



## **Lead NEPA Story:** Permits sought that can help both eagles and wind energy

(*Greenwire*, 12/2/2022), Michael Doyle, E&E News Reporter

The Fish and Wildlife Service will be adding to its pile of more than 7,300 public comments as it updates the permit system that regulates the accidental killing of eagles.

The swarm of proposals, retorts and, at times, raw emotion that met this week's original comment deadline underscored the complications ahead for the federal agency, as well as the high stakes for both the birds and for an energy industry that's voiced frustration with the status quo.

"This [current] voluntary permit program has, from the outset, caused a tremendous lack of certainty for the wind energy industry, while at the same time providing questionable and inefficient conservation value for eagles,"

NextEra Energy Inc. stated in its detailed comments.

Describing itself as "the world's largest generator of wind energy," NextEra declared that it is "encouraged" that the Fish and Wildlife Service "after over 12 years of deliberations" is moving to update the eagle take permit system.

An individual identified as Timothy Keefer, though, countered that the proposal would be "detrimental to the sole Golden Eagle population in the United States located east of the Mississippi River," and he called for its strengthening.

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## **Emergency Planning and Community Right-to-Know Act:** Toxics reporting rule targets plastics, other industries

(*Greenwire*, 11/30/2022) E. A. Crunden, E&E News Reporter

Plastics companies and other industry groups will be required to loop in regulators when they release a dozen chemicals into the environment, part of EPA's growing scrutiny of hazardous substances.

Under a new rule set to be finalized Wednesday, producers across a number of industries must begin reporting releases of 12 chemicals to EPA when they exceed a certain threshold. The regulation, which will first impact releases in 2023 and be reported the following year, will hit compounds used in processes like plastics production, impacting those companies along

with electric utilities, paint manufacturers and other industries.

Based on its reviews of toxicity data, EPA said it had determined that "the 12 chemicals can reasonably be anticipated to cause either adverse

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chronic human health effects at moderately low to low doses and/or environmental effects at low concentration."

EPA chemicals chief Michal Freedhoff noted in her comments signing off on the rule that it has limitations. Carried out via the Toxics Release Inventory, the regulation serves largely as an information-gathering tool for EPA. But it will offer transparency, she wrote, allowing groups like environmental justice communities "access to data which they may use to assess potential exposure to these additional chemicals."

The substances are largely obscure but key for the roles they play in manufacturing. Companies like Dow Chemical Company and BASF SE are among those set to be impacted. EPA estimated costs to run over \$6.5 million during the first year of reporting before dwindling to just over \$3 million in subsequent years.

Virtually all of the chemicals will be subject to EPA's typical thresholds triggering reporting requirements. However, one, HHCB, has been singled out as "chemical of special concern" and any releases of 100 pounds or more must be shared with the agency. HHCB is a fragrance used in personal care products and is very toxic and persistent, leading to the extra precautionary measures.

The new measures stem from a 2014 petition filed by the Toxics Use Reduction Institute, which sought to have 25 chemicals added to the list. At the time of its petition, TURI emphasized that the compounds it targeted were "known and well documented chemicals of concern."

Some of those chemicals have already been added to the inventory. EPA said that data for nine of the chemicals "was not sufficient" for the

agency to make a determination regarding their eligibility for addition, while one compound is no longer manufactured in the United States.

TRI reporting has faced scrutiny in recent years from advocates, who have panned how the data is collected and argued there are loopholes within the inventory, raising concerns around chemicals like PFAS, or per- and polyfluoroalkyl substances.

But the new chemicals slated for reporting requirements also underscore the extent to which EPA has increasingly targeted toxic substances, including those used in plastics production.

Environmental groups have argued the agency should regulate some plastics as hazardous due to the dangers they can pose, particularly during disposal. And some companies involved in chemical recycling — technologies that strip down plastics for further use — are already major emitters of other substances monitored under TRI. Additional data could help regulators build a bigger picture around those facilities and any risks they may pose for the public.

EPA's moves also coincide with an ongoing contentious debate over a global plastics treaty, with more than 150 countries currently meeting in Uruguay as part of United Nations talks.

While cutting plastics pollution is at the heart of the effort, countries are also scrutinizing the use of the hazardous chemicals that go into plastics production. Phasing out those substances would, proponents argue, assist with plastics recycling feasibility and broader public safety. But while some parties like Canada and the European Union are advocating for bans on certain plastics, nations like the United States are pushing instead for voluntary plans offered on an individual country-by-country basis. The division could ultimately imperil the scale of any final agreement.

**Editor's Note:** The final rule, Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting, was published at *Federal Register* 87:73475-73488 (November 30, 2022).

