



DESERT TORTOISE COUNCIL

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Via email and Federal eRulemaking Portal:

<https://www.regulations.gov> "RIN 1004-AE78"

August 14, 2023

Mr. Jayme Lopez, Interagency Coordination Liaison
U.S. Department of the Interior, Director (630),
Bureau of Land Management, 1849 C St. NW, Room 5646,
Washington, DC 20240
Attention: 1004-AE78.

RE: BLM Proposed Rule: Rights-of-Way, Leasing, and Operations for Renewable Energy
(Agency/Docket Number: BLM_HQ_FRN_MO#4500171739; RIN: 1004-AE78)

Dear Mr. Lopez:

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that the Bureau of Land Management (BLM) email to us future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the BLM Proposed Rule: Rights-of-Way, Leasing, and Operations for Renewable Energy, dated June 16, 2023 and found at: <https://www.federalregister.gov/documents/2023/06/16/2023-12178/rights-of-way-leasing-and-operations-for-renewable-energy>. We have thoroughly reviewed the proposed rule and provide the following comments.

General Comments

We consider the expanses of public lands, managed by the BLM for present and future generations, unique in terms of making lands available for broad public uses and in allowing for a wide range of conservation efforts across broad landscapes. These lands provide ecological benefits including preservation of diverse plant and animal communities, sustainable wildlife habitats and populations, clean air and water supplies, and the benefits of carbon sequestration associated with expanses of vegetation and other land covers. These large expanses of land provide connectivity between wildlife populations, often critical for species survival, as well as an ability for many wildlife populations to effectively migrate throughout their ranges. In addition, they provide connectivity between current ranges of plant and animal species and their future ranges, as they move in response to climate change.

These lands also provide for very diverse recreational opportunities as well as for on-the-ground educational opportunities connected to the natural history and cultural heritage of the west. Intact landscapes are critically important to Native American peoples with deep-seated spiritual connections to the land. Expanses of public lands also define and provide branding for many rural communities throughout the west.

Once considered the lands that nobody wanted, these public lands have become highly valued in providing broad economic benefits and a wide range of land uses. Since the passage of the Federal Land Policy and Management Act in 1976 (FLPMA), the land management focus has been for the retention of public lands as a highly valued resource as well as ensuring that commercial uses of the land provide a realistic, fair market, monetary return commensurate with land value.

For example, public lands are critical to the survival of the federally and California state threatened Mojave desert tortoise (*Gopherus agassizii*), which is a primary focus of the Council. The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), as it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), population size fewer than 50 individuals, other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California.

Specific Comments:

The Council has determined that this proposed rule will have broad implications to wildlife habitats and species, including the Mojave desert tortoise. Please consider the following specific comments.

- 1. Proposed Rule:** As stated in the Introduction and explained in detail throughout the proposed rule, the BLM is proposing changes to acreage rents and capacity fees for solar and wind energy right-of-way (ROW) authorizations in order to "promote the greatest use

of wind and solar energy resources,” maximize “commercial interest” in lease sales and ROW grants and avoid “economic hardship” to ROW holders. By implementing these proposed changes, the BLM would promote solar and wind energy use on public lands and underpin an increase to the share of clean energy that is part of the United States' domestic power infrastructure.

Comment: In general, these incentives serve to focus renewable energy development on public lands while de-incentivizing consideration of often more appropriate alternative development areas such as private lands, degraded habitats often referred to as “brown fields,” or roof-top solar installation. This will result in a proliferation of new land disturbances on public lands, with all its associated cumulative impacts, while consideration of previously disturbed and developed areas on non-public lands would be much more appropriate. It may also be less costly to mitigate the adverse impacts to natural and cultural resources on private lands including the release of carbon sequestered in the soil and vegetation removed during the construction of the renewable energy developments and the loss of carbon sequestration in the vegetation and soil for the multi-decades of operation of the renewable energy developments.

Public lands are also more attractive because they offer project proponents contiguous and undeveloped lands under single ownership while avoiding the often-substantial challenges of consolidating privately held lands into a site suitable for project development. No data is presented in the rationale for these new BLM development incentives that would justify incentivizing use of very large expanses of contiguous and undeveloped public lands when previously disturbed and utilized private lands are available and are located where the demand for electricity is greatest.

