

U.S. DEPARTMENT OF THE INTERIOR **BUREAU OF LAND MANAGEMENT**
NationalUNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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EMS TRANSMISSION 12/06/2011
Instruction Memorandum No. 2012-032
Expires: 09/30/2013

To: State Directors (Arizona, California, Colorado, Nevada, New Mexico, and Utah)

From: Director

Subject: Native American Consultation and Section 106 Compliance for the Solar Energy Program
Described in Solar Programmatic Environmental Impact Statement

Program Area: Rights-of-Way Management, Solar Energy, Cultural Resources, and
Tribal Consultation.

Purpose: This Instruction Memorandum (IM) establishes the schedule, procedures, and responsibilities for ongoing Native American consultation in connection with the completion of the Programmatic Environmental Impact Statement (PEIS) for the solar energy program. It also transmits a revised Draft Programmatic Agreement (PA) governing the Bureau of Land Management (BLM) solar energy program's compliance with Section 106 of the National Historic Preservation Act. The revised Draft PA is attached for review and comment.

Policy/Action: This IM requires follow-up actions to continue and strengthen BLM government-to-government consultation with Indian tribes regarding completion of the Solar PEIS. Such consultation has been underway since 2008. Field Offices are directed to take additional steps to assure that tribes understand how their input is being taken into account in the finalization of the Solar PEIS and how tribal consultation will continue when we receive project-specific solar applications following execution of the Solar PEIS Record of Decision (ROD). The National Renewable Energy Coordination Office (WO-301) is distributing the Supplement to the Draft Solar PEIS (Supplement) along with a Question and Answer Fact Sheet to all federally recognized Indian tribes (Attachment 1). The Fact Sheet describes procedures that we will follow to ensure that the solar energy program meets the BLM's responsibilities for tribal consultation and historic preservation.

On February 15, 2011, the Draft PEIS and a Draft PA were provided to all federally recognized Indian tribes in the states listed above, the six State Historic Preservation Officers in those states, the Advisory Council on Historic Preservation, and other interested parties for comment.

Based on their suggestions, we prepared a revised Draft PA (Attachment 2) which is also being distributed with the Supplement for further review and comment.

Native American Consultation—State, District, and Field Office Responsibilities

The State Directors of California and Nevada, through the appropriate District Manager or Field Manager, will contact those tribes that provided extensive, written comments on the Draft Solar PEIS. We have provided copies of these written tribal comments to the California and Nevada State Offices. California will contact the Quechan Indian Nation, the San Manuel Band of Mission Indians, the Soboba Band of Luiseno Indians, and the Big Pine Paiute Tribe of the Owens Valley. Nevada will contact the Duckwater Shoshone Tribe, the Pahrump Paiute Tribe, the Summit Lake Paiute Tribe, and the Washoe Tribe of Nevada and California.

The BLM offices will request a face-to-face meeting with each of these tribes for the purposes of:

- Reviewing the tribe's comments and concerns;
- Explaining the purpose and content of the Supplement to the Draft Solar PEIS;

- Discussing the procedures enumerated within the Question and Answer Fact Sheet;
- Explaining projected timeframes and procedures for finalizing the Solar PEIS; and
- Reviewing proposed Section 106 consultation procedures contained within the revised Draft PA.

Line officers in the six solar states will also contact those tribes with the closest historical and/or cultural ties to the Solar Energy Zones (SEZ) being carried forward in the Supplement. The BLM will offer to meet if so desired by these tribes. In situations where larger numbers of tribes have ties to a given SEZ, groups of tribes may be invited to attend meetings held in a central location. At such meetings, topics will include the contents of the Supplement; the consultation procedures described within the Question and Answer Fact Sheet; projected timeframes and procedures for finalizing the Solar PEIS; procedures for tribal consultation when we receive and consider project-specific solar applications under the provisions of the Solar PEIS; and proposed Section 106 consultation procedures contained within the revised Draft PA.

