Updates
December 20, 2022
BLM To Accelerate Solar Energy Development on Public Lands in the West

Secretary of the Interior Deb Haaland announced on December 5, 2022, that the U.S. Bureau of Land Management (BLM) will develop an updated Solar Programmatic Environmental Impact Statement (PEIS) to help guide solar energy development on public lands throughout the West. The Biden-Harris administration has advocated for clean energy development, and the preparation of a new solar PEIS aligns with the goals of both Executive Order 14008, which directed the Secretary to streamline solar permitting on public lands, and the Energy Act of 2020, which directed DOI 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." The BLM is currently processing 65 utility-scale onshore clean energy projects across the West, which have the combined potential to add over 31,000 megawatts (MW) of renewable energy to the western electric grid.

The proposed updated PEIS will replace the existing Western Solar Plan (Solar Plan), developed in 2012. The Solar Plan covered six western states—Arizona, California, Colorado, Nevada, New Mexico, and Utah—and provided a comprehensive solar energy program applicable to all utility-scale (20 MW or greater) solar energy development on BLM-administered lands. The Solar Plan also categorized land according to its suitability for solar infrastructure by establishing solar energy zones (SEZ),[1] which were areas of land prioritized for development; areas of land that should be excluded from development; and variance areas, or areas of land that were neither excluded nor prioritized. BLM designated many SEZs based on solar generation technologies that were available in 2012, many of which required substantially flat areas with high levels of direct sunlight.

According to the Notice of Intent (NOI), to prepare the new PEIS, technology advances, new resource information, and shifts in energy market economics necessitated an updated assessment for renewable energy planning. In replacing the Solar Plan, the new and updated PEIS would, among other things, expand the study area to 11 western states, change exclusion criteria and land use allocations, and potentially create a new definition to expand the meaning of utility-scale development. Public comments on the proposal to prepare the updated PEIS are due on February 8, 2023.

Possible Changes

Proposed changes to the Solar Plan include updates in several key areas:

Potential Expansion of Study Area

The BLM intends to expand the scope of the PEIS study area from six states to eleven—now including Idaho, Montana, Nevada, Oregon, and Washington. A map of the existing and proposed study area is below.

The BLM is seeking comment on whether lands covered by the Desert Renewable Energy Conservation Plan (DRECP) in Southern California and the Restoration Design Energy Project (RDEP) in Arizona should be included in the study area. The DRECP, issued in 2016, is a landscape-scale planning effort covering 22.5 million acres in Southern California and was developed to advance conservation goals, meet Endangered Species Act (ESA) and Federal Land Policy and Management Act (FLPMA) requirements, and facilitate the timely and streamlined permitting of renewable energy projects. The DRECP identified Development Focus Areas (DFAs) [2], Variance Process Lands, Conservation Areas, Recreation Areas, and unallocated lands (i.e., lands that did not have a specific land allocation or designation). The DRECP also identified a specific set of Conservation and Management Actions designed to achieve the goals and objectives for activities within the various land use allocations. The BLM may decide to follow a competitive process and issue a lease for solar development within DRECP-designated DFAs.[3] Since the DRECP was established in 2016, the BLM has authorized three solar projects within its boundaries with the combined potential to generate up to 900 MW of renewable energy.

The RDEP was a BLM initiative to identify lands across the state of Arizona that may be suitable for renewable energy development. The RDEP identified 192,100 acres of Renewable Energy Development Areas that included disturbed sites, such as existing landfills, agricultural lands, abandoned mine lands, and a 2,500-acre SEZ. Currently, the BLM is in the process of reviewing and authorizing multiple solar projects in Arizona, including the Jove solar project (600 MW), the Pinyon solar project (250 MW), and the Elisabeth solar project (300 MW).

Changes to Exclusion Criteria

The Solar Plan required all utility-scale solar projects to conform with exclusions in 32 categories. But due to changes in both the proposed study area as well as changes in technology, some of the exclusions no longer make sense. Therefore, the BLM is considering modifying or eliminating these categories based on new information and advances in technology. The PEIS will evaluate eliminating exclusions that were required due to

technology constraints in 2012—for example, the exclusion that limited development in relatively flat areas. BLM is also considering changes to the 30 resource-based exclusions based on states that are added to the study area and is seeking public comment on whether it should establish similar exclusion criteria for wind energy development.

Changes in Land Use Allocations

The BLM will evaluate whether it should adjust the land use allocations of SEZs, variance areas, and exclusion areas, as well as updates to the process for considering proposed projects in each area.

Updates to Variance Application Procedures

Currently, applications for solar energy development within a variance area are preliminarily assessed for anticipated conflicts with high-value resources before entering the National Environmental Policy Act (NEPA) process. The BLM is considering modifications to the variance process to focus the review and improve efficiency.

