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Energy and Wildlife Action Coalition

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Comments regarding:

Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development

Submitted by:

Energy and Wildlife Action Coalition

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701 Pennsylvania Avenue, N.W. | Washington, D.C. 20004-2696 | 202-508-5093 | www.energyandwildlife.org

The Energy and Wildlife Action Coalition ("EWAC")[1] submits these comments in response to the Bureau of Land Management's ("BLM") Notice of Intent ["NOI"] to Prepare a Programmatic Environmental Impact Statement to Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development ("Solar PEIS").[2] Through this new Solar PEIS, BLM is planning to evaluate alternatives for updating BLM's Western Solar Plan, adopted in October 2012. EWAC provides these comments regarding the appropriate scope of the Solar PEIS, based upon the knowledge and experience of its membership.

Expanding renewable energy production from public lands is a necessary component of the national effort to increase our reliance on electricity that is generated from renewable sources. As noted in the NOI, the Energy Act of 2020 directs the Secretary of the Interior to "seek to issue permits that, in total, authorize production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws."[3] BLM also is responding to Executive Order 14008, titled "Tackling the Climate Crisis at Home and Abroad,"[4] which ordered the Secretary to "review siting and permitting processes on public lands" with a goal of increasing "renewable energy production on those lands . . . while ensuring robust protection for our lands, waters, and biodiversity and creating good jobs." Solar energy production is an essential element in fighting the effects of climate change.

The Western Solar Plan, now ten years old, was limited to six western states. Its stated objectives were to facilitate utility-scale solar energy development on BLM-administered lands while minimizing negative environmental and social impacts, provide a standardized authorization process, and meet projected demand for solar energy development on public lands.[5]

Elements of the Western Solar Plan were designed to encourage development in Solar Energy Zones (SEZs), with 19 SEZs designated across the six states. However, the SEZs total only about 285,000 acres, with half of that acreage in one area (Riverside East in California). Their small total area (about 0.3% of the land covered by the Western Solar Plan) and other factors, such

[1] EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, 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 reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

[2] 87 Fed. Reg. 75284 (Dec. 8, 2022).

[3] Energy Act of 2020, Sec. 3104.

[4] E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (Feb. 1, 2021).

[5] Solar PEIS Record of Decision (ROD) at 5-6 (Oct. 2012).

as access to transmission for some areas, have limited the utility of the SEZs.[6] The Western Solar Plan also allows solar energy development on an additional 19 million acres (about 20% of the covered lands), but requires completion of a "variance" process for projects within "variance areas." Projects that clear initial prioritization and screening are evaluated under BLM's variance procedures (only high or medium priority projects are allowed to advance).[7] Applicants must complete a Variance Factors Analysis Report that addresses 24 factors, including specific criteria for potential impacts on desert tortoise and greater sage-grouse habitat.[8] BLM estimates that evaluation of variance applications takes about six months and BLM requires applicants to enter into a cost recovery agreement. Not surprisingly, given the relatively small size of the SEZs, the majority of solar developments that BLM has authorized during the last ten years have been in variance areas, not SEZs.

The Western Solar Plan also excluded utility-scale solar energy projects from a much larger area of BLM-administered lands: 79 million acres across the six states. The excluded areas were designated based upon 32 exclusion criteria.[9] Appropriately paring down exclusion criteria will be critical to Plan success, whether BLM continues a zone-based approach or adopts an alternate approach (e.g., only excluding areas that are unusually environmentally sensitive and allowing the NEPA process to evaluate suitability of individual projects on the remaining land areas).

The NOI indicates that BLM will consider removing two technology-based exclusion criteria: Criterion 1, which excludes lands with slopes greater than 5 percent; and Criterion 2, which excludes lands with solar insolation levels less than 6.5 kWh/m^2/day.[10] The NOI indicates that at least one of the alternatives considered in the Solar PEIS would remove these technology-based criteria, which reflected BLM's understanding of the capabilities of solar energy technology in 2012. EWAC supports removing Criteria 1 and 2 from BLM's Western Solar Plan. These two existing criteria do not reflect the current state of solar energy technology, nor is BLM likely to be able to keep up as the technology continues to advance. Should BLM choose to consider modifying rather than removing these criteria, EWAC is prepared to provide comments regarding what is currently technologically feasible in solar energy development. However, entirely removing the criteria would be a better choice and represents EWAC's proposed approach/recommendation. In general, BLM must anticipate that any such technology-based criteria will rapidly become outdated, at which point they unnecessarily limit the range of sites available for solar energy development, and therefore, should be avoided in any future PEIS or resource management plan updates.

