August 15, 2023

Submitted via Regulations.gov
Director Tracy Stone-Manning
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Room 5646
Washington DC 20240

Re: Notice of Proposed Rulemaking: "Rights-of-Way, Leasing, and Operations for Renewable Energy," 88 Fed. Reg. 39,726 (June 16, 2023); OMB Control Number 1004–0206 (RIN 1004–AE78)

Dear Director Stone-Manning:

The American Petroleum Institute (API), Alaska Oil and Gas Association (AOGA), Independent Petroleum Association of America (IPAA), Petroleum Alliance of Oklahoma, Petroleum Association of Wyoming (PAW), Utah Petroleum Association (UPA), and Western Energy Alliance (WEA) (collectively "the Associations") appreciate this opportunity to provide the enclosed comments in response to the above-referenced Proposed Rule. The Associations support responsible energy development on federal lands consistent with legal requirements. We also agree with the general imperative to adopt reforms to increase energy production on public lands consistent with an "All of the Above" energy policy. However, as outlined in these comments, the Proposed Rule relies on a procedurally deficient analysis to underpin changes that would alter basic principles of federal land management, create an unlevel playing field among energy sources, and potentially restrict access for other traditional federal land uses (including oil and natural gas development) in some areas for decades to come. The Associations respectfully request that BLM not move forward with the Proposed ROW Rule or, at a minimum, substantially modify the proposal to address these comments.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact Amy Emmert at emmerta@api.org or (202) 682-8372.

Sincerely,

Amy Emmert
Senior Policy Advisor
American Petroleum Institute

Tamara S. Maddox
Regulatory & Legal Affairs Manager
(907)272-1481
maddox@aoga.org

Daniel T. Naatz
COO and Executive Vice President
Independent Petroleum Association of America

Angie Burckhalter
Senior V.P. of Regulatory & Environmental Affairs
Petroleum Alliance of Oklahoma
angie@okpetro.com

Colin McKee
Regulatory Director
Petroleum Association of Wyoming

Rikki Hrenko-Browning
President
Utah Petroleum Association
rhrenko-browning@utahpetroleum.org

Kathleen M. Sgamma
President
Western Energy Alliance

Enclosure

Comments Submitted by American Petroleum Institute (API), Alaska Oil and Gas Association (AOGA), Independent Petroleum Association of America (IPAA), Petroleum Alliance of Oklahoma, Petroleum Association of Wyoming (PAW), Utah Petroleum Association (UPA), and Western Energy Alliance (WEA)

Notice of Proposed Rulemaking:
"Rights-of-Way, Leasing, and Operations for Renewable Energy"

88 Fed. Reg. 39,726 (June 16, 2023)

OMB Control Number 1004–0206; RIN 1004–AE78

August 15, 2023

Table of Contents

I. Executive Summary 1

II. The Associations' Interests in this Rulemaking 2

A. Global Leadership in Energy Production 3

B. Support for Environmental Conservation 4

C. Ensuring Access for Oil & Gas Production on Federal Lands 6

D. BLM's Proposed ROW Rule Highlights the Broader Need for Greater Domestic Energy Production and Infrastructure Reforms and Deployment of Public Lands in Support of an "All of the Above" Energy Policy. 6

III. The Proposed ROW Rule Does Not Align with All Applicable Statutory Requirements. 8

A. The Existing Legal & Regulatory Framework Provides Robust Conservation and Environmental Protection for BLM Lands, While Also Allowing for Responsible Development of Energy Resources. 8

B. Key Principles of Federal Land Management 10

C. Aspects of the Proposed ROW Rule Lack Clear Statutory Support. 11

IV. Specific Components of the Proposed ROW Rule Conflict with the Governing Principles for Management of BLM Lands 13

A. Lease Terms 13

B. Leasing Requirements 14

C. 2012 Western Solar Plan 16

D. The Record Does Not Support the "Need for the Rule." 16

E. Other Technical Concerns 17

V. Compliance with Federal Rulemaking Requirements 18

VI. Conclusion 18

I. Executive Summary

The American Petroleum Institute (API), Alaska Oil and Gas Association (AOGA), Independent Petroleum Association of America (IPAA), Petroleum Alliance of Oklahoma, Petroleum Association of Wyoming (PAW), Utah Petroleum Association (UPA), and Western Energy Alliance (WEA) (collectively "the Associations") appreciate this opportunity to provide comments in response to the Bureau of Land Management's (BLM's or Bureau's) Proposed Rulemaking titled, "Rights-of-Way, Leasing, and Operations for Renewable Energy," which was published in the Federal Register on June 16, 2023 (88 Fed. Reg. 39,726) ("Proposed ROW Rule" or "the Proposed Rule").

In the Proposed Rule, BLM proposes to amend its existing right-of-way (ROW) regulations to "facilitate responsible solar and wind energy development on public lands." The Proposed ROW Rule would, among other things, recalibrate federal land management regulations to promote and incentivize greater deployment of wind and solar energy projects. To accomplish this goal, the Proposed Rule would provide more favorable land management provisions for renewable energy as compared to traditional energy projects like oil and natural gas development, which remain critical for U.S. energy security. For example, the Proposed Rule would adjust acreage rents and capacity fees for solar and wind energy projects, provide BLM staff with more flexibility when processing applications for solar and wind energy development inside designated leasing areas, update agency criteria on prioritizing solar and wind applications, and make various other technical changes and clarifications to BLM's existing ROW regulations. These favorable changes contrast sharply with the substantial additional burdens contained in BLM's recently proposed revisions to "Fluid Mineral Leases and the Leasing Process," which would revise BLM's oil and natural gas leasing regulations.[1] Rather than using its oversight responsibilities for the multiple uses of federal lands to promote policy priorities, BLM should fairly and consistently implement favorable changes to streamline all forms of energy development on federal lands.

The Associations' members support responsible energy development on federal lands consistent with FLPMA's multiple use mandate and other applicable laws and regulations. We also agree with the general imperative to adopt reforms to increase energy production on public lands consistent with an "All of the Above" energy policy. However, as outlined in these comments, we believe the Proposed ROW Rule relies on a procedurally deficient analysis to underpin changes that would alter basic principles of federal land management, create an unlevel playing field among energy sources on federal lands, and potentially restrict access for oil and natural gas development in some areas for decades to come.