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## NEPA: Bureau of Land Management eyes major expansion of Western solar

(Greenwire, 12/6/2022) Sean Reilly, E&E News reporter

The Interior Department wants to expand a sweeping Obama-era plan that streamlined the permitting process for solar power projects on hundreds of thousands of acres of federal lands across the West.

Interior late Monday announced its plans this week to begin a programmatic environmental impact statement that would update the 2012 Western Solar Plan. The decade-old plan, which analyzed millions of acres in Arizona, California, Colorado, Nevada, New Mexico and Utah, established 17 solar energy zones in those states where commercial-scale solar development was deemed suitable and eligible for a less-rigorous permitting process.

Interior Secretary Deb Haaland announced the new effort this week during a visit to the 260-megawatt Sonoran Solar Energy Project site in Arizona.

The Bureau of Land Management this week will publish a notice in the *Federal Register* kicking off a 60-day public scoping period for the programmatic EIS that could result in adding additional states to the Western Solar Plan, as well as new solar energy zones.

Concurrently, Haaland also announced that BLM would begin evaluating three large-scale solar projects in Arizona, including the 600-MW Jove Solar Power Project in La Paz County. BLM is set to publish a formal notice in Wednesday's *Federal Register* kicking off a 30-day public scoping period for the Jove project.

Haaland said that the effort is part of the Biden administration's commitment "to expanding clean energy development to address climate change."

"Our review of these proposed projects in Arizona, and a new analysis of the role public lands can play in furthering solar energy production, will help ensure we keep the momentum going to build a clean energy future, lower costs for families and create robust

conservation outcomes on the nation's lands and waters," she said.

The Western Solar Plan was a critical component of former President Barack Obama's Climate Action Plan, and his administration eventually approved 60 commercial-scale solar, wind and geothermal power projects capable of powering millions of homes.

In 2012, then Interior Secretary Ken Salazar created the 17 solar energy zones, covering about 285,000 acres. Interior estimated at the time the solar zones would be capable of producing up to 23,700 MW of electricity — enough to power 7 million homes — if built out.

The plan also identified an additional 19 million acres of so-called variance lands, where more study was needed before any projects could be approved.

The plan prohibited commercial solar power projects on nearly 79 million acres.

Transitioning the nation from fossil fuels to clean energy is a top priority of the Biden administration, which has a goal of approving 25,000 MW of renewable energy projects on federal lands by 2025.

But there has been pushback from environmental groups that would ordinarily support green energy projects.

Their concerns have centered on the impacts of converting thousands of acres of vacant federal lands into commercial-scale solar development sites.

For example, the Western Watersheds Project last week informed BLM that it planned to sue the bureau, in part, for failing to protect key habitat for the threatened Mojave Desert tortoise in Nevada from commercial-scale solar development.

Kevin Emmerich, co-founder of the Nevada-based group Basin and Range Watch, has been watching solar power development in the Silver State for more than a decade.

Emmerich said in an email that he's concerned that the latest Interior move to update the Western Solar Plan is an effort "to try to make solar development on public lands cheaper and more appealing" at the expense of wildlife habitat.

He said the original Western Solar Plan discouraged development near national parks, for example, as well as on "good quality sage grouse habitat and on high priority desert tortoise connectivity habitat."

He added: "I would like to see those regulations enforced better, but it is my fear they will be weakened at the request of the solar industry. Large-scale solar energy is having a negative impact on sensitive Southwestern species and could contribute to the decline of the federally threatened desert tortoise, which has seen a rangewide 37 percent decline according to the Fish and Wildlife Service."

Still, the Biden administration shows no signs of slowing down, particularly in Nevada, which has become a hot spot for large-scale solar development.

In Nye County, Nevada, west of Las Vegas, solar power developers have applied for permits to build more than a dozen major projects on more than 124,000 acres overseen by BLM.

If built, they would have the capacity to produce more than 14,000 MW of electricity, enough to power at least 4.2 million homes.

In addition, BLM last summer removed the equivalent of 185 square miles of public lands in southwest Nevada from new mining claims for two years while it studies seven proposed utility-

scale solar power projects capable of powering more than a million homes.

BLM said if all seven projects are built — on the 118,600 acres of federal lands — they would have the capacity to produce 5,350 MW of electricity, enough to power roughly 1.8 million homes.

Overall, Interior said this week that BLM is analyzing 65 utility-scale onshore renewable energy projects proposed on federal lands, as well as transmission lines needed to transport the clean energy from the project sites to the power grid. The 65 mostly solar, wind and geothermal projects would, if approved, have a combined capacity to produce more than 31,000 MW of electricity.