In preparing the Solar PEIS, BLM also should reconsider its other, resource-based exclusion criteria. Flatly excluding areas based upon broad criteria unnecessarily eliminates many promising sites from consideration and is more stringent than BLM's criteria for prioritizing solar

[6] Development within SEZs also has experienced a number of constraints, which EWAC understands will be addressed in other industry comments. In sum, variance areas often are simply better locations for solar energy projects than any SEZs that may be available in the same region.
[7] BLM IM 2023-015, Variance Process for Solar Energy Applications (Dec. 2, 2022).
[8] BLM IM 2023-15, Attachment 3 – Variance Factors to be Considered Checklist For Variance Factors Analysis Report.
[9] ROD Table A-2 – Exclusions under BLM's Solar Energy Program.
[10] 87 Fed. Reg. at 75285-86.

and wind applications set out in 43 C.F.R. §2804.35. For example, Criterion 4 excludes all critical habitat designated and proposed under the Endangered Species Act ("ESA"). However, section 7 of the ESA provides a clear and well-established process for BLM to consult with the U.S. Fish and Wildlife Service (USFWS) as to whether a proposed project would destroy or adversely modify critical habitat. Unlike the Western Solar Plan, BLM's application priority rule assigns a low processing priority to solar and wind applications only if the project's impacts on critical habitat may exceed the approval threshold set by ESA section 7 (i.e., result in destruction or adverse modification of critical habitat).[11] Thus, the application priority rule contemplates project-specific consideration, rather than the broader exclusion of all critical habitat under the Western Solar Plan. BLM should rely on the reasoned outcome of that consultation process, rather than adopt a blanket exclusion of all areas that could trigger an ESA consultation.

In the past, BLM has pointed to the greater agency staff resources needed to evaluate sites that have potential resource conflicts as justification for this and other exclusion criteria or variance prioritization factors. The actual burden on BLM staff may not be that great where, for example, U.S. Fish and Wildlife Service is responsible for preparing an ESA biological opinion. Regardless, blanket exclusion criteria are not consistent with the scale of new energy development needed to achieve our national renewable energy objectives. BLM should form a reasoned decision based upon site-specific data in order to allow applications for sites that may have some resource conflicts, rather than completely foreclosing any consideration of sites based simply upon the potential existence of a resource conflict. To meet its multiple use mandate while advancing national renewable energy objectives, BLM must be significantly more selective with its exclusion criteria. Nor should the agency rely on its staffing levels as justification for rejecting otherwise-worthy projects.

Another example of an overly broad criterion is the exclusion for all greater sage-grouse habitat (Criterion 8). This blanket exclusion, currently applicable in three states, would be particularly inappropriate should BLM expand the Western Solar Plan to the western states that have large areas of greater sage-grouse habitat. Rather than foreclose any consideration of sites that may contain some areas of sage-grouse habitat, BLM should be prepared to evaluate potential impacts at the project level. BLM's variance factors already include specific criteria for avoidance of sage-grouse leks and priority habitat, and for compensatory mitigation for impacts to sage-grouse habitat.

Several of the Western Solar Program's other broad exclusion criteria should similarly be reconsidered, and either narrowed or converted to considerations for the review of individual projects. Among these are the criteria that exclude areas where BLM resource management plans would have to be amended to accommodate a project. Over the last fifteen years, BLM has approved rights-of-way ("ROW") for renewable energy projects, as well as transmission line ROWs, that included resource management plan amendments. Particularly common have been localized changes to visual resource management ("VRM") classifications, but changes to ROW exclusion and avoidance areas and other RMP conditions also have occurred. BLM should consider removing or narrowing its blanket exclusion Criteria 10 (ROW exclusion areas), 11

[11] 43 C.F.R. §2804.35(c)(3).

(ROW avoidance areas), and 19 (VRM Class I or II). These criteria already are accounted for in BLM's application priority rule.[12]

BLM should likewise remove or narrow the criteria that simply exclude lands with features that are subject to protection under the National Historic Preservation Act (NHPA) (Criteria 23 and 24) without consideration of the effects on those resources. Note that under BLM's rule for prioritizing renewable energy ROW applications, a project that may adversely affect NHPA-listed properties or resources is still assigned a medium priority.[13] The NHPA provides a structured process for evaluation of any potential impacts, including consultation with affected Tribes and states, and in many cases for resolution of those impacts.