From a procedural perspective, before addressing acreage rental rates and capacity fees, BLM should more carefully assess the statutory criteria identified in 43 U.S.C. § 3003, which simply gives BLM discretion to consider adjustments to the acreage rental rates for renewable projects but only if BLM first determines that (i) the "existing rates . . . exceed fair market value, impose economic hardships, limit commercial interest . . . or are not competitively priced compared to other available land . . .", and (ii) adjustments are "necessary to promote the greatest use of wind and solar energy sources." The Proposed ROW Rule fails to adequately address any of these factors before proposing to significantly alter the land management regime for wind and

[1] 88 Fed. Reg. 47,562 (July 24, 2023).

solar projects. Likewise, the Proposed ROW Rule fails to adequately justify the decision to extend standard lease terms for renewable projects (but not for traditional energy sources) from 30 years to 50 years, nor does the proposal evaluate the impacts of such lease terms on ensuring access to public lands for traditional energy development in those areas.

II. The Associations' Interests in this Rulemaking

American Petroleum Institute (API) is a national trade association representing nearly 600 member companies that operate throughout the United States and are involved in all aspects of the oil and natural gas industry, including exploration, development, production, transportation, refining, and marketing. Many of our members operate on federal lands, including onshore areas managed by the Bureau of Land Management. For many years, API has worked collaboratively with the Department of the Interior (DOI) and its agencies, including BLM, to help provide for the continued safety of industry workers, protection of the environment, and proper economic development of resources in fulfillment of federal law.

The Alaska Oil and Gas Association (AOGA) is a professional trade association whose mission is to foster the long-term viability of the oil and natural gas industry for the benefit of all Alaskans. AOGA represents the majority of companies that are exploring for, developing, producing, refining, or marketing oil and gas on the North Slope, in the Cook Inlet, and in the offshore areas of Alaska.

The Independent Petroleum Association of America (IPAA) represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Independent producers drill about 91 percent of oil and natural gas wells in the U.S., producing 83 percent of oil and 90 percent of natural gas in the U.S.

The Petroleum Alliance of Oklahoma represents more than 1,400 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Its members produce, transport, process and refine the bulk of Oklahoma's crude oil and natural gas. The Proposed Rule will impact its members as they develop federal and Indian leases in Oklahoma and in many other states.

The Petroleum Association of Wyoming (PAW) represents companies involved in all aspects of responsible oil and natural gas development in Wyoming, including upstream production, oilfield services, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more. PAW advocates for oil and natural gas development that supports sustainable production of Wyoming's abundant resources; fosters mutually beneficial relationships with Wyoming's landowners, businesses, and communities; and upholds the values of science-based, environmental stewardship. Eighty-five percent of the oil and natural gas companies operating in Wyoming are classified as small businesses.

The Utah Petroleum Association (UPA) is a statewide oil and natural gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and natural gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving

technology advancement resulting in environmental and efficiency gains. UPA members operate extensively on federal lands and have a long history of stewardship and conservation.

The Western Energy Alliance (WEA) is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for over 50 years, the Western Energy Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. The majority of independents are small businesses, with an average of fourteen employees.

A. Global Leadership in Energy Production

The U.S. is a global leader in both emission reductions[2] and energy production.[3] Oil and natural gas exploration and development on federal lands and waters provide enormous benefits to our nation and its citizens—for our economy, our environment, and our national security. Given the vital importance of energy production on public lands, overreaching land management regulations could place our domestic energy supply at risk, as do proposals that would undercut a balanced, all-of-the-above energy policy.

The oil and natural gas industry produces and delivers nearly 70% of the energy our country uses. Our nation and the world will continue to need reliable, affordable energy for public health and economic growth, energy that will serve as the foundation for broader opportunities for decades to come. Energy production on public lands, including oil and natural gas production, is a crucial part of the nation's program for energy security and economic strength. Likewise, the oil and natural gas industry is essential to supporting a modern standard of living by providing communities with access to affordable, reliable, and cleaner energy. The Associations' top priority remains public health and safety, and our member companies have well-established policies in place for proactive community engagement and feedback aimed at fostering a culture of trust, inclusivity, and transparency. We believe that all people should be treated fairly, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In this regard, it is crucial to bear in mind that energy development on federal lands promotes investment in rural areas where State and local economies depend on the industry for jobs, continued economic prosperity and revenue generated from state severance tax and other local taxes generated from these projects.

[2] According to EPA, "Between 1970 and 2020, the combined emissions of the six common pollutants (PM2.5 and PM10, SO2, NOx, VOCs, CO and Pb) dropped by 78 percent. This progress occurred while U.S. economic indicators remain strong." EPA, *Progress Cleaning the Air and Improving People's Health* (May 1, 2023), https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health#pollution.

[3] According to the Energy Information Administration (EIA), the United States is ranked first globally in total energy production from both natural gas and from petroleum and other liquids. U.S. Energy Info. Admin., *Total Energy Production from Natural Gas* (last visited June 14, 2023), https://www.eia.gov/international/rankings/world?pa=287&u=2&f=A&v=none&y=01%2F01%2F2021.

B. Support for Environmental Conservation

As importantly, our members support the health and sustainability of public lands and resources. The oil and natural gas industry employs technology and strategies as part of its support for environmental stewardship—taking measures to prioritize protecting public health and the environment, while working to deliver plentiful energy. Measures for the protection of species, habitats and groundwater are all part of our approach to oil and natural gas development, and projects are designed, managed and operated to identify and address potential environmental impacts associated with activities ranging from initial exploration to eventual closure and land reclamation. Our members strive to improve the compatibility of their operations with the environment while responsibly and economically developing energy resources and supplying high quality products and services to consumers. Indeed, across these varied operations, our members are working every day to minimize and reduce impacts to air, water, and land resources, including to protected species and habitats.

These efforts take many forms. For example, our industry is dedicated to developing affordable energy while working to reduce emissions and protecting air quality. As noted above, total emissions in the U.S. of the six traditional criteria pollutants have dropped dramatically even while energy consumption has increased.

