

August 15, 2023

Tracy Stone-Manning

Director

Bureau of Land Management

Submitted electronically

Agency/Docket Number: BLM\_HQ\_FRN\_MO#4500171739; RIN: 1004-AE78

**Taxpayers for Common Sense Comments to Bureau of Land Management on Rights-of-Way, Leasing, and Operations for Renewable Energy**

Dear Director Stone-Manning:

Taxpayers for Common Sense (TCS) appreciates the opportunity to provide comments to the Bureau of Land Management (BLM) on the proposed rule, “Rights-of-Way, Leasing, and Operations for Renewable Energy.” TCS is an independent, nonpartisan budget watchdog that has been working on behalf of the nation’s taxpayers since 1995. Over our nearly 30-year history, TCS has advocated for responsible natural resource management of federal lands and waters to ensure a fair return and reduce long-term taxpayer liabilities.

For years, TCS has been actively engaged in ensuring the responsible development of solar and wind energy projects on public lands overseen by the BLM. Our organization has focused on advocating for fair returns to taxpayers from resources extracted from federal lands and waters. The royalties and fees collected from natural resource development constitute a substantial non-tax income source for the federal government, and it is imperative that these revenues reflect a fair market value. TCS has consistently commended the BLM’s efforts to establish a competitive process for wind and solar energy development, a crucial step toward capturing fair market value for taxpayers. We have also been strong advocates for the implementation of fees based on megawatt capacity for wind and solar energy projects, as this mechanism ensures an equitable return for the American public.

In 2016, the BLM introduced the *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections (2016 Wind and Solar Leasing Rule)*, a pivotal initiative aimed at facilitating responsible solar and wind energy development on public lands.<sup>1</sup> This rule was designed to guarantee that American taxpayers receive a fair return from the utilization of these valuable resources. TCS has steadfastly supported this rule, which establishes a framework for competitive solar and wind energy development on federal lands and introduces megawatt capacity fees for these projects. We believe the Solar and Wind Energy Rule also aligns with the Department of the Interior’s comprehensive landscape-scale planning endeavors, such as the Western Solar Plan.<sup>2</sup> We believe these efforts can help streamline development in high-generation

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<sup>1</sup> Bureau of Land Management. “Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections.” The Federal Register, December 19, 2016. <https://www.federalregister.gov/documents/2016/12/19/2016-27551/competitive-processes-terms-and-conditions-for-leasing-public-lands-for-solar-and-wind-energy>.

<sup>2</sup> Bureau of Land Management, “Approved Resource Management Plan Amendments/Record of Decision (ROD) for Solar Energy Development in Six Southwestern States.” October 2012. [https://solareis.anl.gov/documents/docs/Solar\\_PEIS\\_ROD.pdf](https://solareis.anl.gov/documents/docs/Solar_PEIS_ROD.pdf)

potential areas while simultaneously safeguarding critical environmental, cultural, and recreational resources.

The proposed amendments to the BLM's existing right-of-way (ROW) regulations seek to expedite responsible solar and wind energy project development on public lands. This rule is underpinned by the Energy Act of 2020, which empowers the Secretary of the Interior to strategically reduce acreage rental rates and capacity fees to promote extensive wind and solar energy resource utilization.<sup>3</sup> The proposed changes encompass adjustments to acreage rents and capacity fees for solar and wind energy, as well as provisions that enhance the BLM's flexibility in processing applications for renewable energy development within designated leasing areas. The proposed rule endeavors to modernize the agency's criteria for prioritizing solar and wind applications.

TCS supports the overarching goal of the proposed rule – fostering renewable energy development while preserving environmental considerations and efficient land management. We recognize the pivotal role that clean energy projects on public lands play in advancing sustainable energy solutions and mitigating greenhouse gas emissions. As a watchdog of taxpayer funds, we advocate for a balance between incentivizing renewable energy development and ensuring that taxpayers receive a fair return on resources extracted from federal lands and waters.

