

# **Question and Answer Fact Sheet**

## **BLM-Tribal Consultation Procedures Regarding Solar Energy Development on Public Lands in Six Southwestern States**

The Bureau of Land Management (BLM) will complete a Programmatic Environmental Impact Statement (PEIS) to evaluate and establish a national solar energy program by the fall of 2012. This fact sheet explains how the agency will consult with Indian tribes regarding this undertaking. Following a brief introduction, Questions and Answers address the manner and timing of government-to-government consultation with federally recognized tribes and compliance with Section 106 of the National Historic Preservation Act (NHPA) through execution of a Programmatic Agreement (PA).

### **Introduction**

The BLM and the Department of Energy are jointly preparing a PEIS for solar development in six southwestern states. The PEIS analyzes a new solar energy program that would be applicable to utility-scale solar energy development on BLM-administered lands. Following release of the PEIS, the BLM will consider future site-specific applications for solar development under the solar energy program through project-specific National Environmental Policy Act documents.

The BLM State Directors initiated consultation with Indian tribes in June 2008 regarding the preparation of the PEIS. They sent a letter to the elected leadership of 253 federally recognized Tribes, Chapters, and Bands, notifying them of the forthcoming Solar PEIS, inviting them to be cooperating parties, and requesting government-to-government consultation. Such government-to-government consultation addressed the agency's affirmative consultation obligations, including those that pertain to Section 106 of the NHPA.

In July 2009, the California Desert District Manager mailed a letter on behalf of the agency to all tribes with ties to the six southwestern states, including maps of proposed Solar Energy Zones (SEZ), again inviting them to consult. Responsible line officers followed-up with phone calls, emails, and face-to-face visits to make sure that cultural resource personnel within the tribes were aware of these notification efforts. In the fall and winter of 2010/2011, staff from Argonne National Laboratory called all tribes with ties to the SEZs or other developable areas who had not responded to make sure the tribes had received the maps. Argonne re-sent maps and information packets as needed.

The BLM and Department of Energy have contracted Argonne National Laboratory to produce the PEIS. Argonne National Laboratory is the Department of Energy's largest research center. It conducts applied research and assists in the preparation of environmental impact statements. As a contractor for the Solar PEIS effort, Argonne has contacted tribes on behalf of the agencies, and collected and analyzed information. However, the BLM has the sole responsibility to negotiate and make commitments to tribes. Only the BLM will conduct government-to-government consultation for this program.

The discussion below outlines the context and timing of these discussions. For further information on this project, please visit <http://www.solareis.anl.gov>.

## **Questions and Answers**

*1. What is the relationship between current “priority” solar energy proposals and applications that “will be considered” under the terms of the PEIS?*

Developers submitted hundreds of solar project applications prior to the initiation of the PEIS. Applicants withdrew many of these projects and the responsible BLM line officers cancelled some projects due to insufficient information or lack of diligence on the part of the applicant.

Other applicants provided sufficiently detailed plans and analyses for the agency to process right-of-way authorizations for development of specific projects on the public lands. The BLM gives those applications that are sufficiently complete to meet certain deadlines priority review and refers to them as “priority” projects (formerly “fast track” projects). The responsible BLM line officers will evaluate these and other applications during the preparation of the PEIS and will process them in accordance with existing policies. The BLM treats these priority projects separately and independently from the PEIS. The BLM will analyze and process them under existing solar program guidance and treat them as project-specific undertakings under Section 106 of the NHPA. The agency will incorporate the program established through the PEIS into the processing of site-specific applications for solar development considered after the release of the Record of Decision.

The following tables list those priority projects that the BLM has approved or is currently processing. These projects include those for which the companies have demonstrated sufficient progress and expertise to start the environmental review and public participation process. Responsible line officers are conducting tribal consultation for these priority projects under established tribal consultation policies and Section 106 consultation procedures specified within individual state protocol agreements or under the 36 CFR 800 regulations. (Follow the link [www.blm.gov/wo/st/en/prog/more/CRM.html](http://www.blm.gov/wo/st/en/prog/more/CRM.html) for an explanation of how state protocols guide the cultural resources program and links to state-specific protocols.)