We also recognize the importance of reducing emissions intensity, including greenhouse gas (GHG) emissions like carbon dioxide (CO_2) and methane (CH_4). The Congressional Budget Office (CBO) recently found that the "downward trend in emissions related to energy is largely attributable to a shift away from coal-fired generation to natural gas-fired generation in the electric power sector," with approximately "two-thirds of the decline in CO_2 emissions in that sector" resulting from "the switch from coal to natural gas."[4] At the same time, companies implement and improve innovative practices and technology while continuing to bolster research that looks for new ways to minimize environmental impacts. In addition, we monitor, compile and report emissions data per government regulations and on a voluntary basis as appropriate, conduct studies with academic institutions, and work closely with state and federal regulators.

Our industry also is continuing to invest substantially in modernizing our nation's energy infrastructure, including construction of new, state-of-the-art pipelines that safely transport oil and natural gas and reduce truck usage and emissions in and around our operations.[5] Equipment and hardware are monitored and replaced with more efficient and effective parts as appropriate. Companies use low-emission diesel or clean-burning natural gas to power some sites when practicable; in some instances, solar is used to power operations.

We also take steps to appropriately manage water. We assess the availability of water, design plans for usage, develop technology, and conduct inspections to ensure well integrity. In conducting operations, our industry takes precautionary measures so we can be good stewards of our natural resources. For example, before drilling, seismic tests and surveys help determine if

---

[4] Cong. Budget Office, *Emissions of Carbon Dioxide in the Electric Power Sector* (Dec. 2022), https://www.cbo.gov/system/files/2022-12/58419-co2-emissions-elec-power.pdf.

[5] ICF, *U.S. Oil and Gas Infrastructure Investment through 2035: Study Prepared for American Petroleum Institute* (Apr. 2017), https://www.api.org/-/media/Files/Policy/Infrastructure/API-Infrastructure-Study-2017.pdf.

aquifers are present and if so, their location. When drilling a well, companies use multiple layers of steel and cement to provide structural integrity and completely seal the well and surrounding formation from one another. These casings extend below aquifers, adding several layers of protection.

Finding opportunities to responsibly manage water usage is important for our industry. The primary use for water in oil and natural gas development is in the drilling and completion phases of operations. The amount of water usage depends on a number of factors including basin and geography. During the oil and natural gas development process, water levels and quality around the area are identified, benchmarked, monitored and reported in accordance with local, state and federal environmental and water protection regulations.

Whether operating onshore or offshore, the industry works to protect and preserve some of the most complex and diverse habitats on earth. Our industry works with government agencies as well as wildlife groups like the National Fish and Wildlife Foundation to develop plans and protocols for protecting wildlife. For example, voluntary efforts by the oil and gas natural industry and others, in partnership with federal, state, and local agencies, are helping to "facilitate the conservation of the lesser prairie-chicken and its habitat."[6] According to the FWS, "[t]hese partnerships have resulted in millions of acres of land being voluntarily enrolled over the past two decades to implement various conservation measures across the lesser prairie-chicken's range."[7] Though just one of many such efforts, the Western Association of Fish and Wildlife Agencies' Candidate Conservation Agreement with Assurances for oil and natural gas covers portions of Colorado, Kansas, New Mexico, Oklahoma, and Texas, and allows oil and natural gas companies to voluntarily enroll. This effort attracted over 110 oil and gas industry participants (with more than 6 million acres of land enrolled in the conservation program). Industry also worked with the New Mexico BLM to voluntarily restore over 2 million acres of grassland through the Restore NM project. The ongoing Pecos Watershed Conservation Initiative is another example of these partnerships to protect important habitats in New Mexico through the National Fish and Wildlife Foundation.

This type of collaboration has resulted in improved habitat and species health. For example, modern energy production methods and technologies have resulted in a 70% reduction in surface disturbance when compared to historic practices.[8] Our industry also works with many stakeholder groups to understand migration patterns and routes in areas where we operate. Companies adapt operations to address impacts to these animal movements and habitats. We recognize the importance of protecting and maintaining these historic migrations.

---

[6] FWS, *Partners in Lesser Prairie-Chicken Conservation* (last visited June 14, 2023), https://www.fws.gov/lpc/partners-lpc-conservation.

[7] *Id*.

[8] *See* David H. Applegate & Nicholas Owens, *Oil and Gas Impacts on Wyoming's Sagegrouse: Summarizing the Past and Predicting the Foreseeable Future*, 8 HUMAN–WILDLIFE INTERACTIONS 284, 289–90 (2014), https://www.researchgate.net/publication/267765279_Oil_and_Gas_Impacts_on_Wyoming%27s_Sagegrouse_Summarizing_the_Past_and_Predicting_the_Foreseeable_Future.

C. Ensuring Access for Oil & Natural Gas Production on Federal Lands

Energy production on BLM lands provides immense value for the nation. BLM should ensure that the Proposed ROW Rule does not inadvertently limit access to large swaths of public lands that would otherwise be suitable for potential energy resource development of all kinds, including oil and natural gas production.

BLM manages approximately 245 million acres of surface estate of public lands in the United States (more than any other federal agency).[9] BLM also manages the federal government's onshore subsurface mineral estate (approximately 700 million acres).[10] The Congressional Research Service (CRS) recently explained the enormous importance of energy production on federal lands to the federal government, the states, local communities, and the nation as a whole.[11] Production of oil and natural gas from onshore federal lands represents almost 10% of total domestic production of crude oil and natural gas. CRS found that total revenues from oil and natural gas leases on onshore federal lands exceeded $4.2 billion in fiscal year 2019. This substantial return for the taxpayer is comprised of royalty payments, bonuses, interest payments on leases, rents, and other sources. In turn, these funds were disbursed to states (more than $2 billion), the Reclamation Fund (more than $1.5 billion), and the U.S. Treasury ($444 million), among other things.[12]

More recent data published by the Interior Department's Office of Natural Resources Revenue (ONRR) shows that, for fiscal year 2022, federal leases generated over $7.6 billion in revenues (from bonus bids, royalties, rents, and other sources).[13] For FY 2022, ONRR disbursed over $4.3 billion in funds collected from leasing activities on federal lands and waters to 33 states.[14] As stated by CRS, "[f]ederal revenues from oil and natural gas leases provide income streams that support a range of federal and state policies and programs."

