authorizing the centralized permitting office to oversee and prioritize permit processing by setting timetables, ensure that field offices assign adequate and appropriate staffing, and provide consistent direction for permit processing. Oversight by a centralized permitting office with ultimate decision-making authority on a given approval would increase consistency and predictability for the regulated community and allow for more efficient permit processing and should not result in added delay for a project or approval process. Based on member experiences, EWAC believes the establishment of a central permitting office would create a significant and immediate benefit for renewable energy developers and transmission providers and would lessen the overall burden on BLM’s limited resources. If a centralized permitting office focused on renewable energy and electric transmission and distribution is successful, the structure could potentially be expanded to cover other sectors and uses.

The agency should also revive and sufficiently staff its Renewable Energy Coordination Offices (“RECO”). RECO offices should report directly to a central permitting office, should have a clear understanding of the limitations on developing BLM lands for renewable energy purposes, and should also recognize that the purpose of the office is to successfully achieve renewable energy development on those lands. For example, the purpose of the Desert Renewable Energy Conservation Plan (“DRECP”) by BLM and other federal and state agencies was to facilitate timely and streamlined permitting of renewable energy projects while advancing federal and state conservation goals and meeting requirements of the federal Endangered Species Act and Federal Land Policy and Management Act.³ However, in practice, the DRECP severely limits development and transmission of renewable energy on federal lands in a way that arguably goes beyond the

³ See

https://eplanning.blm.gov/public_projects/lup/66459/133459/163123/DRECP_BLM_ROD_Executive_Summary.pdf.

statutory requirements of the ESA and FLPMA, with additional lands made unavailable for development due to the provisions of the Bald and Golden Eagle Protection Act.

Additionally, BLM should consider renewing its Electric Systems Short Course that previously served to train lands and realty specialists on power line and generation siting requirements from both an agency and electric utility's perspective. EWAC understands that the U.S. Forest Service is coordinating with western utilities to re-initiate the course, but BLM has thus far declined to participate.⁴

Finally, EWAC notes that because of the aforementioned long permitting timelines associated with BLM review of renewable energy and transmission and distribution projects, there is often staff and line-officer turnover, which causes confusion and re-evaluation of project actions, impact assessments, and mitigation requirements. Turnover and timelines are exacerbated by the fact that BLM staff are also pulled off project review for fire response or other BLM priorities. Sufficient staffing could help ameliorate these issues, along with other changes recommended by EWAC in this comment letter.

3. BLM should refrain from requiring use of new, unproven technology in the conservation context.

EWAC recognizes that innovation and technology can be an asset for agency planning. However, we encourage BLM to work with industry to understand both the availability, utility, cost, and limitations of new technology before issuing regulations, policy, or guidance requiring such technology, or before individual offices begin "recommending" the same.⁵ Further, the BLM should explore ways to promote use of new technology so that project proponents are incentivized to include the cost of technology into project budgets. In the context of wildlife resources, oftentimes new technology is encouraged, but not "counted" as avoidance or minimization because of the relatively novelty of the technology.

4. Other recommendations.

In addition to the recommendations set forth above, EWAC encourages BLM to consider strengthening any ultimate Permitting Regulations by removing unnecessary barriers to development on public lands, including:

- *Elimination of capacity factor payments for wind energy projects.* The capacity factor for wind projects is an additional charge on top of rent that reduces the economic viability of otherwise potentially suitable sites. Often, the rental fee is, itself, a substantial increase in cost compared to the exiting use (e.g., grazing or mining prospecting grants).

⁴ See <https://www.fs.usda.gov/working-with-us/partnerships/servicefirst/locations/arizona>).

⁵ For example, some federal agencies have, in the past, strongly recommended technologies such as Identiflight be used as a means to reduce perceived risks of avian collision at various facilities. While Identiflight may be valuable for reducing eagle fatalities at some wind energy facilities, the tool is expensive and would be inappropriate for reducing impacts to common migratory birds or for use at lower-risk sites.