Since BLM will be using the NEPA process to re-evaluate the elements of its Western Solar Plan, it should take this opportunity to be much more selective with its exclusion criteria and address more potential resource conflicts through variance criteria (if the variance process is retained) or reliance on the requirements of other laws designed to protect those resources. BLM should not automatically foreclose sites based solely on the possibility of tension between resource values. Resolution of that tension is the essence of multiple use management, which is the core of BLM's mission. Existing laws and procedures provide mechanisms for evaluating the potential resource conflicts and making a reasoned decision as to whether a project should proceed, and if so, as to appropriate conditions, modifications, or mitigation.

Potential Expansion to Additional States. BLM has requested comment on whether it should expand the Western Solar Plan to include BLM-administered lands in Idaho, Montana, Oregon, Washington, and Wyoming. Any expansion should only occur in conjunction with a re-evaluation of exclusion criteria. It would not advance our nation's renewable energy objectives to preempt consideration of the siting of solar energy projects and related infrastructure on large swaths of additional western states based only on high level screening criteria. So, unless and until BLM revisits these restrictive criteria, it should not expand the Western Solar Plan to include additional public lands in western states.

Potential Exclusion Criteria for Wind Energy Projects. The NOI invites public comment on whether BLM should establish similar exclusion criteria for wind energy development.[14] The impacts of utility-scale wind projects on the landscape are inherently different from those of utility-scale solar projects. As a result, the exclusion criteria currently identified in the Western Solar Plan cannot reasonably be applied to wind energy project siting. The last fifteen years of wind project siting on public lands also has demonstrated that potential resource conflicts identified at the screening stage could be avoided or minimized through project design and other measures. Accordingly, it is questionable whether BLM could develop a workable set of high-level screening criteria for excluding areas from consideration of wind energy development without foreclosing development from areas where potential resource conflicts can readily be resolved. Therefore, it is EWAC's strong position that BLM should not develop exclusion criteria for wind energy development.

[12] 43 C.F.R. §2804.35(c)(5) [exclusion areas]; (b)(3) [avoidance areas]; (c)(4) [VRM Class I or Class II].
[13] 43 C.F.R. §2804.35(b)(3).
[14] 87 Fed. Reg. at 75286.

Conclusion

While significant renewable energy development has occurred on public lands administered by the BLM over the last two decades, Congress has directed the Department of the Interior to increase the pace.[15] The President also has directed Interior to review siting and permitting processes with a goal of increasing renewable energy production.[16] BLM is appropriately reviewing the Western Solar Plan to advance these objectives.

As part of this review, BLM should significantly narrow its exclusion criteria. The ESA, NHPA, and other federal laws provide meaningful protection for the resources that the existing exclusion criteria are meant to serve. These laws also provide mechanisms for more fine-grained evaluation of the tension between different potential uses of the public lands and provide pathways for resolving those potential conflicts. The Federal Land Policy Management Act itself provides BLM with similar tools to use in areas where those other laws do not apply. BLM can provide incentives for renewable energy development in specific areas that have the lowest potential for resource conflicts without simultaneously closing out most of the land it administers in the west based only on high-level screening criteria. The BLM should remain open to using the tools provided by existing law to resolve the potential resource conflicts and advance its multiple use mandate.

Please feel free to contact the following EWAC representatives:

Jennifer A. McIvor, EWAC Policy Chair, jennifer.mcivor@brkenergy.com, 712-352-5434
John M. Anderson, EWAC Executive Director, janderson@energyandwildlife.org, 202-508-5093
Brooke Marcus, Nossaman LLP, bmarcus@nossaman.com, 512-813-7941

[15] *See* Energy Act of 2020, Sec. 3104.
[16] E.O. 14008.

BLM National NEPA Register

Comment Submission

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Comment

Comments submitted on behalf of Energy and Wildlife Action Coalition

Upload File(s)

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EWAC Comments on BLM Solar PEIS Scoping.pdf

Submitter(s)

Submitter 1

Name: Not Provided
Address: Not Provided
Group or Organization Name: Energy and Wildlife Action Coalition

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