D. BLM's Proposed ROW Rule Highlights the Broader Need for Greater Domestic Energy Production and Infrastructure Reforms and Deployment of Public Lands in Support of an "All of the Above" Energy Policy.

BLM's decision to undertake this rulemaking underscores the reality that the existing web of federal laws, regulations, and policies are unnecessarily restricting the production of all forms of energy on public lands. The Associations encourage BLM, along with all federal resource and

---

[9] The White House, *Department of the Interior*, *in* THE BUDGET FOR FISCAL YEAR 2024 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/int_fy2024.pdf.

[10] BLM, *About the BLM Oil and Gas Program* (last visited June 14, 2023), https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about#:~:text=The%20BLM%20manages%20the%20Federal,benefit%20of%20the%20American%20public.

[11] BRANDON S. TRACY, CONG. RES. SERV., R46537, REVENUES AND DISBURSEMENTS FROM OIL AND NATURAL GAS PRODUCTION ON FEDERAL LANDS (2020), https://crsreports.congress.gov/product/pdf/R/R46537.

[12] *Id.*

[13] DOI, *Interior Department Announces $21.53 Billion in Fiscal Year 2022 Energy Revenue, Highest-Ever Disbursements from Clean Energy from Federal Lands and Waters* (Nov. 4, 2022) [*hereinafter FY 2022 Announcement*], https://www.onrr.gov/press-releases/FY2022.Disbursements.Press.Release.pdf.

[14] *Id.*

energy agencies, to continue to work to reform the federal regulatory system to promote a truly "All of the Above" energy policy.

Energy builds America and helps promote flourishing communities. In April of this year, API published a new report, "Impacts of the Oil and Natural Gas Industry on the US Economy in 2021."[15] This report "explores the economic impact of the oil and natural gas industry in the United States. These impacts are the result of three channels: direct impacts from the employment and production within the oil and natural gas industry; indirect impacts through the industry's purchases of intermediate and capital goods from a variety of other US industries; and induced impacts from the personal purchases of employees and business owners both within the oil and natural gas industry and its supply chain, as well as from the personal spending by shareholders out of the dividends received from oil and natural gas companies."[16] The report's findings show that "the US oil and natural gas industry has a widespread economic impact throughout all sectors of the economy. Combining the industry's direct, indirect, and induced impacts, the industry's total impact amounted to 10.8 million full-time and part-time jobs and accounted for 5.4 percent of total US employment in 2021."[17] The report, which was prepared by PwC, further explains: "At the national level, each direct job in the oil and natural gas industry supported an additional 3.8 jobs elsewhere in the US economy in 2021 (for a multiplier of 4.8). Counting direct, indirect, and induced impacts, the industry's total impact on labor income (including proprietors' income) was $908.7 billion, or 6.4 percent of the US national labor income in 2021. **The industry's total impact on US GDP was nearly $1.8 trillion, accounting for 7.6 percent of the national total in 2021**."[18]

As expansive as our nation's energy infrastructure is, it requires investment to keep pace with a growing population, demand for goods and services, and energy needs. Investing in our nation's energy infrastructure will not only allow the oil and natural gas industry to keep pace with energy demand, it will also help keep energy affordable for Americans. Furthermore, investments in energy infrastructure create well-paying jobs, give U.S. manufacturers a competitive advantage through lower energy and raw material costs and provide revenue to local, state and federal governments. All of these benefits collectively mean increased national security for Americans. To sustain our nation's energy renaissance and our position as the world's largest producer of oil and natural gas, the Biden administration and Congress should work with the private sector to enable the expansion of our nation's energy infrastructure through consistent regulation and efficient processes.

To that end, while BLM considers new regulations to promote renewable energy production on public lands, BLM should also take effective action to promote traditional energy development on public lands while also streamlining federal regulatory processes that currently impose an undue burden on the deployment of energy infrastructure. For example, while BLM considers ways to promote the use of ROWs for renewable energy production, BLM should also

---

[15] A copy of this report is available at https://www.api.org/-/media/files/policy/american-energy/pwc/2023/api-pwc-economic-impact-report-2023.

[16] *Id.* at ES-1.

[17] *Id.*

[18] *Id.* at ES-1 to ES-2.

ensure that its regulations and policies work to reduce unnecessary restraints and burdens on traditional and renewable sources alike.

III. The Proposed ROW Rule Does Not Align with All Applicable Statutory Requirements.

The Federal Land Policy and Management Act ("FLPMA") and its Multiple Use Framework generally govern the use of lands administered by BLM.[19] The Mineral Leasing Act of 1920 ("MLA") also establishes requirements that BLM must comply with.[20] And while the Proposed ROW Rule references the Energy Act of 2020 as the basis for the Proposed Rule's authority,[21] that same legislation expressly *reaffirms* Congress's directive that BLM "shall continue to manage public lands under the principles of multiple use and sustained yield in accordance with [FLPMA] . . . including for due consideration of mineral and nonrenewable energy-related projects and other nonrenewable energy uses, for the purposes of land use planning."[22]

The Associations are concerned that certain aspects of the Proposed ROW Rule may fail to adhere to the statutory requirements designed to ensure that public lands are accessible and available for leasing for all sources of energy. The relevant legal framework is set forth below.

A. The Existing Legal & Regulatory Framework Provides Robust Conservation and Environmental Protection for BLM Lands, While Also Allowing for Responsible Development of Energy Resources.

Under FLPMA, Congress specifically instructed that federal lands must be managed "on the basis of multiple use and sustained yield unless otherwise specified by law."[23] The terms "multiple use" and "sustained yield" are expressly defined by Congress. Hence, the Multiple Use Framework, as defined in 43 U.S.C. § 1702(c), requires BLM to consider a variety of factors when managing public lands:

> *The term "**multiple use**" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into*

[19] *See, e.g.*, 43 U.S.C. § 1702(c) (defining "multiple use"). While the proposed rule would apply to lands administered by BLM under RMPs implementing the multiple-use mandate of FLPMA, it would not apply to other lands administered by BLM which typically have a primary purpose designated by Congress. We encourage BLM to maintain clarity on this point so that neither BLM nor the regulated community of public land users must labor under uncertainty about the scope of application of the regulations.