- *Reconsideration of rent payment plans.* Rent should be consistent with land values rather than based on the table used under current BLM permitting regulations. Rent payments are set to a national schedule that is predominantly much higher than the going rates of lands of similar quality and use adjacent to the BLM lands, which are subject to implementation of the BLM rental schedule for solar sites. While the most recent regulations regarding rental rates left open the potential for bringing assessments and market appraisals for consideration, the BLM does not appear to be in a position to assess the comparative values at the field office or district level when given the choice to otherwise implement a readily available BLM cost schedule. The industry supports payment of fair rental terms and would like the option to use appraisals of similar land use for rental rates on BLM lands.
- *Elimination of competitive leasing.* Competitive leasing is a strong disincentive to developers to pursue BLM lands for renewable energy development, primarily as there is intensive upfront effort put forth by developers to identify suitable lands with a feasible point of interconnection, with low to no resource impacts. Proponents of solar energy projects must also consider whether a potential site has suitable terrain that will not be infeasible to grade, which represents another upfront, non-recoupable cost that is forfeited if a developer is not successful in securing the lease. Additionally, competitive leasing can add one year to the site control process, which negatively impacts interconnection applications and further disincentivizes developers from pursuing BLM leases. Lastly, BLM's hosting of a competitive lease invites additional interest by potential intervenors who may have otherwise not seen fit to weigh in on a project's mitigation commitments (and costs).
- *Elimination of bonding requirements for transmission and distribution projects.* BLM should eliminate bonding requirements for transmission and distribution projects, either through regulatory changes, changes to regional instruction memoranda, and/or guidance. Transmission and distribution projects are rarely, if ever, removed from the interconnected power grid and should not be treated like projects with a set lifespan, after which decommissioning and the need for site restoration/reclamation is needed. Even in the highly rare instances where an electric utility might become insolvent, the assets would be taken over by other entities, which would continue to operate the lines on the landscape. There is a fundamental difference between shorter-lived projects where bonding may be appropriate, and the long-term and enduring nature of electrical infrastructure where it is inappropriate. The imposition of bonding for transmission and distribution lines merely adds to operational costs, without a commensurate benefit, with the added costs passed on to customers. Any future changes to rental rates and bonding requirements should be made only by regulation or should otherwise be limited to provide long-term predictability necessary for renewable energy projects.
- *Reconsideration of bonding requirements relative to decommissioning.* Relative to decommissioning of renewable energy projects, BLM should: (a) include a resale and salvage value discount in its reclamation cost estimate; and (b) require bond payment later than under existing BLM structure (e.g., ten years before the end of the project term if financing, PPA, and insurance demonstrate the project equity would more than cover the cost of decommissioning for the first 20 years of a project's life).
- *Facilitation of development on variance lands and repeal of application prioritization rule.* Variance lands make up a large percentage of public lands potentially available for renewable energy development, transmission, and distribution. BLM should repeal its rule

regarding prioritization of applications, which gives applications for development on variance lands unequal treatment. This has hindered rather than fostered renewable energy development. BLM has relied on that rule to indefinitely delay the processing of project applications based upon a screening assessment that resource conflicts may exist and could require BLM staff resources, without consideration of the feasibility of avoiding, minimizing or mitigation for potential conflicts. While justified as a way to prioritize limited agency resources, in practice this rule has allowed BLM decisions regarding staffing in field offices to control the pace of renewable energy development.

- *Better coordination with Federal Energy Regulatory Commission.* BLM should examine whether it can better coordinate with the Federal Energy Regulatory Commission (“FERC”) to support more efficient interconnection and transmission buildout on federal lands. Currently, interconnection and transmission buildout timelines are extraordinarily long, often includes upgrade cost requirements that are not tied to project impacts and are so expensive that it can call into question the financial feasibility of projects. BLM and FERC should coordinate with one another so that interconnection issues do not unnecessarily delay or otherwise act as a barrier to the deployment of renewable energy assets and transmission and distribution lines, needed to deliver the electricity generated by the facilities across federal lands. While this suggestion is challenging to implement, the lack of economic points of interconnection is the most significant impediment to renewable energy development on BLM lands. If the BLM and FERC—along with local utilities—were to identify routes for transmission lines and substations for interconnection, the stimulated developer interest could increase by an order of magnitude or more for renewable energy development on federal lands. There are hundreds of thousands of acres of BLM lands that have been reviewed and identified as virtually free from protected resources, but which are too far from points of interconnection to pursue.
- *Instructional Memorandum issuance.* While agency guidance like instructional memoranda (“IM”) have value in providing direction to agency staff and the regulated community alike; in some instances, IMs have negatively impacted the development and operation of renewable energy on public lands. These IMs were promulgated without any ability for the regulated community to provide formal input. To avoid such guidance adding regulatory burdens or otherwise becoming barriers to deployment of renewables and transmission and distribution assets on BLM lands, any future IMs having the potential to create new regulatory-type burdens on project proponents or otherwise having a binding effect on the regulated community should, in the interest of regulatory transparency, and in accordance with the Administrative Procedure Act, go through formal notice and comment prior to finalization.
- *Continuation of vegetative management plan review for transmission lines.* EWAC appreciates that BLM generally has been timely and helpful in its review and approval of vegetative management plans along transmission lines. We encourage the agency to continue its practices relative to the same, and to consider how the efficiency of that process could be translated to other BLM approvals.
- *Wind energy development compatibility.* If we are going to be successful as a nation in meeting the national climate goals set forth by the Biden administration, public lands are going to need to play an important role in the deployment of renewable energy, and with relatively small physical land disturbance footprints, it must be recognized that wind energy is compatible with habitat conservation and the America the Beautiful Initiative.

Conclusion

EWAC appreciates BLM's consideration of these comments and would welcome the opportunity to meet with BLM staff and others within the Administration to provide a more detailed overview of the planning and permitting process for renewable energy and transmission and distribution infrastructure in order to inform any ultimate regulations.

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