



February 28, 2023

Mr. Jeremy Bluma, Acting Division Chief
National Renewable Energy Coordination Office (NRECO)
Bureau of Land Management
1849 C Street NW
Washington, DC 20006

Re: 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; Agency/Docket No. LLHQ330000.L1340000. PQ0000.234; Document Number 2022-26659.

Dear Acting Chief Jeremy Bluma:

Thank you for considering The Permitting Institute's ("TPI") comments on the Bureau of Land Management's (BLM) proposed *Programmatic Environmental Impact Statement to Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development* as described in Federal Register Document # 2022-26659, published on December 8, 2022.

TPI aims to ensure improved and faster permitting and protection of the United States' resources. TPI strongly supports agency efforts to "increase renewable energy production on [public lands]...while ensuring robust protection for our land, waters, and biodiversity and creating good jobs." In this regard, TPI urges the BLM to carefully evaluate every aspect of the proposed action to determine its effectiveness in achieving both objectives. TPI submits these comments because its members help build, fund, and develop America's infrastructure and have a vested interest in any policy or rule that could have intended or unintended consequences on the permitting process and timeliness of environmental reviews and authorizations affecting infrastructure deployment.

Introduction:

TPI is a non-profit, non-partisan organization based in Washington D.C. that advocates for accelerated investment in rebuilding and modernizing America's infrastructure while preserving our environmental, biological, cultural, and historic resources. Simplifying the permitting process is critical to achieving these objectives. However, conflicting, overlapping, and frequently changing regulations often delay projects, increase costs, and result in abandonment. These costs are unsustainable and hinder infrastructure initiatives at all levels of government. TPI believes there is a better way to streamline the permitting process, protect our nation's resources, and build critical infrastructure for continued prosperity. TPI believes there is a better way to achieve these shared objectives and we appreciate the opportunity to provide comments on the BLM's proposed

Programmatic Environmental Impact Statement to Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development.

Background:

On December 8, 2022, the BLM announced its intention to initiate a Programmatic Environmental Impact Statement (PEIS) for renewable energy development in Western States and associated Resource Management Plan (RMP) amendments. The Notice of Intent outlines several objectives for updating the Bureau of Land Management's (BLM) solar energy planning in alignment with Executive Order 14008 and the Energy Act of 2020. These objectives include increasing renewable energy production on public lands while protecting biodiversity and creating jobs, seeking to issue permits for 25 gigawatts of electricity from wind, solar, and geothermal energy projects by 2025, and updating and expanding the Solar Energy Program to advance renewable energy and support conservation and climate priorities.

The notice highlights the BLM's stated goals to: focus BLM's utility-scale solar energy planning on resource management rather than technology-based criteria, expand the program to additional states, increase opportunities for responsible renewable energy development in priority and variance areas, and develop appropriate criteria to exclude high-value resource areas from renewable energy development. The PEIS will also consider and adjust policy or procedural elements of how the BLM plans for utility-scale solar energy development on BLM-administered lands where appropriate.

Comment Summary:

TPI specializes in assisting its members with navigating complicated planning, siting, and permitting issues and is therefore leveraging its experience to provide the following comments on the proposed PEIS to help the BLM assess the potential impacts of various proposed updates to the 2012 PEIS, particularly in light of formally identified timeframes for increased renewable energy development on public (BLM-managed lands).

The structure of the comment letter is based on the Bureau of Land Management's (BLM) stated objectives for updating and expanding the Solar Energy Program, including focusing on resource management, expanding the program to additional states, increasing opportunities for responsible renewable energy development, and developing appropriate criteria to exclude high-value resource areas. The letter includes a subsection focused on the time and level of effort involved, which varies depending on the scope of the action taken. Additionally, the letter includes a subsection that identifies potential complications and/or recommendations for implementation that may affect BLM's ability to successfully meet all its stated goals. These complications and recommendations address challenges in balancing renewable energy development with land conservation and protection of biodiversity, as well as the need to address concerns from stakeholders and local communities regarding the potential impacts of renewable energy projects on their surroundings. By addressing both the time and level of effort required and potential complications in implementation, the comment letter provides comprehensive and strategic input to support BLM's goals of increasing renewable energy production while ensuring environmental protection and economic benefits.