[20] Mineral Lands Leasing Act of 1920, Pub. L. No. 66-146, 41 Stat. 437 (1920), *codified at* 30 U.S.C. § 181 *et seq.*

[21] *See* 88 Fed. Reg. at 39,726–29 (citing 43 U.S.C. § 3003).

[22] Energy Act of 2020, Pub. L. 116-260, § 3106, 134 Stat. 1182, 2517 (2020) (codified at 43 U.S.C. § 3005).

[23] 43 U.S.C. § 1701(a)(7).

> *account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.*[24]

Likewise, the term "sustained yield" means "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use."[25]

In conjunction with the Multiple Use Framework under FLPMA, the MLA also establishes a structured process set by DOI to use public lands for resource production, including oil and gas. The Proposed ROW Rule lacks any meaningful discussion of the MLA's role in assuring access and availability of public lands for energy resource development. Under the MLA, federal onshore lands with possible fossil energy resources are available for exploration and production and may be leased by BLM to lessees in exchange for lease payments and royalties (except where those activities have been prohibited by law). Indeed, lands containing oil and natural gas "shall be subject to disposition in the form and manner provided by this chapter [i.e., the MLA]."[26] These statutory frameworks account for the fact that public land use must be multifaceted and still meet present resource needs. They incorporate a variety of principles, including sometimes competing objectives, to help inform and guide the proper use of federal lands for resource extraction or other economic purposes.

As discussed in the Proposed ROW Rule, Congress recently adopted the Energy Act of 2020, which permits DOI to "reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations" if the agency makes certain determinations, either concerning the existing rates or fees, or that such reduction "is necessary to promote the greatest use of wind and solar energy resources."[27] In addition, the Energy Act sets a production goal of "not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws."[28]

Though not referenced or considered in the Proposed ROW Rule, the Energy Act of 2020 expressly codified the following requirements:

> *Notwithstanding any other provision of this subtitle, the Secretary of the Interior and the Secretary of Agriculture* ***shall continue to manage public lands under the principles of multiple use and sustained yield*** *in accordance with the Federal Land*

[24] *Id*. § 1702(c) (emphasis added).

[25] *Id.* § 1702(h).

[26] 30 U.S.C. § 181.

[27] 134 Stat. at 2418, 2516 (codified at 43 U.S.C. § 3003(b)).

[28] *Id.* (codified at 43 U.S.C. § 3004(b)).

> *Policy and Management Act of 1976 (43 U.S.C. 1701* et seq.*) or the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600* et seq.*), respectively, including for* ***due consideration of mineral and nonrenewable energy-related projects and other nonrenewable energy uses****, for the purposes of land use planning, permit processing, and conducting environmental reviews*.[29]

In 2022, Congress further curtailed the Energy Act of 2020 by reinforcing the imperative of ensuring "energy security." In particular, Section 3006 of the Energy Act now restricts BLM's ability to promote renewable energy development on public lands unless and until certain nonrenewable objectives are achieved:

> *The Secretary may not issue a right-of-way for wind or solar energy development on Federal land unless—(A) an onshore lease sale has been held during the 120-day period ending on the date of the issuance of the right-of-way for wind or solar energy development; and (B) the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the right-of-way for wind or solar energy development is not less than the lesser of—(i)2,000,000 acres; and (ii) 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period; and (2) the Secretary may not issue a lease for offshore wind development under section 1337(p)(1)(C) of this title unless—(A) an offshore lease sale has been held during the 1-year period ending on the date of the issuance of the lease for offshore wind development; and (B) the sum total of acres offered for lease in offshore lease sales during the 1-year period ending on the date of the issuance of the lease for offshore wind development is not less than 60,000,000 acres.*

Thus, notwithstanding Section 3003's allowance for taking certain steps to encourage renewable energy on public lands, BLM's authority remains constrained by FLPMA, the MLA, and Section 3006. The Proposed ROW Rule fails to mention Section 3006, let alone explain how BLM will ensure continued access for traditional energy projects in line with all of these statutory directives.

The Energy Act of 2020 confirms that, while renewable energy production goals and their implementing policies may be considered in the context of public lands (and the administration thereof), all those measures must still be in line with the Multiple Use Framework and other applicable statutes. Combined with FLPMA and the MLA, a broad range of federal statutes provide an extensive overlay of federal environmental requirements that BLM must comply with when administering public lands.

B. Key Principles of Federal Land Management

Based on the legal background of public land management outlined above, several key principles emerge.

[29] *Id.* at 2517 (codified at 43 U.S.C. § 3005) (emphasis added).

- ***First,*** under FLPMA and the MLA, Congress has established a carefully tailored way for agencies such as BLM to administer public lands.

- ***Second,*** that carefully tailored method, embodied most prominently in the Multiple Use Framework, mandates "a combination of balanced and diverse resource uses" that accounts for both "renewable ***and*** nonrenewable resources."

- ***Third,*** the Energy Act of 2020 reiterates the above principle by setting a 25-gigawatt renewable energy production goal for public lands, while still requiring BLM to adhere to the Multiple Use Framework—expressly flagging the "due consideration" of nonrenewable energy and making sure certain other benchmarks for nonrenewable energy production are achieved.

Thus, while it is true that the Energy Act of 2020 establishes an expectation that BLM will meet the minimum goal of producing 25 GW of electricity from renewable sources by 2025, it is equally important for BLM to recognize that it cannot do so in a way that excludes other energy uses or limits access for those projects to public lands. As BLM seeks to implement the Energy Act of 2020, BLM must maintain a level playing field among energy sources, and not use the Bureau's regulations, standards, or policies to create winners and losers among energy sources. Otherwise, BLM would be violating an equally important statutory counterpart—one that the Energy Act of 2020 itself references.

C. Aspects of the Proposed ROW Rule Lack Clear Statutory Support.

A bedrock principle of administrative law is that agency regulations must be based on statutory authority. Congressional statutes define the permissible bounds of a federal agency action.[30] This is especially true for federal agencies seeking to exercise authority over federal lands, as the Constitution's Property Clause expressly provides: "**The *Congress* shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States**."[31] Agency actions with significant consequences for federal land use management should be based on clear congressional authorizations.[32] Accordingly, Congress has the right and power to determine the proper balance of uses for federal lands, and against that constitutional backdrop, Congress has established the Multiple Use Framework to guide BLM's effectuation of that legislative purpose. Even the newer authority set

[30] *See, e.g.*, 5 U.S.C. § 706(2)(C) (finding unlawful agency actions "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"); *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) ("Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" (Brackets in original)).

