

Why Conservation Leasing on Public Lands Is a Win-Win for Renewables and Wildlife

By Drew McConville June 1, 2023

The Biden administration is working to rapidly deploy clean energy across the United States, including taking action to responsibly utilize federal lands for new solar, wind, geothermal, and transmission projects. The Bureau of Land Management (BLM), an agency of the U.S. Department of the Interior (DOI) that oversees 245 million acres of public lands—10.5 percent of all U.S. lands—plays a leading role in this effort.¹

BLM lands offer substantial solar, wind, and geothermal energy potential, as well as a diversity of ecosystems, wildlife habitat, watersheds, cultural resources, recreation opportunities, and other valuable assets. On March 30, 2023, the BLM proposed a rule—called the Public Lands Rule—that would provide overdue direction for how the agency conserves and restores public natural resources for future generations.² Among other measures, the Public Lands Rule would unlock an innovative tool—called conservation leasing—that could be utilized by clean energy companies to build projects more quickly and with better outcomes for lands, waters, and wildlife.

What is conservation leasing?

When a project developer proposes to build a clean energy project, such as a utility-scale solar facility or a wind farm, it must avoid, minimize, restore, and/or offset the project’s impacts on important natural resources, such as wetlands or the habitat of endangered species. Project developers may be required by federal or state regulators, or choose voluntarily, to offset the impacts they cannot avoid through actions that restore, create, enhance, or preserve the affected natural resources, such as habitat for certain sensitive species, in an offsite location. This “compensatory mitigation” typically occurs on private lands, even when the project and affected resources are on public lands.³

The BLM is seeking public input on a proposed Public Lands Rule that would, among other things, allow mitigation projects to occur on public lands through what the BLM terms a “conservation lease.”⁴ As proposed, these leases are essentially legal agreements that would allow a private entity or Tribe to conduct

compensatory mitigation on BLM-managed public lands over a period of time that matches the time frame of anticipated project impacts. The proposal would also allow an entity to sign a conservation lease for other restoration or land enhancement projects,⁵ such as when a local conservation group or Tribe wants to restore degraded wildlife habitat on BLM lands. The BLM would retain its legal responsibilities for managing the lands, have full discretion to decide where and if conservation leases are appropriate, and be required to ensure that the private party holds up their end of the bargain responsibly. Conservation leases would not affect existing rights or authorizations on BLM lands.

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With this proposal, the BLM is giving clean energy and other project developers another way to meet their mitigation requirements and minimize natural resource conflicts. At the same time, the agency is unlocking a powerful tool to help restore and conserve U.S. public lands that perennially suffer from inadequate federal funding. As new federal investments and other Biden administration actions are helping substantially more clean energy and transmission projects break ground on public lands, this tool is needed now more than ever.

How would conservation leases work in practice?

The BLM has provided several examples of how conservation leasing could work.⁶ In one example, a required environmental review finds that a proposed transmission line across public lands affects an imperiled bird species. The BLM and the relevant state agency determine that mitigation is needed to offset these impacts, but the best remaining habitat for the bird is on BLM lands. Under the framework of the proposed rule, the BLM could consider a conservation lease application that would allow activities to conserve the bird's habitat on public lands—rather than on private lands only—for the duration of the transmission project's impact.

In another example, the BLM describes a proposed solar development that would have unavoidable impacts on wilderness values and opportunities for hiking, camping, hunting, biking, and other recreation. The agency finds that compensatory mitigation is needed. The project developer or another entity could apply for a conservation lease to offset the impacts through conservation, restoration, and enhancement measures elsewhere on BLM lands. While the conservation lease is in place, existing uses of those public lands will continue and new uses will be allowed as long as they do not undermine the purpose of the conservation lease.