BLM Objective: Focus BLM's Utility-Scale Solar Energy Planning on Resource Management Rather Than Specifying Technology-Based Criteria for Solar Development on Public Lands

Summary:

The proposal suggests modifying or eliminating some exclusion categories outlined in the Western Solar Plan, which required utility-scale solar energy development projects to conform to its exclusions and associated land use plan amendments. The BLM excluded a broader set of categories for utility-scale solar energy development due to its large scale and single use of public lands. The proposal notes that exclusion criteria, such as excluding development in locations with slopes greater than 5 percent and insolation values below 6.5 kWh/m²/day, were based on technological constraints that may no longer apply due to technological advancements. Therefore, the proposal intends to remove these criteria from the exclusions to the Solar Energy Program in at least one proposed alternative. The proposal acknowledges the need to update exclusion categories based on new information and advances in technology.

Time and Level of Effort:

To achieve BLM's objectives of building renewable energy infrastructure while protecting resources in a timely manner, it's crucial to recognize advancing technology. It is important to consider the duration required to develop the original 2012 PEIS. It took 4 years from notice of the PEIS to the ROD, with an additional 2 years to work through implementation questions. This is a significant amount of time to wait to address obsolete technical exclusion criteria and move responsible renewable energy development forward.

TPI Recommendations:

TPI recommends a separate document to amend the 2012 PEIS, also referred to as the Western Solar Plan, by removing outdated technical exclusion criteria immediately. This will allow feasible solar project proposals to move forward where they are currently unable to do so in the very near term, rather than waiting for the full PEIS update process to be completed (4 years for the 2012 PEIS). This supplemental document can later be referenced or incorporated into the larger proposed PEIS update.

BLM Objective: Expand the Program to Additional States

Summary:

The Western Solar Plan, which was initially limited to six Western States, is in need of an updated assessment for renewable energy planning due to advancements in technology, updated resource information, and shifts in energy market economics. The BLM is considering expanding the study area to include 11 Western States, or portions thereof, in the programmatic EIS. However, the BLM is seeking feedback on the appropriate scope of the study area and may reduce the number of states included prior to developing the draft programmatic EIS.

Time and Level of Effort:

The 2012 PEIS for solar energy took four years to develop for the states that would be impacted by the modifications in BLM's proposed update. But just as many states new to the Western Solar Plan will now also be included in the proposed PEIS update. Of note, an additional two years were needed to work through major implementation questions for projects that had already begun project-specific reviews. With stakeholder engagement, state-specific considerations, and concurrence on the existing plan to be updated, not having been conducted for those states, the process of updating the PEIS could take longer. This longer development timeframe may slow down the certainty for developers proposing projects in the states covered by the 2012 PEIS, as BLM seeks to address new considerations for states not involved in those proposed projects.

TPI Recommendations:

While the development of the 2012 PEIS for the same number of states was a lengthy process that involved stakeholder engagement and state-specific considerations, it is important to recognize that the proposed PEIS update will include additional states that were not part of the original plan. To ensure that all stakeholders are heard and that the plan is tailored to the unique needs of each state, it may be prudent to divide the PEIS into two separate documents. The first document could focus on the states that participated in the drafting of the original PEIS, while the second document could take the time to consider the specific needs and concerns of the states that were not included in the previous plan. This approach would allow for a more expedient implementation of the plan for the states that participated in the drafting of the original PEIS while still ensuring that all states are given appropriate consideration.

BLM Objective: Increase Opportunities for Responsible Renewable Energy Development in Priority and Variance Areas and Consider and Adjust Policy or Procedural Elements of BLM Utility-Scale Solar Energy Development

Summary:

The Western Solar Plan has a variance process in place for utility-scale solar energy development in areas outside of Solar Energy Zones (SEZs) and exclusion areas. Prior to filing a Right-of-Way (ROW) application, applicants must schedule and participate in two preliminary meetings with the BLM and adhere to data collection and survey protocols prescribed by resource agencies. The BLM is considering modifications to the variance process to focus the review and improve efficiency, and at least one proposed alternative will include changes to the process. The BLM is also considering whether the purpose of the variance process is being met through other mechanisms and whether the process should be continued.