[31] U.S. CONST. ART. IV, § 3, cl. 2 (emphasis added); *see also Utah Div. of State Lands v. United States*, 482 U.S. 193, 201 (1987) ("The Property Clause grants Congress plenary power to regulate and dispose of land within the Territories . . . ."); *Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976) ("[D]eterminations under the Property Clause are entrusted primarily to the judgment of Congress.").

[32] *Cf. Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) ("So the answer requires construing the challenged statute to figure out what task it delegates and what instructions it provides.").

forth in the Energy Act of 2020 imposes specific limitations on BLM's discretion, which must be closely followed.

The Proposed ROW Rule fails to align with this constitutional and statutory framework in several respects. As mentioned earlier, FLPMA adopts a Multiple Use Framework that treats renewable resources on equal footing with nonrenewable resources. Under the "Statutory Authority" section of the preamble, BLM acknowledges the Multiple Use Framework—and the agency's need to abide by it—as well.[33] But it is difficult to discern how the substance of the Proposed Rule ultimately ensures adherence to this principle in the anticipated implementation of the ROW rule.

To offer two illustrative examples, first, BLM proposes to change the acreage rents and capacity fees specifically for wind and solar energy. Second, BLM proposes to remove competitive leasing requirements in priority areas for wind and solar power developments without them first going through a full auction.[34] These economic incentives of rent/fee reduction and the removal of the full auction, both of which are ***specifically targeted toward*** wind and solar energy, demonstrate that BLM is putting a thumb on the scale with respect to how these lands should be used, but doing so without any discussion or regard for ensuring continued access and availability of public lands for other energy uses. Regarding removal of competitive leasing, "BLM believes that by revising the regulations to . . . issue leases without a competitive process where no competitive interest exists across all BLM-managed public lands, the BLM can maximize interest in renewable energy leasing and accelerate the deployment of solar and wind energy on public lands."[35] Yet no part of FLPMA or the MLA articulates that the role of BLM, especially in the context of public lands administration, includes the promotion of a particular energy source beyond the specific aspirational goal set by Congress.

Efforts to promote wind and solar development on public lands are especially questionable because in the context of managing public lands, one particular use of a land could crowd out a different use of that same area. As one illustration, if renewable energy projects secure 50-year leases pursuant to proposed 43 C.F.R. § 2805.11 ("Energy generation facilities, including solar or wind energy development facilities, are authorized with a grant or lease for up to 50 years[.]"), that would be 50 years during which time other companies would likely be restricted from accessing those areas for other forms of energy development. Inherently these incentive structures become unfair by crowding out a different form of energy production. The Proposed ROW Rule also lacks specificity with regard to lease terms that would ensure continued access to these areas for nonrenewable energy, especially to the extent nonrenewable projects do not achieve anticipated electricity generation levels. In particular, BLM should ensure equitable treatment among sources of energy with regard to requirements to maintain production to retain a lease.

While BLM cites to other provisions of FLPMA as well to derive its authority for the Proposed Rule, these provisions reaffirm that the Bureau should not prioritize a particular way of using public lands. The preamble references BLM's authority under FLPMA to grant ROWs, issue

[33] 88 Fed. Reg. at 39,728.

[34] *See id.* at 39,727–28.

[35] *Id.* at 39,728.

regulations, charge rent for such rights, and impose terms and conditions on the ROWs.[36] The preamble also references BLM's authority under FLPMA to collect funds from ROW applicants or holders.[37] But of note, all those authorities are value-neutral. They provide BLM with the ***general*** authority to grant ROWs to all applicants; not select industries or uses to favor. Moreover, such authorities are still cabined by the agency's obligations to adhere to the Multiple Use Framework.

Similarly, while BLM also cites to the Energy Act of 2020 for its authority, this law does not supersede BLM's duty to follow the Multiple Use Framework. To the contrary, Congress made well known its intent that public lands management must be "under the principles of multiple use," with "due consideration of mineral and nonrenewable energy-related projects and other nonrenewable energy uses."[38] Furthermore, even though the Act established a minimum goal to "authorize production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025,"[39] that goal has been satisfied,[40] and thus does not serve as an adequate rationale for this entire rulemaking. Putting these provisions together, the Energy Act of 2020 not only preserves the statutory approach of FLPMA (and the Multiple Use Framework), it ***prohibits*** the preferential treatment of renewable energy over other forms of energy—especially in the context of public lands management.

IV. Specific Components of the Proposed ROW Rule Conflict with the Governing Principles for Management of BLM Lands

Beyond the legal concerns outlined above, the Associations are specifically concerned with the following concepts in the Proposed ROW Rule.

A. Lease Terms

One of the ways in which BLM is proposing to favor renewable energy projects relates to the length of a lease term. Under BLM's current regulations, leases for wind and solar developments in designated lease areas extend for 30 years.[41] Similarly, grants of ROWs under the MLA for oil and natural gas pipelines and related facilities cannot exceed 30 years.[42] BLM is now proposing to provide more generous lease terms for solar and wind energy generation facilities, energy storage facilities that are separate from energy generation facilities, and transmission lines with a capacity of 100 kV or more by authorizing lease terms of up to 50 years.

---

[36] *Id.* (citing 43 U.S.C. §§ 1761, 1764, 1765).

[37] *Id.* (citing 43 U.S.C. § 1734(b), 1764(g)).

[38] 43 U.S.C. § 3005.

[39] *Id.* § 3004.

[40] *See* The White House, *Fact Sheet: Biden-Harris Administration Races to Deploy Clean Energy that Creates Jobs and Lowers Costs* (Jan. 12, 2022) ("Major Progress toward 25 GW by 2025. . . . [T]he Administration has approved 18 onshore projects . . . and initiated processing of another 54 priority projects with the potential to add at least 27.5 GW of clean energy.").

[41] 43 C.F.R. § 2805.11(b)(2)(iv).

[42] *Id*. at § 2880.11(a).