Royalties and fees collected from natural resource development represent one of the largest non-tax income sources for the federal government,<sup>4</sup> and taxpayers have the right to fair market compensation. While TCS applauds the BLM's proposal to promote the use of wind and solar energy, it's also important that such efforts do not undermine taxpayers' interests, ensuring that taxpayers receive a fair return on resources extracted from federal lands and waters.

We offer the following comments on specific provisions of the proposed rule:

**Allowing Noncompetitive Leasing by Applications:** Recognizing that solar and wind energy developers have generally not submitted nominations or expressions of interest for lands within Designated Leasing Areas (DLAs), the rule would allow noncompetitive leasing inside DLAs. While this effort would reduce unnecessary bureaucratic hurdles, it could also lead to waste, fraud, and abuse.

The creation of a nomination and competitive process instead of an application process, established by the BLM's 2016 rule, was a critical step toward fulfilling the fair market value mandate set forth in the Federal Land Policy and Management Act (FLPMA).<sup>5</sup> Traditional energy programs, like oil and gas, use a competitive leasing process and recent legislation eliminated noncompetitive leasing.<sup>6</sup> Other renewable energy systems, such as geothermal and offshore wind and solar, also use a competitive leasing framework. Competitive offering appropriately shifts the risk burden from taxpayers onto the economic interests of those who stand to profit from access to the resource in question. FLPMA directs the BLM to receive fair market value for right-of-way authorizations on the public lands and opting to offer ROWs noncompetitively could prevent the BLM from doing so.

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<sup>3</sup> 43 U.S.C. § 3003

<sup>4</sup> U.S. Department of the Interior Office of Natural Resources Revenue, "About ONNR." <https://onnr.gov/about>

<sup>5</sup> The Federal Land Policy and Management Act, P.L. 94-759, states that the United States is to receive fair market value for the use of the public lands and resources unless otherwise provided by statute.

<sup>6</sup> The Inflation Reduction Act, P.L. 117-169, title V, §50262(e), eliminated noncompetitive leasing for oil and gas development on federal lands.

TCS recognizes the BLM's effort to streamline the application process to expedite wind and solar development on public lands, however, we encourage the BLM to clearly define the criteria for determining when a full auction is not required. This will prevent any potential misuse of this authority and guarantee that taxpayers continue to receive appropriate returns for the utilization of public lands.

**Adjusting Rental Rates and Capacity Fees:** We recognize the potential benefits of the BLM's efforts to incentivize renewable energy development by reducing acreage rents and capacity fees for wind and solar rights-of-way on public lands. However, we are concerned that the broad approach to these reductions may have revenue implications and fail to guarantee that taxpayers obtain a fair return for the utilization of our public lands. Considering this, we believe that responsible development within pre-screened DLAs should be prioritized. By focusing on DLAs and limiting reductions in acreage rents and capacity fees to projects inside these areas, greater incentives can be provided for responsible projects while maintaining a fair return for the public. Nevertheless, we urge the BLM to consider capping the total amount of reduction in acreage rents and capacity fees individual lease holders can claim.

It is important to recognize that reducing rental rates and capacity fees have revenue impacts and may fail to ensure that taxpayers receive a fair return for the use of our public lands. The BLM estimates that the proposed changes would reduce revenues taxpayers can receive from operators of solar and wind installations by \$414 million over the ten-year period from 2023-2032 (using a discount rate of 7 percent) or \$510 million (using a discount rate of 3 percent).

TCS supports the BLM's proposal to determine the capacity fee based on actual production, instead of nameplate capacity, absent the authority to collect ad valorem royalties based on percentage of gross proceeds from the sale of electricity produced. TCS recognizes that Congress will have to grant the BLM such authority. However, a reduction of 80 percent until 2036 and 20 percent thereafter,<sup>7</sup> on top of additional Buy American reductions, may fail to ensure fair return to the public.

