

Bureau of Land Management Rules Signify Shift Toward Conservation

Alert

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The Bureau of Land Management (BLM) has finalized two rules to further prioritize the health of public lands and facilitate renewable energy leases: the [Conservation and Landscape Health Rule](#) and the [Rights-of-Way, Leasing, and Operations for Renewable Energy Rule](#).

In recent history, BLM has prioritized activities like oil and gas activities and mining and livestock grazing on the 250 million acres of public lands that it manages. However, in 2023, BLM first suggested a shift to put a greater emphasis on sustainability consistent with the Biden Administration's climate focus. These two rules released in April 2024 cement the change and will have wide-ranging effects to public lands, many of which will only be understood through implementation. The rules also mark a significant shift in the treatment of public lands that should be proactively considered in planning and decision making.

CONSERVATION AND LANDSCAPE HEALTH RULE

The Conservation and Landscape Health Rule generally requires BLM to make land management decisions that are based on science and data, protect existing functional landscapes and restore degraded landscapes. To that end, the rule primarily establishes restoration and mitigation leases, which provide a mechanism for parties seeking to restore land or for developers to offset damage from other leases, and also allows BLM to prioritize the protection of Areas of Critical Environmental Concern. While this protective approach is consistent with the agency's functions under the Federal Land Policy and Management Act, it is a shift from the previous decades of implementation where extractive activities were prioritized. In its rule, BLM indicates a focus on safeguarding lands to ensure resilient ecosystems to benefit communities by:

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- Protecting the most intact, functioning landscapes.
- Restoring degraded habitat and ecosystems through millions of acres of restoration and mitigation leases.
- Using science and data as the foundation for management decisions across all plans and programs.

RIGHTS-OF-WAY, LEASING, AND OPERATIONS FOR RENEWABLE ENERGY RULE

The Rights-of-Way, Leasing, and Operations for Renewable Energy Rule generally revises BLM's regulations to facilitate more solar and wind development on public lands. To promote renewable developments, the rule makes three primary changes:

- Reduces the rent and capacity fees for solar and wind by 80% compared to the 2016 fees and maintains the reduction through 2035. It also maintains a 20% reduction for 2038 "and beyond."
- Adjusts the rate-setting methodology for calculating the rent and capacity fee to reflect the acres of land actually authorized for use and the energy actually produced. This methodology is available to new and existing right-of-way holders. It will also require right-of-way holders to pay the greater of either the rent or the capacity fee.
- Gives BLM more discretion in issuing leases by allowing BLM to grant a lease even where there is insufficient competitive interest to warrant a competitive bidding process. When reviewing lease applications, BLM will consider the prioritization criteria holistically, and it may establish additional criteria through local or national policy guidance.

EXPECTED NEXT STEPS

The Conservation and Landscape Health Rule has not yet been published in the *Federal Register*, but will be effective 30 days after publication. The Rights-of-Way, Leasing, and Operations for Renewable Energy Rule was published May 1, 2024, and is effective July 1, 2024. These rules have already been the subject of political consternation, as the House of Representatives has passed legislation that would require BLM to withdraw the Conservation and Landscape Health Rule. While this is not likely to gain traction and end up as law, the quick action by Congress is indicative of the high-profile nature of these actions. Litigation is also likely to ensue, so interested parties should be aware of potential changes through either the legislative or judicial branches.

Many of the effects of these rules will be understood only through implementation, but we anticipate that they may result in increased scrutiny of the effects certain projects may have on the health and function of the landscape or result in additional conditions designed to protect the health of the landscape. The rules will also likely shift the development of public lands toward solar and wind projects rather than oil and gas, and may affect the overall availability of leases for development given the focus on restoration and

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mitigation leases.

For more information on the Bureau of Land Management Rules, please contact [Brittany Barrientos](#), [Aimee Guzman Davenport](#), [Nathaniel Donoghue](#), [Kristen Ellis Johnson](#), [Kyle Foote](#), [Micah Revell](#), [Guy Smith](#), [Betsy Smith](#), [Claire Williams](#), [Zachary Wright](#) or the Stinson LLP contact with whom you regularly work.

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