As BLM notes, FLPMA requires the Bureau to limit ROWs to a reasonable term in light of all circumstances concerning the project, including the cost of the facility, its useful life and the public purposes it serves.[43] BLM further states that it "believes, based on its experience administering such ROWs, that the reasonable term of a grant or lease is best limited to a 50-year term for large infrastructure ROWs, considering the cost of the facility, its useful life, and the public purpose it serves."[44] While many oil and natural gas-related facilities are appropriately characterized as "large infrastructure," BLM gives no indication that ROWs for such facilities likewise should be subject to 50-year terms and provides no basis for concluding that wind and solar facilities alone among potential uses of public lands should be eligible for extended lease terms.

To the extent BLM does provide substantially longer-term leases for wind and solar projects and related infrastructure, it risks tying up large areas for long periods which could end up being under-utilized unless BLM takes steps to ensure that other compatible uses are authorized – or potentially subject to authorization – within the lease area during the lease term. The Proposed ROW Rule fails to evaluate the impact that these lease terms may have on ensuring access to, and availability of, public lands for other uses, including the development of other sources of energy.

B. Leasing Requirements

Another way in which BLM is proposing to loosen normal procedures to favor renewable projects relates to non-competitive leasing and grants. Under current regulations, leasing within designated renewable energy lease areas is subject to a competitive bidding process, which is the process that has historically been used for leasing of public lands for energy development and which ensures the greatest return to the American people for the use of public lands. For land outside of designated leasing areas, current regulations reflect a preference for a competitive process. BLM is now proposing to allow non-competitive leasing in designated leasing areas and to revise the regulations concerning processing of grant applications while eliminating the regulatory requirement that it prioritize competitive leasing over processing of non-competitive grants. According to BLM, this broad discretion is intended to "maximize interest in renewable energy leasing and accelerate the deployment of solar and wind energy on the public lands."[45]

The Associations question the need for this departure from the norm of competitive leasing. As noted above, BLM is already well on its way to surpassing the goal of 25 gigawatts of electricity from wind, solar and geothermal energy projects by 2025. Moreover, BLM states that in the past two years it has identified greater levels of competitive interest both inside and outside of designated leasing areas and has offered designated leasing area competitively.[46] With the financial and other incentives currently available for wind and solar energy projects through the Fiscal Responsibility Act and other sources, interest in designated leasing areas should be increasing and should minimize the need for any non-competitive leasing.

---

[43] 88 Fed. Reg. at 39,730.

[44] *Id*.

[45] *Id*. at 39,728.

[46] *Id*.

Likewise, Section 50262(e) of the Inflation Reduction Act eliminated noncompetitive leasing for oil and gas leases and now requires subsequent rounds of competitive leasing.[47] This provision responds to a recent U.S. Government Accountability Office (GAO) report concerning noncompetitive leasing practices at BLM.[48] This report found that "[a]verage revenues from competitive leases over [the studied] time period were nearly 3 times greater than revenues from noncompetitive leases…"[49] Notably, for this particular report, GAO was only "asked to review oil and gas leasing on federal lands."[50] Nothing in the report suggests that noncompetitive leasing for other forms of energy on BLM lands would yield different results. Absent a factual basis for finding that other sources require different treatment, BLM should treat all sources similarly with regard to competitive leasing practices. To the extent BLM would allow noncompetitive leasing for wind and solar projects while it is prohibited for oil and gas leasing, BLM would need to provide a reasoned explanation and justification for such an approach. The same concerns with noncompetitive leasing would seem to apply to all sources. At a minimum, BLM should restore the preference for competitive leasing and provide guidelines for the exercise of discretion in determining when it is appropriate to process non-competitive leases within designated leasing areas. Competitive leasing should continue to be the norm.

A related concern is that BLM is proposing to use the same process for competitive leasing inside and outside designated areas for wind and solar leases.[51] In effect, BLM is proposing to minimize or even erase the distinction between making public lands available for wind and solar facilities and related infrastructure inside and outside of designated areas. Under these circumstances, the designation of an area for leasing largely becomes irrelevant. The designation process at least has the benefit of focusing wind and solar energy development—which can take up large areas of the landscape—in areas where conflicts with other resources and uses are minimized through a land use planning process. While the proposed prioritization process will help mitigate these concerns to some extent, the leasing of areas throughout public lands for wind and solar energy development has the potential to increase conflicts among uses and ultimately lead to the dedication of broad swaths of public land for wind and solar facilities at the expense of other potential uses that BLM is mandated to consider.

Moreover, BLM should clarify that, when BLM "consider[s] whether the proposed development avoids adverse impacts to or conflicts with known resources or uses on or adjacent to public lands,"[52], it will consider both present *and potential future* energy development activities in that particular location. As currently proposed, BLM merely plans to consider "potential

---

[47] *See* Pub. L. No. 117–169, § 50262, 136 Stat. 1819, 2057 (2022) (amending Section 17 of the Mineral Leasing Act, 30 U.S.C. § 226).

[48] *See* GAO, *Onshore Competitive and Noncompetitive Lease Revenues* (Nov. 2020), available at https://www.gao.gov/assets/gao-21-138.pdf.

[49] *Id*. at 2.

[50] *Id*.

[51] *See id*. at 39,733.

[52] *Id*. at 39,734

conflicts *with existing uses* on or adjacent to the proposed [renewable] energy generation facility."[53]

Likewise, the Proposed ROW Rule suggests: "In some instances, such as when other applicants have submitted applications for incompatible uses, the BLM may determine that processing other applications must wait until it issues a decision on a first-in-line solar or wind energy development facility."[54] A preference in this respect would be contrary to FLPMA, MLA, and other applicable law. Where land is suitable for either traditional or renewable energy development, BLM should not set a preference for processing renewable projects first.

C. 2012 Western Solar Plan

To the extent that designation of lease areas for wind and solar energy projects would continue to have practical meaning, BLM should exercise caution in relying on the 2012 Western Solar Plan. The Bureau is revising the Plan through the preparation of a programmatic environmental impact statement and related amendments to resource management plans, suggesting that the 2012 plan is out of date. Among other things, BLM has expanded the Plan to five additional states with millions of acres of public lands. The Bureau is also considering modifying the criteria for identifying solar energy zones and exclusion areas in light of technological and other developments. In addition, one of BLM's stated objectives is to develop criteria to exclude high-value resource areas from renewable energy development. Given the unsettled state of the Western Solar Plan, BLM should carefully consider the use of the current Plan as a basis for the proposed rule. In particular, the Western Solar Plan does not adequately consider the need to ensure continued access to public lands for other energy uses, including oil and natural gas development.