"We take seriously our responsibility to manage the nation's public lands responsibly and with an eye toward the increasing impacts of the climate crisis," Principal Deputy Assistant Secretary Laura Daniel-Davis, said in a statement. "The power and potential of the clean energy future is an undeniable and critical part of that work."

**Editor's Note:** The Notice of Intent to Prepare an Environmental Impact Statement and Notice of Segregation for the Proposed Jove Solar Project, La Paz County, AZ, appeared on December 7, 2022 (*Federal Register* 87:75064-75065). The Notice of Intent to Prepare a Programmatic Environmental Impact Statement to Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development appeared on December 8, 2022 (*Federal Register* 87:75284-75287)

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## *Clean Air Act:* EPA launches new review of fossil fuel-related pollutant

(*Greenwire*, 12/8/2022) Sean Reilly, E&E News reporter

EPA is launching a new review of its primary ambient air standards for nitrogen oxides, or NO<sub>x</sub>, a step that in the long term could lead to

stricter limits on a class of pollutants closely tied to fossil fuel combustion.

In a newly released notice, the agency asks researchers and other members of the public to

suggest relevant studies released since 2015 for inclusion in a roundup of the scientific literature on the pollutant's health effects.

"In addition to studies that provide information on health outcomes, EPA also seeks recent information in other areas of research relevant to oxides of nitrogen such as sources and emissions, analytical methods, transport and transformation in the environment, and ambient concentrations," according to the notice, which sets a February deadline for submissions.

Under the Clean Air Act, NO<sub>x</sub> is among a half-dozen pollutants subject to National Ambient Air Quality Standards that must be periodically reassessed to ensure that they remain adequate to protect public health and the environment in light of the latest research into their effects. The primary standards are health safeguards; the last such appraisal for NO<sub>x</sub> ended in 2018, with no changes to the status quo.

An EPA spokesperson had no immediate information Thursday morning on why the agency is now beginning a new review or how long it is expected to last. While also not listed on EPA's latest rundown of planned regulatory actions, however, it will almost certainly take years to complete. A separate review of the secondary NO<sub>x</sub> standards, meant in part to protect animals, crops and other vegetation, has been underway for years.

NO<sub>x</sub>, a respiratory irritant that can worsen asthma attacks, is produced by sources ranging from gasoline- and diesel-fueled vehicles to coal-fired power plants. It also contributes to the formation of particulate matter and ozone, two other pollutants covered by ambient air quality standards.

The current one-hour exposure standard for NO<sub>x</sub> is 100 parts per billion, while the annual benchmark — based on an average of yearly NO<sub>x</sub> concentrations — is 53 ppb. They have not been changed since 2010, when EPA created the one-hour standard.

The decision to launch a new review of the primary standards means that EPA is currently revisiting limits for four of the six pollutants encompassed by the National Ambient Air Quality Standards framework. Agency officials are expected to shortly release a proposal for tightening fine particulate standards. A review of the limits for airborne lead is in its early stages, while EPA under President Joe Biden's administration is relooking a Trump-era decision to leave ground-level ozone standards unchanged.

**Editor's Note:** The Call for Information on the Integrated Science Assessment for Oxides of Nitrogen was published in *Federal Register* 87:75625-75627 (December 9, 2022).

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## **NEPA:** Ranchers, greens on edge as Bureau of Land Management rewrites grazing rule

(*Greenwire*, 12/5/2022) Scott Streater, E&E News reporter

For the first time in almost three decades, the Bureau of Land Management is preparing a new rule to guide its management of cows and other livestock grazing on federal lands, a long divisive issue that has only grown more contentious in the West after two decades of drought.

But advocates on both sides expressed skepticism that BLM's update, which is expected to be released in draft form early next year, will include sweeping changes to the current regulations in place since 1995.

That would be just fine with the livestock industry, ranchers and some local government leaders who say BLM has begun reaching out to

them for input over the past several weeks. Industry advocates say they have emphasized that the current regulatory system on 150 million acres of BLM-managed lands provides a solid partnership between the regulators and ranchers that has worked for decades.

"For generations, grazing permittees have guarded vast Western landscapes against development, encroachment, and destruction," said Kaitlynn Glover, executive director of the Public Lands Council, a ranching industry trade group.

In contrast, leaders with several conservation groups active on the grazing issue report BLM has not contacted them about their proposal. These groups have long argued cattle and sheep grazing plays an outsize role in rangeland degradation that must be addressed as the climate warms and drought conditions persist.

"Livestock grazing rules on public lands need a fundamental overhaul," said Randi Spivak, director of the Center for Biological Diversity's public lands program.