Native American Consultation—Washington Office Responsibilities

Concurrent with public release of the Supplement, WO-301 mailed the Supplement, the Question and Answer Fact Sheet, and the revised Draft PA to tribes. Recipient tribes included those that provided comments on the Draft Solar PEIS, those with cultural and/or historical ties to the proposed SEZs, and those with cultural and/or historical ties to lands subject to solar development through the variance process. This correspondence (Attachment 3) addresses government-to-government consultation. It also explains how tribal concerns will be addressed as the PEIS is completed and how the BLM intends to consult further with tribes when we receive and consider project-specific solar applications under the provisions of the Solar PEIS.

As part of the Solar PEIS analysis, WO-301 awarded an ethnographic contract to identify traditional cultural properties and sacred sites in selected SEZs and produce ethnographic overviews for designated tribes in Nevada and Utah.

In the correspondence discussed above, WO-301 has asked other tribes if they wish to share similar concerns or issues before the Solar PEIS and ROD are finalized

After the ROD is signed, WO-301 will write to all tribes describing how we considered tribal input in reaching a final decision. Opportunities for further tribal consultation when the BLM receives new solar applications will be outlined.

Section 106 Compliance

The February 15, 2011 Draft PA has been revised to reflect detailed critiques provided by the Advisory Council on Historic Preservation, the Arizona State Historic Preservation Officer, the Nevada State Historic Preservation Officer, and the National Trust for Historic Preservation.

The State Directors of all six states included in the Solar PEIS will review the revised Draft PA and provide comments on its adequacy and clarity. Suggestions that would improve the efficiency of the Section 106 process would be appreciated.

Consultations with the Signatory and Concurring Parties are ongoing, and a Final PA will be executed before the Solar PEIS ROD is signed.

Timeframe: This IM is effective upon issuance.

Appropriate line officers in California and Nevada must initiate contact with the eight tribes that provided detailed written comments on the Draft Solar PEIS within 30 days.

Appropriate line officers in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah must contact those tribes with the closest historical and/or cultural ties to SEZs within 60 days.

All six State Directors must provide written comments on the revised Draft PA by January 27, 2012.

WO-301 must receive copies of the administrative record documenting all written contacts, telephone calls, meetings, and presentations to tribes made in response to this IM by March 1, 2012. This will ensure that the Final Solar PEIS fully takes into account the tribal issues and concerns expressed through this government-to-government consultation.

Budget Impact: Implementation of this IM will have some budget impact since additional work is required to arrange and participate in face-to-face meetings with tribes, document such meetings, and

prepare any correspondence to tribes.

Background: In response to the Energy Policy Act of 2005 (Public Law 109-58) and Secretarial Order 3285A1, the BLM has proposed a national solar energy program to further its ability to meet the requirements for facilitating solar energy development on BLM-administered lands. The Solar PEIS is analyzing and defining such a program. The actions required by this IM and its attachments will demonstrate an ongoing commitment to consult with Indian tribes and give full consideration to the effects of solar energy development upon historic resources.

These policies will strengthen the BLM's efforts to comply with the requirements of Section 106 of the National Historic Preservation Act and the National Environmental Policy Act. In addition, these policies may avoid or reduce controversy related to the proposed actions called for in the Solar PEIS modified preferred alternative.

Manual/Handbook Sections Affected: This IM does not affect any manual/handbook sections. It is intended for use in accordance with BLM Manual 8120 and Handbook H-8120-1.

Coordination: The BLM State Offices of the six solar states reviewed and provided suggestions for improving the tribal consultation procedure document prior to its finalization. The revised Draft PA was coordinated with the Office of the Solicitor. The Renewable Resources and Planning (WO-200) and Minerals and Realty Management (WO-300) directorates coordinated revisions to this IM and all its attachments.

Contact: If there are any questions concerning this IM, please contact Ed Roberson, Assistant Director, Renewable Resources and Planning, 202-208-4896; Mike Nedd, Assistant Director, Minerals and Realty Management, 202-208-4201; or Stephen Fosberg, Solar PEIS Project Archeologist, 828-693-9310 or sfosberg@blm.gov.

Signed by:
Mike Pool
Acting, Director

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

3 Attachments

- 1 - Question and Answer Fact Sheet (11 pp)
- 2 - Draft Solar Programmatic Agreement (17 pp)
- 3 - Letter to Tribes (4 pp)