Why conservation leasing is a win-win idea

Conservation leases are a win-win proposal that would benefit clean energy projects as well as wildlife and other natural resources in the following ways:

- **Providing more options for clean energy developers would bring efficiency and cost savings.** Mitigation, whether to meet federal or state laws or to otherwise reduce conflicts, helps ensure that development projects proceed without depleting valuable natural resources. But a shortage of appropriate and affordable mitigation project options could add delay, greater risk of litigation, and/or additional costs to a project. For example, renewable energy projects that need to offset impacts in areas where private land values are high can incur greater costs. This could be the case for areas where private lands are in short supply—such as Nevada, where nearly 86 percent of lands are federal or Tribal lands.⁷ The BLM’s proposal will not be the best fit every time, but it provides another option for project developers, something that should mean greater efficiency, more cost savings, and faster project timelines overall.
- **Allowing mitigation projects on public lands could help offset impacts to wildlife and natural resources more directly and effectively.** Even the best-designed clean energy and transmission projects can have unavoidable impacts. In theory, compensatory mitigation ensures that resources such as species habitat and wetlands experience no net loss, or even a net gain. But currently, impacts that occur on public lands must be offset away from those public lands, which can make it hard to match offsetting conservation gains with the impacts. While it is still a good thing, for example, to fund sagebrush restoration hundreds or thousands of miles away from an initial project, it is often better to offset the project’s impacts in the same landscape, benefiting the same local populations of wildlife. In some cases, a particular habitat type may not be available on private lands. Moreover, the Biden administration’s plan to permit a total of 25 gigawatts (GW) of renewable energy on public lands by 2025 will make the availability of this mitigation option even more important.⁸
- **Better natural resource outcomes reduce the risk of conflict and litigation.** More effectively offsetting a project’s unavoidable impacts should also benefit the developers and timelines of those projects. Responsible companies want to reduce the net impacts of their projects, but more effective offsets can also reduce concerns from local conservationists, community members, and other land users, saving companies time and resources and allowing them to avoid conflicts and potentially even litigation.

■ **Allowing public lands to benefit from mitigation projects is good for taxpayers and helps address urgent restoration needs.** Across public lands, the effects of uncharacteristic wildfire, drought, invasive species, poorly managed grazing, and habitat fragmentation have created a massive need for ecosystem restoration.⁹ Yet although climate change is only projected to exacerbate many of these impacts to land health,¹⁰ annual funding has not kept pace with growing demands.¹¹ Bringing private mitigation funding off the sidelines could help close these gaps and address urgent problems before they get worse and more expensive to fix. This would benefit both public natural resources and taxpayers.

Conservation leasing is not an entirely new concept

Although the BLM's use of the term conservation lease may be new, the concept is not. In fact, offsite mitigation projects on publicly owned lands are already an option in several states.

In California, for example, the BLM adopted a similar approach to enable compensatory mitigation projects that would benefit agency-managed public lands, although the agreement was limited to mitigation required under state law. The BLM and the state of California forged this agreement in 2015 while developing the Desert Renewable Energy Conservation Plan, which established a landscape-level plan for renewable energy development and conservation on 22.5 million acres of the California desert. The agreement, made between the BLM and the California Department of Fish and Wildlife and applying statewide, allows projects to meet state-imposed mitigation requirements to address impacts to fish, wildlife, plants, and related habitat via projects undertaken on BLM-managed conservation lands.¹² The agreement envisions a range of different habitat improvement and restoration projects, from invasive species removal to artificial nest sites and wildlife corridor restoration.¹³

Conservation leasing offers clean energy companies another important tool to deliver responsibly developed clean energy while helping conserve wildlife, clean water, and other treasured natural resources.