The stakes are high as a changing climate, drought and a near year-round wildfire season are making it increasingly difficult for federal rangelands to support a multiple range of uses, much less support wildlife.

Not only is the issue complicated, it's also fraught with political peril, and BLM over the years has sought to strike a careful balance with the ranching community. That's been particularly true since the 2014 armed standoff between law enforcement and ranchers and militia groups in Nevada when the bureau unsuccessfully attempted to remove hundreds of cattle owned by rancher Cliven Bundy that were illegally grazing on federal lands.

Environmental groups have proposed what they say would be significant improvements to how BLM manages federal rangelands. While they remain hopeful, several people active on the issue said they're not expecting BLM to change much in how it regulates grazing activity.

"My expectation is that the BLM will not address the primary problems with the grazing program in a way that will be meaningful or actually require any action to make changes,"

said Josh Osher, public policy director for the Western Watersheds Project, which opposes large-scale grazing on federal lands.

"What they will probably do is maintain policies that allow almost complete control by state offices and local managers, which means that any changes will be scattershot, inconsistent and not durable," he said.

BLM has not said much publicly about the rule or the process to develop a draft proposal, which was put on the White House's list of 2022 regulatory priorities in June.

Last spring, the bureau hired Errol Rice, a Montana native who has previously worked for the National Cattlemen's Beef Association and the Montana Stockgrowers Association, to serve as a senior adviser to BLM Director Tracy Stone-Manning and act as a liaison between the bureau and the ranching community.

In response to questions, a BLM spokesperson in an email said the proposed livestock rule will be ready sometime in 2023 and noted that the bureau is working with 41 cooperating agencies across 13 states, including state and local governments, as well as conservation districts. The draft environmental impact statement will also incorporate comments from "a broad range of stakeholders and the public," said Brian Hires, the bureau press secretary, when asked if conservationists were being consulted.

"Our goal is to have more tools available for the grazing community to improve rangeland health, encourage resilient landscapes, and provide more flexible responses for changing resource and climatic conditions, such as drought," Hires said.

People who have been consulted by BLM said that bureau officials told them a draft proposal likely would be unveiled for public comment in January.

"We will be hopefully working with BLM to review and develop the preferred alternative" in a draft rule, said Joel Bousman, a Wyoming rancher and county commissioner in Sublette County, Wyoming, which is a formal cooperating agency on development of the rule.

Stone-Manning has said publicly she wants the new rule to provide flexibility to allow BLM to

alter individual grazing permit activity to address real-time impacts to rangelands associated with climate warming. This could include changes to seasonal grazing.

In March, Stone-Manning told the Public Lands Council that the new grazing rule — as well as a separate evaluation on managing greater sage grouse — would focus on helping federal rangelands become more "resilient" to climate warming and the ongoing severe drought gripping much of the West.

Stone-Manning also promised that BLM would work with the livestock industry and other stakeholders on the rule. But she also made it clear that BLM's rationale for the rule update, begun three years ago during the Trump administration, is at least in part designed to get out in front of these climate-driven changes.

Bousman emphasized that evaluating regions separately is important.

"The one thing I don't want to see is a Washington, D.C., one-size-fits-all decision for everyone, because that doesn't fit," Bousman said.

The feedback he said his county has received so far from BLM indicates that the bureau wants to work with livestock grazing permittees and is leaning toward a kind of performance-based system that encourages good stewardship of the land.

"If they would promote responsible grazing practices, that's something the livestock industry would fully support," he said.

### **Greens: Total redo needed**

If BLM is sincere about making rangelands more resilient to the impacts of climate change, then no less than an overhaul of livestock grazing regulation on federal lands is needed, environmental groups say.

"The biggest problem on Western public lands right now is that BLM is not evaluating the rangeland health of the public lands prior to allowing livestock grazing to continue," said Todd Tucci, a senior attorney with Advocates for the West in Boise, Idaho, which represented the environmental groups challenging the Trump-era grazing plan at the BLM-managed

San Pedro Riparian National Conservation Area in Arizona.

"This rule has to prioritize full permit processing in important landscapes prior to issuing new grazing permits," Tucci said. "It is a slow-motion disaster when BLM stops monitoring, they close their eyes to the current context, and they continue to allow livestock grazing" without "accounting for modern scientific understandings of climate change."

The Western Watersheds Project was part of a coalition of 18 groups, including the Center for Biological Diversity, that in 2020 submitted to BLM detailed proposals outlining specific issues that they say the bureau needs to correct.

Last spring, the Western Watersheds Project released an online report showing that BLM failed to conduct an environmental analysis before renewing more than half of the grazing permits it approved last year, resulting in degraded rangelands.