TCS has similar concerns with how the BLM's new formula for determining rental fees will likely reduce taxpayer revenue. In the BLM's economic analysis of the proposed rule, the "Comparison of Existing and Proposed Payment Schedule for a Hypothetical 350-MW Solar ROW in Riverside County, CA" example estimates that acreage rent for a hypothetical solar project would decrease by \$10.8 million dollars, 94 percent, over a five-year window. Furthermore, as the BLM cites in the proposed rule, the current 5-year period averages of NASS pastureland rent values range from \$2.10/acre in Arizona to \$12.60/acre in California, meaning that if the proposed rule were to be implemented today, rental fees for a wind development in its first year would range from \$0.11/acre in Arizona to \$0.65/acre in California.<sup>8</sup> The BLM should ensure that taxpayers will receive a fair market value for the use of federal lands under this new calculation.

TCS also has concerns with the 5 percent encumbrance value for wind projects in calculating rental fees. An encumbrance value of 5 percent for wind energy is too low, as the other 95 percent of land held under ROW grant but not 'encumbered' by development is still not accessible to the public. The

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<sup>7</sup> A reduction factor of 0.2 until 2036 and reduction factor of 0.8 thereafter

<sup>8</sup> Estimate assumes a NASS pastureland rent value of \$2.10/acre and \$12.60/acre, respectively, an encumbrance factor of 0.05 for a wind energy project, and an annual adjustment factor of 1.03 for the first year of the lease.

encumbrance value for wind should be set at or close to the 50 percent encumbrance value used for linear ROWs.

**Buy American Discount:** The BLM is considering a proposal to decrease the MW rate by as much as an additional 20 percent for projects where at least a certain percentage of the materials are sourced within the country. This rule stipulates that 25 percent of the total project materials must be domestically sourced for the lowest, 5 percent reduction, and 55 percent of the total project materials must be domestically sourced more the highest, 20 percent reduction.

Although TCS normally opposes blanket “Buy American” subsidies, the reduction in capacity fees tied to the use of American-made parts and materials, as proposed in the rule, is acceptable because it aligns with existing federal guidelines and strategic objectives, including the Energy Act of 2020 and the Federal Acquisition Regulation (FAR), both of which emphasize the importance of using American-made goods.

**Extending Maximum Lease Term:** TCS cautions the BLM against extending the maximum lease term for a solar or wind ROW beyond 30 years. As changing economic conditions and technological innovation may affect the future needs of solar and wind development in the United States, shorter lease terms will allow the BLM to review these factors and better serve the American taxpayers. Additionally, as factors in determining the rental fee and capacity fee are established at the start of the lease, shorter lease terms allow the BLM to adjust course and ensure taxpayer receive a fair return on development.

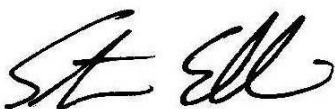
**Clarifying Terminology:** The introduction of clear definitions for terminology related to renewable energy projects is a positive step towards enhancing communication and decision-making processes. We recommend that the BLM engage relevant stakeholders and industry experts to ensure that these definitions accurately reflect industry practices and standards, thus contributing to a more coherent and efficient regulatory framework.

**Assigning Different Statuses to Successful Bidders:** We acknowledge the need for distinct statuses for successful bidders within and outside designated leasing areas, aligning with the BLMs environmental review and other considerations. To ensure consistency and prevent potential misuse of this distinction, it is imperative that the BLM maintains rigorous oversight over the assignment of these statuses.

TCS fully supports the BLM’s goals of promoting renewable energy development on public lands and appreciates the agency’s commitment to environmental responsibility and efficient management. We urge the BLM to carefully consider our comments and recommendations to ensure that the finalized rule strikes the right balance between incentivizing clean energy development and protecting the interests of American taxpayers.

We thank the BLM for its dedication to responsible energy development and commend the agency for its continuous efforts in this sphere. TCS remains committed to collaborating constructively on this critical issue and appreciates the opportunity to contribute our insights to the rulemaking process.

Sincerely,

A handwritten signature in black ink, appearing to read "SE" followed by a stylized flourish.

Steve Ellis  
President