The current effort to expand and update the 2012 Western Solar Plan highlights the extent to which BLM is devoting resources to promoting solar and wind energy development on public lands. While the Associations have no objection to the use of public lands for renewable energy projects where appropriate and acknowledge congressional directives to facilitate such uses, BLM remains obligated to manage the public lands under its jurisdiction under the Multiple Use Framework established by Congress and must allocate sufficient resources to other uses of public lands—such as traditional energy development—to satisfy its overall congressional mandate.

D. The Record Does Not Support the "Need for the Rule."

BLM's "Need for the Rule" discussion lacks a meaningful explanation of the necessity of this rulemaking as it relates to the aspirational goal of "seek[ing]" to "authorize production of not less than 25 gigawatts of electricity m wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws."[55] The Interior Department has already notified Congress that it forecasts that, by the end of FY2025, enough

[53] *Id.*

[54] *Id.* at 39,747.

[55] 48 U.S.C. § 3004(b).

wind, solar and geothermal energy projects will be approved to far exceed the 25 gigawatt goal.[56] The Proposed Rule itself already recognizes that "BLM has authorized projects on public land that are estimated to support more than 13 gigawatts of electricity from renewable energy sources." And BLM's public database for "Renewable Energy Projects Undergoing Environmental Review (as of July 2023)" shows that an additional 26 renewable energy projects are currently "in proposed" stage with the potential for more than 17 gigawatts. In other words, by the time this Proposed ROW Rule is finalized and in effect, other federal actions likely will have achieved the statutory goal.[57] Accordingly, the Proposed Rule does not provide technical data supporting a need for increased preferences and more favorable treatment for lease terms and other provisions.

E. Other Technical Concerns

In addition to the legal flaws discussed above, the Proposed Rule adopts a particular technical approach favoring renewable energy sources over traditional energy development on public lands, without analyzing environmental impacts and valuing resources. The proposal lacks meaningful discussion of the technical basis of the approach chosen in the Proposed Rule and how it harmonizes with existing law. The Administrative Procedure Act prohibits arbitrary and capricious rulemaking,[58] and requires agencies to provide a reasoned explanation and to consider important aspects of a problem.[59] In its current form, the Proposed ROW Rule fails to articulate the "problem" it seeks to resolve nor does it provide any meaningful discussion of a technical or scientific record support for the chosen approach. For example, the Proposed Rule does not address or evaluate potential environmental impacts (from a life cycle perspective or otherwise) associated with deploying such a large number of renewable energy projects with such long-duration lease terms and other favorable conditions.

Likewise, BLM briefly recognizes that the Proposed Rule "must be based on the best available science" in keeping with executive orders.[60] But nothing in the Proposed Rule or its preamble indicates that the Bureau has grappled with identifying the "best available science" when

---

[56] *See* BLM, *Public Land Renewable Energy – Fiscal Year 2021,* at 7-9 (March 2022) (forecasting renewable capacity approved for federal lands exceeding 30 gigawatts by end of FY2025), available at https://www.blm.gov/sites/blm.gov/files/docs/2022-04/BLM%20Public%20Land%20Renewable%20Energy%20FY21%20Report%20to%20Congress%20v4%20508_0.pdf.

[57] Section 3102 of the Energy Act of 2020 requires the Interior Department to submit this report to Congress annually (no later than February of each year). The last "Public Land Renewable Energy" report, as posted on BLM's website, is dated March 2022. Given the central role of the Energy Act of 2020's objective of achieving 25 GW of renewable energy development on public lands, BLM should reopen the public comment period for this proposed rule once the next annual report is published.

[58] 5 U.S.C. § 706(2)(A).

[59] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009).

[60] *See* 88 Fed. Reg. at 39,749 ("E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements."); *see also* 43 U.S.C. § 1701(a)(8) (requiring, under FLPMA, public lands to be "managed in a manner that will protect the quality of scientific . . . values"); Information Quality Act, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 to -154 (2000) (directing the Office of Management and Budget to issue guidelines "for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies").

fashioning the proposal. Similarly, the Proposed Rule provides no information about the impact of the proposal on states and local communities, including impacts on revenue sharing, funds for local infrastructure and schools, and other valuable benefits.

V. Compliance with Federal Rulemaking Requirements

To support various required determinations related to its proposed rulemaking (e.g., compliance with Executive Order 13563 and the Regulatory Flexibility Act), BLM has prepared an "Economic and Threshold Analysis." The threshold analysis concludes that the Proposed Rule may have an effect on the economy of $200 million or more, which would qualify the proposed rule as a significant regulatory action (BLM notes that OIRA has determined the Proposed Rule would also be a significant regulatory action because it may cause material budgetary impacts).[61] At the same time, however, BLM concludes that for purposes of the Congressional Review Act, the proposed rule is not a major rule within the meaning of 5 U.S.C. § 605 because it would not have an annual effect on the economy of $100 million or more. BLM needs to explain these seemingly contradictory conclusions.

At the same time, in conducting these analyses of economic impacts, BLM needs to acknowledge the potential for adverse economic impacts on entities involved in traditional energy development on public lands. To the extent that BLM moves aggressively to lease significant amounts of public lands for renewable energy development both inside and outside designated lease areas and devotes substantial resources to doing so, such lease activity may come at the expense of traditional energy development, thereby impacting the many entities (including small businesses) historically involved in such energy development. These potential adverse impacts need to be acknowledged and considered.

VI. Conclusion

In conclusion, the Associations respectfully request that BLM not move forward with the Proposed ROW Rule or, at a minimum, substantially modify the proposal to address these comments. As we have done before, the Associations urge BLM to focus its efforts on ensuring productive use of public lands consistent with the existing Multiple Use Framework and in a manner that places all sources of energy production on a level playing field.

[61] 88 Fed. Reg. at 39749.