The Western Solar Plan also aims to implement policies and procedures that incentivize and facilitate utility-scale solar energy development in SEZs, and the BLM intends to propose additional incentives that would facilitate faster and easier permitting in SEZs, improve and facilitate appropriate mitigation, and encourage solar energy development on suitable lands adjacent to SEZs. The BLM is seeking feedback on what additional incentives would achieve these goals and how the current uncertainty and disruptions in global supply chains might affect the deployment of solar and wind energy development projects on public lands.

Potential Complications:

Many proposed projects in variance areas have been waiting for years to begin the BLM review process due to the implementation of a prioritization policy that assigns available agency resources to proposed projects based on the degree of potential impacts. However, many of these projects submitted their applications when “first come, first serve” was BLM’s process for determining processing order. Since implementing this prioritization policy, many projects have now been waiting for years, despite completing the pre-application process, paying the application fee, and conducting numerous desktop studies and surveys without being assigned staff to begin the project-specific review. The current prioritization policy is preventing viable proposed projects from undergoing review, which hinders BLM’s progress in achieving its goals. This policy’s continued implementation, and in fact expansion, is particularly puzzling since BLM has since received increased appropriations and additional resources to address prior resource constraints during the annual budget process, in addition to significant funding for BLM in the Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act of 2022 (IRA), and the creation of renewable energy coordination offices (RECOs) in the Energy Act of 2020. Past resource constraints no longer support the prioritization process, which appears to serve less as an actual prioritization process and more as a merit review that led to a de facto rejection, depriving project applicants from their right under due process to administrative legal review. BLM can still ensure responsible energy development through its existing authorities to outright reject a proposed project that the agency deems unacceptable.

To achieve the Administration's goal of increasing renewable energy on public lands, BLM should avoid creating delays or adverse impacts to projects that have already completed the pre-application process and paid the application fee by introducing new policies and requirements after the fact. This creates a regulatory system where applicants who have already invested significant resources into due diligence, stakeholder outreach, and engineering design may face changing policies that disrupt the permitting process and erode trust. Late policy changes can disrupt a well-coordinated and responsible permitting process.

TPI Recommendations:

TPI recommends BLM reinstate its National Project Manager program, known for its successes in delivering comprehensive and timely project reviews and resultant well-informed decision making by regulators for renewable energy projects. Alternatively, BLM and create the same program but within the RECO offices to achieve the same or similar results. This program was in high demand by renewable energy developers while it existed, and would help alleviate any localized resource constraints in project management expertise commensurate with the size, scale, complexity, or controversial nature of a proposed renewable energy project undergoing BLM review.

Should BLM determine reverting to the First Come, First Serve application process, now that Congress has provided BLM with a substantial increase in resources to meet the permitting workload, also causes issues with staffing assigned to too many projects not yet ready for a timely review process, TPI recommends BLM consider a similar approach to that taken by FERC for transmission planning, in moving away from First Come, First Serve to First Ready, First Serve. This will eliminate the significant delays in responsible, renewable energy

development currently observed under the existing “prioritization” process, which has not resulted in prioritization in practice, but in many viable projects not beginning the review process at all, and not benefitting from RECO assistance with any lingering, localized gaps in project management or subject matter expertise in relation to the workload at an individual office

In order to achieve the Administration’s stated goal for an immediate, significant increase in renewable energy on public lands, any unintended delays or adverse impacts to projects that have already submitted applications and paid the application fee should be mitigated with the inclusion of a grandfathering clause that allows the existing PEIS provisions to apply to projects already underway with the project applicant having the option to opt out of that grandfathering provision. Grandfathering was identified as an option in the DRECP signed in 2016 for California, and should be incorporated in the proposed PEIS update as well.

BLM Objective: Develop Appropriate Criteria to Exclude High-Value Resource Areas from Renewable Energy Development

Summary:

The Bureau of Land Management (BLM) is seeking public comment on potential modifications to the exclusion criteria for solar energy development on public lands, as well as the establishment of similar criteria for wind energy development. The BLM's Western Solar Plan currently excludes certain lands from utility-scale solar energy development based on various criteria, and identifies specific locations for prioritized development, while also allowing for responsible development in variance areas. The BLM intends to consider adjustments to these land use allocations, as well as potential updates to the process and procedures that apply in each area and is interested in public feedback on these provisions as part of a programmatic environmental impact statement.