Approved Applications				
Serial Number	Customer Name (Project Name)	MWs	Total BLM Acres	BLM Field Office
CACA049537	TESSERA SOLAR (Calico Solar) - acquired by K Road Power	664	4,604	Barstow
CACA048880	NextEra/BOULEVARD ASSOCIATES LLC (Genesis/Ford Dry Lake)	250	1,950	Palm Springs-Southcoast
CACA048811	SOLAR MILLENNIUM/CHEVRON (Blythe)	1,000	7,025	Palm Springs-Southcoast
CACA049561	CHEVRON ENERGY SOLUTIONS CO (Lucerne Valley)	45	422	Barstow
CACA047740	TESSERA SOLAR (Imperial Valley Solar) - acquired by AES Solar	709	6,459	El Centro
CACA048668	SOLAR PARTNERS I LLC (Ivanpah SEGS includes CACA 049502, 3, and 4)	370	3,501	Needles
CACA048649	FIRST SOLAR (Desert Sunlight)	550	4,165	Palm Springs-Southcoast
NVN084359	SOLAR MILLENNIUM LLC (Amargosa Farm Road)	484	4,350	Pahrump
NVN085077	NEXTLIGHT RENEWABLE POWER LLC (Silver State North)	50	618	Las Vegas
NVN086292	Solar Reserve/TONOPAH SOLAR ENERGY LLC (Crescent Dunes)	110	2,250	Tonopah

Priority Projects				
Serial Number	Customer Name (Project Name)	MWs	Total BLM Acres	BLM Field Office
AZA034187	NextEra/BOULEVARD ASSOC LLC (Sonoran Solar)	500	4,000	Lower Sonoran
CACA048810	SOLAR MILLENNIUM/ CHEVRON (Palen)	500	5,160	Palm Springs-Southcoast
CACA051625	SAN DIEGO GAS & ELECTRIC CO (Ocotillo Sol)	14	115	Barstow
AZA034666	<i>SOLAR RESERVE LLC (Quartzsite)</i>	<i>100</i>	<i>1,500</i>	<i>Yuma</i>
AZA034425	<i>PACIFIC SOLAR INVST INC (Iberdrola) (Hyder)</i>	<i>350</i>	<i>4,500</i>	<i>Lower Sonoran; Yuma</i>
CACA048728	<i>NextEra ENERGY (McCoy)</i>	<i>250</i>	<i>7,754</i>	<i>Palm Springs-Southcoast</i>
CACA049397	<i>FIRST SOLAR (Desert Quartzite)</i>	<i>700</i>	<i>7,245</i>	<i>Palm Springs-Southcoast</i>
CACA048669	<i>FIRST SOLAR (Stateline/Ivanpah)</i>	<i>380</i>	<i>5,454</i>	<i>Needles</i>
CACA 049491	<i>ENXCO (Desert Harvest)</i>	<i>100</i>	<i>930</i>	<i>Palm Springs - Southcoast</i>
NVN084052	<i>NV POWER CO (Dry Lake Valley)</i>	<i>125</i>	<i>919</i>	<i>Las Vegas</i>
NVN084465	<i>PACIFIC SOLAR INVESTMENTS INC (Iberdrola) (Amargosa North)</i>	<i>150</i>	<i>7,500</i>	<i>Las Vegas</i>
NVN085077	<i>FIRST SOLAR (Silver State South)</i>	<i>350</i>	<i>1,400</i>	<i>Las Vegas</i>

*Italicized entries in the table above are draft and subject to change. These projects have not yet been shared with the general public.*

**2. Why has the BLM placed so much emphasis on government-to-government consultation at the programmatic level?**

Throughout this planning process, the BLM engaged tribes in discussions early on in the process. Tribal expressions of concern tied to specific geographical regions, identification of cultural sites and resources on the ground, and documentation of landscape use have been critical. The identification of tribal issues and concerns allowed the agency to make adjustments through the planning process to minimize the impacts to places and resources considered important by tribes. The PEIS process provided several opportunities for tribes to affect decisions regarding where to

concentrate solar development so that we could reduce the time pressures of project-specific consultation.

The BLM acknowledges that the tribes may consider the disclosure of information pertaining to sacred sites by tribal members to be culturally inappropriate, uncomfortable, and even spiritually dangerous. The agency will continue to use all legal means available to protect such sensitive information from unwarranted disclosure.

*3. What is the Supplement to the Draft Solar PEIS (Supplement) and how does it relate to ongoing government-to-government consultation?*

The Supplement, included with this mailing, provides additional information to address key issues identified through public comments. The Supplement includes:

- a) Modification of the action alternatives;
- b) Refinement of which SEZs will be carried forward;
- c) A description of additional information that will be collected and analyzed for each SEZ to be carried forward;
- d) A process for identifying new SEZs in the future; and
- e) A variance process for applicants who wish to develop projects outside of SEZs.

Copies of the Supplement are available through the project Web site (<http://solareis.anl.gov>) and have been mailed to tribes along with correspondence described in question 5 below. The public has 90 days to comment on the new information.