In June 2022, the BLM and California authorities announced the first restoration project that puts this agreement into action. To address impacts of solar development occurring on private lands, state-required mitigation is funding ecosystem restoration on 158,000 acres in the California Desert Conservation Area located in Kern County.¹⁴ Restoration projects, including rehabilitation of unauthorized trails, will help improve habitat for the desert tortoise, Mohave ground squirrel, burrowing owl, and American badger, while also improving

overall ecosystem health and function. Subsequently, another solar company, Avantus, announced an agreement to offset impacts of its development through a 215,000-acre mitigation project on BLM lands in this same region.¹⁵

In other states, the BLM has identified specific degraded public lands that are good candidates for mitigation projects to offset anticipated impacts from solar energy projects in designated leasing areas, known as solar energy zones. For example, the agency's regional mitigation strategies for solar energy zones in Arizona¹⁶ and Nevada¹⁷ identify certain designated "areas of critical environmental concern" on BLM lands as ideal places for mitigation projects to offset anticipated impacts of solar development on nearby public lands. Such projects could become good options for conservation leasing agreements in the future.

Finally, states can also allow compensatory mitigation projects to occur on state-managed lands. For example, the Colorado State Land Board allows third parties to enter into "ecosystem service leases" to conduct mitigation projects on state trust land.¹⁸ This program has operated successfully since 2013, primarily generating mitigation credits used by infrastructure developers to meet wetland and stream mitigation requirements under the Clean Water Act.¹⁹

Responsibly deploying renewable projects on federal lands

As noted above, the BLM's proposal to formalize a conservation leasing tool for mitigation goes hand in hand with a suite of actions the agency and DOI are taking to rapidly and responsibly deploy clean energy on federal lands. To meet and exceed a goal of permitting 25 GW of onshore renewable energy on federal lands by 2025, the DOI is working with other government partners to expedite and prioritize environmental and permit reviews, reduce fees, and update plans and policies to spur clean energy development on federal lands with the greatest technical and economic potential and limited natural resource conflicts.

Currently, the BLM is revising its Western Solar Plan, which will update and expand areas on public lands prioritized for solar energy due to their high development potential and low resource conflicts, potentially broadening the plan's coverage from six to 11 Western states.²⁰ This follows the BLM reducing rates and fees charged for solar and wind by more than 50 percent²¹ and updating the screening process for solar and wind projects, which will improve efficiency and allow the agency to reach decisions more quickly for the most promising project opportunities.²² The BLM has also initiated a process to update its regulations for renewable energy projects with an aim of removing barriers and other unnecessary impediments for timely permitting decisions.²³

Additionally, the DOI has announced steps to improve coordination to more rapidly deploy clean energy. These include standing up five Renewable Energy Coordination Offices to boost the agency's capacity to handle applications from solar, wind, and geothermal project developers,²⁴ as well as a new five-agency collaboration between the departments of the Interior, Agriculture, Defense, and Energy, along with the Environmental Protection Agency, to prioritize review and expedite decision-making for renewable energy projects on federal lands.²⁵

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Complementing these actions to permit clean energy projects on federal lands, the administration is taking new steps to facilitate the buildout of transmission infrastructure across the country²⁶ while rapidly enabling companies to tap into clean energy project incentives from the Inflation Reduction Act.²⁷ Moreover, the administration recently announced an interagency agreement to accelerate the responsible permitting of transmission lines.²⁸

These efforts are already yielding results. Between fiscal years 2020 and 2021, the BLM increased its renewables permitting activity by 35 percent.²⁹ Since the Biden administration took office, the BLM has approved at least 35 clean energy projects, as of May 2023, which will produce an estimated 8.2 GW of electricity, enough to power more than 2.6 million U.S. homes.³⁰ The agency is actively reviewing at least 26 other solar, wind, and geothermal projects that have the potential to bring another 17 GW of capacity online.³¹ Already, renewable energy from federal lands and waters brought in more revenue last year than ever before—a trend that will accelerate as more approved projects come online.³²

Conclusion

Solar, wind, and geothermal energy projects, along with transmission lines needed to connect them to the grid, are on a rapid growth trajectory across federal public lands, thanks in large part to policies and measures adopted by the Biden administration and major new incentives that the president has signed into law. Conservation leasing offers clean energy companies another important tool to deliver responsibly developed clean energy while helping conserve wildlife, clean water, and other treasured natural resources in concert with other elements of the BLM's proposed Public Lands Rule. It's a step that industry and conservationists alike should welcome.

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