



June 27, 2011

Mr. Ray Brady
Chief of Lands and Realty Division
Bureau of Land Management
U.S. Department of the Interior
Attn: 1004-AE19
1849 C Street, NW
Washington, DC 20240

TRANSMITTED VIA FEDERAL E-RULEMAKING PORTAL

RE: RIN 1004-AE19 - Interim Temporary Final Rule and Proposed Rule on the Segregation of Lands for Renewable Energy

Dear Mr. Brady:

On behalf of the Solar Energy Industries Association (SEIA) and its 1,000 members and the American Wind Energy Association (AWEA) and its more than 2,500 member companies, we would like to thank the Bureau of Land Management (BLM) for its ongoing efforts to support the deployment of solar and wind energy projects on public land. The United States has some of the richest solar and wind resources in the world and we should not miss an opportunity to further facilitate permitting of utility-scale solar and wind power projects that create jobs and generate clean, reliable energy.

Thank you for the opportunity to submit these comments on the notices of interim temporary final rule and proposed rule.

Best Regards,

A handwritten signature in blue ink that reads "Daniel M. Adamson".

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A handwritten signature in black ink that reads "Tom Vinson".

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Background

SEIA greatly appreciates the Bureau of Land Management's (BLM) hard work and dedication over the past few years to accelerate the permitting process for utility-scale solar power projects on public land. 2010 was an unprecedented year for the solar industry as BLM permitted the first nine utility-scale solar power projects on public lands. These projects will provide over 3,100 megawatts of generating capacity, enough to power more than 625,000 homes.

In addition, BLM has identified ten utility-scale solar power projects or related actions as priority projects in 2011, as well as five wind projects or related actions. BLM has chosen these projects because it sees them as the most promising projects that will help diversify the country's energy portfolio in an environmentally responsible manner. BLM's goal is to issue permits for these fifteen projects by the end of 2011. Once constructed and online, these priority projects will provide a further 3,023 megawatts of solar capacity and 1,024 megawatts of wind capacity.

Today, there are more than one hundred solar power projects awaiting a permit from BLM. Together, these projects would generate over 30,000 megawatts of renewable energy in five different states using a variety of technologies. While the solar industry appreciates BLM's progress in permitting solar power projects, BLM must continue to issue permits as efficiently as possible to ensure the future success of solar power on public lands.

From the wind industry's standpoint, BLM's Wind Energy Development Policy, as written, provides a reasonable path forward to project developers. However, the pace of processing wind energy-related applications, including those chosen as "priority projects," has been slower than anticipated for a variety of reasons. AWEA also strongly supports a more efficient BLM permitting process.

These Segregation Rules Are a Positive Move in the Right Direction

These segregation rules – both the interim temporary final rule and the proposed rule – are a positive move toward more efficient permit processing, as they will give BLM the authority to remove or prevent impediments caused by speculative mining claims within the acreage for which a solar or wind developer applies for a right-of-way (ROW). This is, however, not the only step toward improved efficiency that is necessary to facilitate renewable energy development.

As BLM has explained, lands within an energy generation ROW, unlike lands proposed for exchange or sale, remain open to appropriation, including mining claims, while BLM considers the ROW.¹ Furthermore, under the Mining Law of 1872, a ROW cannot materially interfere with previously located mining claims. Over the past two years, 216 new mining claims were located within solar energy ROW application areas² and 437 were located within wind energy ROW application areas in seven states.³

¹ 76 Fed. Reg. 23,231 (Apr. 26, 2011).

² *Id.* at p. 23,233.

³ *Id.* at p. 23,231

However, many of these mining claims were filed after the wind or solar ROW application was made public.

BLM has stated that, based on past experiences, “some of these claims are likely to be valid, but others are likely to be speculative and not located for true mining purposes.”⁴ Speculative applications are usually filed to compel payment from the ROW applicant to relinquish the mining claim, and it can be time-consuming and expensive for ROW applicants to prove that a mining claim is speculative. In addition to the cost and effort involved in disputing them, mining claims also create uncertainty for project developers and financiers who worry that mining claims may ultimately prevent a project from receiving an ROW. Removing obstacles, such as speculative mining claims, from BLM’s permitting process is necessary to prevent the undue delay or withdrawal of deserving ROW applications and accelerate solar and wind power project development, thereby enabling BLM to meet its goal of permitting at least 10,000 megawatts of renewable energy generation capacity on public lands by 2015.⁵

SEIA and AWEA applaud BLM’s recognition that speculative mining claims pose a potentially insurmountable obstacle to utility-scale solar and wind power development. Below are a few suggestions that could make the proposed segregation process even more effective.

The Segregation Process Could Be Clearer

These rules allow BLM to segregate lands if it determines such action “to be necessary for the orderly administration of the public lands.”⁶ However, BLM has indicated that not all solar or wind energy ROW applications would warrant land segregation,⁷ and that BLM may reject some applications or decide that other applications do not require land segregation because conflicts with mining claims are unlikely. SEIA and AWEA do not dispute BLM’s authority to decide whether lands are segregated. However, it is not clear when in the ROW application process this determination is made, nor whether applicants can, should, or must request land segregation within their ROW application to initiate the land segregation process.

In our view, BLM should decide whether to segregate lands immediately upon receiving an application and prior to BLM’s first public announcement that it is evaluating a ROW application. Publishing the land segregation decision in conjunction with the first public announcement would prevent submission of speculative mining claims after the public announcement—the primary purpose of this rule.

For currently pending ROW applications, BLM should make a land segregation decision immediately so as to prevent initial or further speculative mining claims on lands within pending solar or wind energy ROW applications. As mentioned above, over the past two years, 216 new mining claims were located

⁴ *Id.*

⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, Section 211.

⁶ 76 Fed. Reg. 23,232.

⁷ *Id.*

within solar energy ROW application areas and 437 within wind energy ROW application areas.⁸ BLM should issue segregation decisions right away for any pending solar and wind energy ROW applications to ensure that speculative mining claims are not impeding the permitting process for these solar and wind power projects.

In addition, it appears that BLM will make a decision on land segregation independent of any applicant request, but if an applicant is expected to request land segregation, or if an applicant requesting land segregation will encourage BLM to segregate land, BLM should indicate so. Furthermore, it would assist both the solar and wind industries to know what factors, aside from the likelihood of mining claims on land within a ROW application, BLM will look at when deciding whether to segregate land.

In conclusion, AWEA and SEIA are supportive of the proposed rule and the interim temporary final rule related to the segregation of lands for renewable energy. The proposals could be improved, however, by clarifying the issues raised above.

Thank you for your consideration of these comments.

⁸ *Id.* at p. 23,233.