BLM'S PROPOSED CONSERVATION AND LANDSCAPE HEALTH RULE: CONSERVATION LEASING MAKES SENSE, BUT OTHER REVISED/NEW AUTHORITIES THREATEN ADMINISTRATION'S RENEWABLE ENERGY AND TRANSMISSION GOALS ON FEDERALLY MANAGED LANDS

On April 3, 2023, the Bureau of Land Management ("BLM") published a notice of proposed rulemaking for its Conservation and Landscape Health Rule ("Proposed Rule") in the Federal Register. The Proposed Rule is complex. While its conservation leasing proposal could be a "win-win" for renewable energy and the environment, the other mandates would potentially paralyze solar, wind, and transmission development on BLM-managed lands and should not be adopted.

The Large-scale Solar Association ("LSA"), Solar Energy Industries Association ("SEIA"), American Clean Power Association ("ACP") and their members and other renewable energy companies (together, the "Renewable Energy Industry") *support* the concept of conservation leasing and recommend limiting the Proposed Rule to addressing conservation leasing only for mitigation and restoration.

Specifically, the Proposed Rule would require local BLM Field Managers to protect "intact landscapes," to prioritize "ecosystem resiliency," and to apply "land health" standards designed for grazing land on all areas and decisions. Adopting these vague, overbroad, and often inappropriate approaches to land use decisions on arid lands and other lands is likely to have far-reaching and unintended consequences precluding renewable energy development and transmission on federally managed lands, thereby undermining and stalling the Administration's ambitious goals for addressing climate change. The proposed relaxation of standards for creating Areas of Critical Environmental Concern (ACECs), and the absence of public participation, pose similar concerns.

The Proposed Rule also introduces the concept of conservation leasing for mitigation and restoration purposes, which would enhance BLM's existing authority to achieve conservation through the use of ACECs by allowing BLM to actively pursue conservation in partnership with project proponents and the public, a concept we support.

Because the remainder of the Rule would likely severely limit renewable energy development on BLM land, we ask that it be pared down to address conservation leasing only.

The Renewable Energy Industry's principal concerns with the Proposed Rule are as follows:

- **Establishes Duplicative Land Conservation Program and Lowers Bar for Establishing ACECs.** BLM already has effective and well-understood tools to conserve public lands that authorize the BLM State Director to evaluate and designate ACECs for resources of regional significance. Those existing tools can be used to protect landscapes and ecosystem resiliency without adoption of the Proposed Rule. The Proposed Rule would allow local BLM Field Managers to establish ACECs to protect resources of local importance, likely eliminating potential renewable energy development on vast tracts of Federal Land, and to do so without publication for notice and comment in the Federal Register. These changes to current regulations should not be adopted.

- **Establishes Broadly Defined and Unworkable Land Management Standards**. The Proposed Rule requires local BLM Field Managers to protect broadly defined "intact landscapes," prioritize "ecosystem resiliency," and apply "land health" standards designed for grazing land in all areas and decisions. Local staff would likely not process applications (by giving them "low priority" under the

regulations) in areas that will potentially be preserved in Resource Plan Amendments as "intact landscapes." In addition, because arid lands cannot by their nature meet ecosystem resiliency or grazing land health standards, projects would be denied even though those standards are by their nature inappropriate for application to desert areas. Ecosystem resiliency standards and grazing land health standards should not be applied to renewable energy projects in desert areas; current biological resource protection standards amply protect these lands. Similarly, protection of landscapes, where appropriate, should occur through State Director approval of ACECs, not a separate process.

- **Creates Significant Litigation Risk.** By establishing a programmatic mandate to require local officials to set aside intact landscapes and to apply inapposite ecosystem resiliency and grazing land health standards to solar applications on arid land, the Proposed Rule will expose BLM and developers to significant litigation risk from parties asserting that BLM failed to account properly for and consider these standards in the context of specific projects, or, more broadly, in the adoption of landscape level planning initiatives, such as the planned update to the Solar PEIS.

- **Undermines the Administration's Clean Energy Goals.** Currently, BLM is considering approximately 220 applications for solar, wind, geothermal and transmission projects. Many BLM Field Offices are already understaffed, overworked, and unable to process renewable energy applications at the pace necessary to meet the Administration's climate change goals on federally managed lands. Implementation of the Proposed Rule at the BLM Field Office level is likely to divert attention and already constrained resources from processing renewable energy permits. Furthermore, adoption of the Proposed Rule will likely result in conflicting standards and mandates at the BLM Field Office level without guidance as to how these conflicts should be resolved, resulting in ambiguity, uncertainty, increased risk and delay. Because the Proposed Rule appears to delegate many of these decisions to local staff, it is not clear that State Directors or the Director of BLM would continue to have the authority and oversight to ensure critical federal land-use decision making takes into consideration state-wide and federal priorities.

In addition to these potential unintended consequences, the Proposed Rule is a major agency action that would substantially alter the *status quo* of BLM's management of federal lands and therefore should be scrutinized to examine its economic and environmental consequences. Among other things, the Proposed Rule:

- **Requires OIRA Review.** BLM's effort to shield the Proposed Rule from OIRA review is inappropriate. At a minimum, it must be subjected to the detailed policy analyses required of "major rules" under the CRA, "significant regulatory actions" under Executive Order (EO) 12866, and "significant energy actions" under EO 13211.

- **Requires Full NEPA Review.** BLM proposes to comply with NEPA by applying a Departmental categorical exclusion (CX) typically used for "policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." The Proposed Rule goes well beyond what is appropriate for consideration under a CX, and BLM should prepare an EIS analyzing the Rule's environmental and economic impacts, including an evaluation of the potential negative consequences for renewable energy development on federally managed lands.

For all these reasons, the Renewable Energy Industry asks that the Proposed Rule be revised to address conservation leasing for mitigation and restoration, only.