Under the current BLM Wind and Solar Rule (2016), the existing acreage rents and capacity fees for wind and solar authorizations have created a rapid increase in proposed projects on public lands. This increase has resulted in a significant increase in cumulative impacts on public lands and resources, especially when combined with other growth and development. Areas such as the Interstate Highway 10 corridor between Desert Center, California and Phoenix, Arizona, as well as the Las Vegas/Southern Nevada Region are experiencing a rapid increase in renewable energy project development on our public lands. Other BLM state offices and areas are experiencing similar increases in solar and wind project proposals on public lands as indicated by BLM state-wide lists of authorized and proposed renewable energy projects.

Given this high level of interest in renewable energy development on public lands under the existing regulations, the Council questions the need for substantial increases in development incentives under these proposed regulations. The Council is also very concerned that these additional incentives will create an unmanageable increase in project proposals resulting in long-term degradation of high value public lands as projects are approved and the public’s subsidizing the profits of energy companies at the expense of the severe, long-term, and cumulative impacts to natural and cultural resources with little or no effective mitigation required. These incentives appear to contradict the Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” that includes protecting 30 percent of the country’s lands and ocean waters by 2030, as part of an effort to slow the wildlife extinction crisis. Incentivizing energy development on public lands over other locations that may already have been developed is not in keeping with the intent of this Executive Order.

In addition, solar, and to an extent wind projects represent a total conversion of public lands from undeveloped and available public lands to becoming unavailable with low resource value. The Council believes that the extent of this land conversion to commercial use is inconsistent with the purposes and vision as set forth in FLPMA involving the management and stewardship of public lands. The addition of these incentives designed to substantially increase wind and solar development on public lands only exacerbates this on-going loss of public lands entrusted to the BLM.

2. **Proposed Rule:** These proposed rent and capacity reductions should particularly benefit smaller scale projects or projects that are on the margins of being economically profitable, increasing interest among renewable energy developers.

Comment: The Council is very concerned that enacting these incentives to authorize projects that are on the “margins of being economically profitable” creates the real potential for project failures leaving public lands irreparably damaged, with high restoration liabilities and only long-term restoration potentials that may never be achieved. Implementing such a set of development incentives would be inconsistent with exiting BLM land management and stewardship standards.

3. **Proposed Rule:** The BLM proposes reductions to capacity fees tied to a holder's use of American made parts and materials consistent with direction in the Energy Act of 2020. The BLM anticipates that the proposed Buy American capacity fee reductions would increase economic certainty for renewable energy projects on BLM-managed public lands. By incentivizing the use of American made parts and materials in exchange for a reduced capacity fee, the BLM expects to reduce costs for developers, which in turn will stimulate increased demand for domestic production of renewable energy parts and materials. The BLM believes that incentivizing the use of parts and materials that qualify for the Buy American reduction will increase the responsible deployment of renewable energy and will increase commercial interest in the use of public lands, promoting the development of solar and wind energy resources on public lands.

This reduction would be based on a discount based on the amount that a project utilizes the Buy American program. For example, 55 percent or more qualifying for Buy American preference equals a 20 percent reduction in capacity fees. In addition, other incentives are being considered such as a reduction in the capacity fee of up to 20 percent based on the use of union labor during project construction.

Comment: These forms of rental and land use discounts are completely inappropriate for determining fair market rents and fees for public land uses, especially given the value that the public attaches to public lands and resources. These artificial incentives are a reversal of the long-standing improvements by the BLM to ensure fair market value for the use of public lands. The Council requests that any use of discounts be based on actions taken to protect resources and off-set impacts of the functions of these resources, including their part in sequestering carbon (e.g., Schmitz et al. 2023, Yap et al. 2023, etc.).

We appreciate this opportunity to provide comments on this proposed rulemaking and trust that changes will be made to the final rule to allow for better protection of public lands and consideration of non-public lands for renewable energy development. The level of public interest in this rulemaking process is indicative of the importance of this effort. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BLM that may affect species of desert tortoises, and that any subsequent processes furthering these proposed regulations is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council

Cc: Tracey Stone-Manning, Director, Bureau of Land Management, tmanning@blm.gov
Nada Culver, Deputy Director of Policy and Programs, Bureau of Land Management, nculver@blm.gov

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