That same month, the government watchdog group Public Employees for Environmental Responsibility used BLM data to develop an interactive digital map that found 54 million acres of federal lands the bureau leased for livestock grazing failed land health standards for basic physical and biological factors.

First and foremost, BLM must adopt "grazing polices that require robust and regular evaluation of grazing allotments for conformance with land health standards and that those standards be updated to include meaningful standards to ensure climate resilience, drought resilience and [the] protection/enhancement of biodiversity," said Osher, the Western Watersheds Project's public policy director.

As things stand, Osher said, "BLM really has no idea what the baseline conditions are for the grazing program."

Fixing this is also one of the top recommendations in the grazing regulation alternative championed by the Center for Biological Diversity.

"The current regulations are heavily tilted to benefit the livestock industry and at the expense of native plants, wildlife and functioning ecosystems," said Spivak, the center's public

lands program director. "The changes we're proposing would shift that balance, create more resilient landscapes including taking into consideration drought."

Other recommendations also include requiring the use of native plant species when repairing heavily grazed areas that are dominated by invasive plant species like cheatgrass and capping the annual consumption of available forage on each allotment.

"Most current BLM grazing authorizations are wholly inconsistent with the most basic principle of range management, which in general states that livestock should utilize (including trampling) no more than 30 percent of available

forage each year," Osher said. "Most current authorizations allow for 60 percent utilization, even during extreme drought conditions. Setting utilization at this level would be a good first step."

But Osher and others with environmental groups say they remain in the dark over what's to come.

"We really don't know what to expect," Osher said. "At this point, we still have no idea whether our alternative is still going to be considered in the upcoming draft [rule], and have not been offered the opportunity to revise our alternative based on any new direction that the BLM may be taking with the regulations."

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## *Lead NEPA Story* (continued from page 1)

"The American public expects more of its trusted stewards of natural resources," Keefer stated.

In September, the Fish and Wildlife Service aired its eagle permit proposals, the first public step in what's going to be a long process. On Monday, the agency extended the comment period by 30 days.

FWS spokesperson Vanessa Kauffman explained that the agency "received numerous requests from stakeholders, industry, federal and state agencies, nongovernment organizations, and the public" to extend the comment period, and so it's now open until December 29.

"This additional time will give all stakeholders more opportunity to analyze and comment on the various details of the proposed rule and related [National Environmental Policy Act] environmental assessment associated with this important conservation program," said John Anderson, executive director of the Energy and Wildlife Action Coalition.

The coalition represents power producers, energy developers and related trade associations, among others.

Bald eagles were listed as endangered in 1967, but habitat preservation and bans on DDT and other pesticides helped the population rebound. Bald eagles were removed from the national endangered species list in 2007.

Still, take of eagles, a term that includes disturbance, injury or killing of the birds, is generally prohibited under the Bald and Golden Eagle Protection Act. Incidental take means the killing or injuring of an eagle that isn't intended.

Take permits for eagles were established in 2009 and revised in 2016. They are intended to cover the unintentional killing of eagles that can occur from energy development, residential and commercial construction, and resource recovery, among other activities.

The current rules allow permits of up to 30 years, with reviews conducted every five years. The 2016 rule was implemented when the bald eagle population was estimated at 143,000. Golden eagles then had an estimated U.S. population of 40,000.

The Interior Department last year announced that the latest survey found an estimated 316,700 individual bald eagles, including 71,400 nesting pairs, in the lower 48 states.



The latest FWS proposal calls for the creation of general permits for four activities. These would include wind energy generation projects and power line infrastructure, as well as activities that disturb breeding bald eagles and those that harm bald eagle nests.

Each general permit outlines eligibility criteria and mitigation requirements to minimize and compensate for impacts to eagles. Eligible activities would obtain a general permit by registering with the service and certifying compliance with permit conditions.

“We generally support the concept,” the Atlantic Flyway Council stated, “but have substantial concerns that, in pursuit of convenience and increased participation, state wildlife agency input won’t be solicited and incorporated within the permit language.”

The Atlantic Flyway Council is a coalition of 17 states and other governmental bodies that work with federal agencies to manage migratory birds and their habitats in eastern North America.

In addition to the general permits, FWS is proposing changes in the specific permit process.

David Harrison, conservation chair of the Salem Audubon Society, wrote that “properly sited wind energy is a win for birds, people, and the planet alike,” while adding that permitting rules must strike a balance.

“Require more robust monitoring under the general wind permit,” Harrison said, adding that “site surveys need to be done more often than every three months and should be undertaken by third-party monitors. Wind energy companies require federal oversight.”

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