The Western Solar Plan outlines the exclusion of certain lands from utility-scale solar energy development based on specific criteria, identified locations suited for utility-scale production of solar energy, and allowed for responsible development outside of exclusion areas through the variance process. The plan incentivizes and prioritizes solar energy development in Solar Energy Zones (SEZs) with high potential for solar energy generation and low potential for resource conflicts, and includes a collaborative process to identify additional SEZs. The BLM intends to consider adjustments to the land use allocations of SEZs, variance areas, and exclusion areas, as well as potential updates to the process and procedures.

Time and Level of Effort:

By incorporating flexibility and adaptive management plans in exclusion criteria and excluded lands, the proposed PEIS could avoid the need to imagine every possible scenario in the future based on limited information and science available today. This approach could save time in gaining consensus on the PEIS itself, as it allows for more efficient and effective decision-making in response to new information, scientific advancements, and emerging market considerations. By avoiding the need to modify hard and fast exclusion criteria and excluded lands for the future, the BLM can pursue the proposed action more expediently and achieve its stated goals of supporting conservation and timely, responsible critical infrastructure

development, sooner.

Potential Complications:

TPI strongly supports science-based policies and land use management approaches that balance both the conservation of natural and cultural resources with America's infrastructure needs. Resource-based exclusion criteria should be carefully evaluated with flexibility to reconsider upon new information, just as technical exclusion criteria can become obsolete with technological advancements. Innovative technologies and solutions should be considered to foster coexistence of renewable energy infrastructure with the natural world and propose options for net benefit to impacted resources.

In addition, it is important to consider real market constraints in land use allocations where renewable energy development is excluded, including proximity to existing or proposed transmission lines and substations, market analysis, regional transmission planning studies, and the potential for maximized energy generation per acre of disturbed area. The notable lack of project applications for solar energy zones identified in the 2012 PEIS underscores the importance of incorporating market considerations in the successful identification and implementation of exclusion criteria and excluded lands that align with the overall objectives of the BLM. The market constraints and proximity to existing or proposed transmission lines and substations should also be accounted for when identifying exclusion criteria and excluded lands.

TPI Recommendations:

TPI recommends BLM maintain flexibility and adopt an adaptive management approach, using the best available science, to expedite the PEIS update process, manage trade-offs in impacts and desired benefits, and achieve their stated goals. As demonstrated by the lack of renewable energy projects currently operating in the 2012 PEIS solar energy zones, real market constraints need to be factored into the evaluation of renewable energy development exclusions, including proximity to existing or proposed transmission lines and substations, market analysis, regional transmission planning studies, and the potential for maximized energy generation per acre of disturbed area should be included and considered, potentially as weighting factors when evaluating exclusions and project-specific proposals. This approach would allow for unique site-specific solutions that would result in overall net beneficial impacts, avoiding outdated exclusion criteria and excluded lands. The BLM can encourage renewable energy project development on BLM lands more effectively by making adjustments as new information (e.g., newer technologies, modeling methods, and ground-truthed data) emerges, leading to a more efficient and effective permitting process.

TPI recommends that exclusion criteria and excluded lands remain flexible and adaptive to reflect the best available science, including newer technologies, modeling methods, and ground-truthed data, and manage for trade-offs in impacts and desired benefits to allow for unique site-specific solutions that result in overall net beneficial impacts in an area that might otherwise prevent such thoughtful proposals from being pursued.

Conclusion:

TPI reiterates that it appreciates the opportunity to provide comments on the proposed PEIS update in keeping with the Administration’s commitment, as stated by Secretary Haaland as, “expanding clean energy development to address climate change, enhance America’s energy security and provide for good-paying union jobs... (and to ensure) a new analysis of the role public lands can play in furthering solar energy production will help ensure we keep the momentum going to build a clean energy future, lower costs for families and create robust conservation outcomes on the nation’s lands and waters.”¹

Sincerely,



Karen Hanley
Executive Vice President
The Permitting Institute
<https://www.permittinginstitute.org/>

¹ <https://www.doi.gov/pressreleases/secretary-haaland-announces-new-steps-accelerate-solar-energy-development-public-lands>