The current variance process has been in place for over a decade and was intended to support the preliminary screening of applications to analyze the technical and financial feasibility of proposed projects. The variance process considers potential conflicts with key resources and other existing uses of public lands and helps ensure that up-front coordination with governmental entities (including state, local, and tribal entities) has commenced prior to the beginning of the NEPA process.

In its update to the Solar Plan, the BLM will consider modernizing the existing variance process. It is possible that any changes to the process would mirror those already announced this year when BLM issued its Instruction Memoranda (IM) *Initial Screening and Prioritization for Solar and Wind Energy Applications and Nominations/Expressions of Interests* (IM 2022-027) and *Variance Process for Solar Energy Applications* (IM 2023-015), which helped to clarify and streamline the variance process.

The first Instruction Memorandum, IM 2022-027, was intended to accelerate decision-making for solar and wind energy development projects that had the greatest technical and financial feasibility and least anticipated natural and cultural resource conflicts to provide consistency and reduce workloads for BLM staff. The IM outlines procedures applicable to initial screening for right-of-way (ROW) lease and grant applications and details how BLM officers are to prioritize the processing of each application.

The second Instruction Memorandum, IM 2023-015, identifies requirements for assessing applications for solar development on public lands allocated as variance areas under the Solar Plan. This IM clarifies that the procedures should apply only once an application has gone through the initial screening procedures in IM 2022-027. Once the initial screening has been completed, applications that are ranked either as high- or medium-priority would be eligible to move into the variance process. IM 2023-015 states that variance process should take approximately six months. The process includes reviewing any reasonably foreseeable effects of the project and consulting with federal, state, tribal, and local governments. The BLM may also consider whether the proposed project is likely to receive the required permits and authorizations of all other relevant jurisdictions to implement the project. If the BLM determines that the application is appropriate for continued processing, the application will be processed in compliance with NEPA and all other applicable laws, regulations, and policies at the applicant's expense.

While the incorporation of these two IMs would not change current BLM practice, their incorporation into the Solar PEIS does give stakeholders the opportunity to comment on existing processes and offer suggestions for further improvements.

Modification of Utility-Scale Definition

The Solar Plan is currently limited to "utility-scale" solar energy development, which is any project capable of generating 20 or more MW of electricity that is delivered to the electricity transmission grid. The BLM is considering expanding the scope of the "utility-scale" to encompass smaller development projects that could accelerate approvals of solar development in the West.

Incentivizing Development in SEZs

To date, the majority of authorized solar projects on public lands have occurred in variance areas, not SEZs. The BLM has asked for public comment on whether additional incentives may be available to expedite permitting and facilitate mitigation. BLM is also interested in incentivizing development in SEZs while simultaneously addressing concerns regarding global supply chain disruptions by encouraging the use of American-made solar system components and union labor. This aligns with the Biden-Harris administration's goal of advancing the American clean energy economy, as well as with provisions in the recently passed Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act or IIJA*)* and the Inflation Reduction Act (IRA), which offer enhanced tax incentives to projects that use domestically produced solar equipment and union labor.

Summary of Impacts

Ultimately, the updated PEIS is intended to address any effects to natural and cultural resources, other resource uses, and social and economic conditions that might arise from renewable energy development on public lands. The BLM will also examine the potential for improved conservation outcomes in high-resource value areas allocated as exclusion areas or whether it could implement other practices for utility-scale solar development on BLM-administered public lands to support improved conservation outcomes.

Next Steps

BLM published the NOI in the *Federal Register* on Thursday, December 8, 2022, which kicks off the formal 60-day comment period, allowing interested stakeholders to submit written feedback or participate in virtual or in-person scoping meetings. Interested parties can submit comments and sign up to be notified of any public meetings. Following the scoping period, the BLM will develop a draft PEIS for public review and comment.

Endnotes

[1] The 2012 Solar PEIS designated 17 SEZs on about 285,000 acres of BLM-administered lands. The SEZs are identified as Designated Leasing Areas (DLAs) in BLM's leasing regulations (43 CFR 2800), which allow for the BLM to issue solar energy "leases" (43 C.F.R. § 2809) through a competitive process for utility-scale solar energy development within DLAs. Projects outside DLAs (and others designated as BLM deems would be in the public interest) are authorized with a ROW grant issued for up to 30 years. Note that the 2016 DRECP described below superseded the Solar PEIS designations.

[2] DFAs are locations that contain a combination of available renewable energy resources, including solar, wind, and geothermal areas that have been pre-screened for development potential and minimal resources conflicts, and therefore provide opportunities for streamlined development

[3] *See* 40 C.F.R. § 2802.10(a).

Authors

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