*4. How will the BLM notify tribes regarding how the Final PEIS was influenced by the issues and by concerns expressed by tribes during the consultation process?*

Language of the Final PEIS will reflect tribal consultation, oral testimony, written comments, and the findings of ethnographic research. The BLM will provide detailed feedback to tribes that goes beyond normal EIS procedures. The BLM Washington Office will respond to each comment letter or public testimony received from tribes regarding the Draft PEIS and the Supplement in the Final PEIS. The agency will provide a written summary to all tribes informing them of the changes that were made to reflect the input they provided in written comments, oral testimony, and face-to-face meetings. If the BLM cannot make the requested changes, it will justify its decision. The agency will also reiterate plans for ongoing consultation regarding future site-specific applications for solar development.

*5. What efforts are currently underway to continue government-to-government consultation with tribes concerning the BLM's solar energy program?*

The responsible BLM line officers continue to strengthen efforts to consult with tribes concerning how they may be affected by solar projects approved under the terms of the PEIS. Line officers will first call those tribes who have submitted written comments on the PEIS. BLM line officers will **request** a government-to-government meeting with elected tribal officials so that we can discuss issues raised in tribal correspondence and the process for finalizing the

PEIS and Record of Decision. BLM line officers in the six solar states will also telephone tribes with historical and cultural ties to the SEZ areas and **offer to meet** face-to-face. At such meetings, topics may include the content of the Supplement; the consultation procedures described within this Question and Answer Fact Sheet; projected timeframes and procedures for finalizing the PEIS; procedures for tribal consultation when we receive and consider project-specific solar applications under provisions of the PEIS; and proposed Section 106 consultation procedures contained within the revised draft PA. The BLM will initiate these contacts in late October 2011.

Concurrent with release of the Supplement, the National Renewable Energy Coordination Office will mail the Supplement, the Question and Answer Fact Sheet, and the PA to all tribes. Recipient tribes will include those who commented regarding the draft PEIS, those with cultural and/or historical ties to the SEZ area, and those with cultural and /or historical ties to lands subject to solar development through the variance process. Letters will request additional government-to-government consultation. They will explain future consultation procedures the responsible BLM line officers will propose when we receive site-specific solar applications.

*6. How will the BLM handle tribal consultation for site-specific solar applications?*

The government-to-government consultations initiated for the PEIS will continue and become more focused as the BLM receives and considers future site-specific applications for solar development. The BLM understands that the large-scale and hypothetical nature of some of the issues under consideration in the PEIS made it difficult for tribes to come forward and identify specific places, sites, and resources of concern. The Preferred Alternative recommended in the Draft PEIS, for example, proposes that nearly 22 million acres in six southwestern states would remain open for possible solar energy development. When a BLM field office receives future site-specific applications for solar development, the responsible line officer will determine which tribes are most likely to have historical and/or cultural ties to the project's area of potential effect. The responsible BLM line officers will make reasonable and good faith attempts to meet with the affected tribe(s) so that the BLM and the affected tribes can discuss the proposed development in detail. The BLM will make initial contacts with the tribes by letter and telephone. Either the tribal or BLM cultural staff may make the arrangements for any face-to-face meetings, and the line officers (the District Manager, Field Office Manager, or other BLM decisionmaker) will attend. The BLM will request that elected tribal officials, ideally the tribal Chairman or President, attend at least one such meeting in order to address government-to-government concerns. The purpose of the meetings will be to describe the proposed project and discuss cultural resources or other tribal issues of concern. Any agency decisions to authorize or modify the proposed solar project will take tribal issues and concerns into account.

*7. Are the proposed BLM procedures to meet its government-to-government consultation obligations for the solar energy program compatible with the Secretary of the Interior's proposed policy governing Consultation with Indian Tribes?*

The Secretary of the Interior will soon issue a new policy to improve consultation with Indian tribes. Published in the *Federal Register* on May 17, 2011, the public comment period for this draft policy closed on July 18, 2011.

The six BLM states affected by the new solar energy program are conducting consultation with Indian tribes that is consistent with the draft Secretarial policy. The BLM's procedures for tribal consultation regarding the solar energy program will be fully compatible with the signed final policy. Such a process will likely include a number of key directives listed in the current draft:

- BLM officials engaged in consultation will be those line officers who have delegated authority in the disposition and implementation of an action.
- BLM line officers responsible for the proposed project area will request that tribal consultation partners involve those officials who are elected, appointed, or officially delegated in writing to represent the tribe.
- BLM line officers will consult with tribes for those proposed actions with tribal implications. Such actions may have a substantial direct effect on tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands.
- Notices will provide a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes.
- If tribes do not respond to requests for consultation, the responsible BLM line officers will make reasonable and periodic efforts throughout the planning process to repeat the invitation.
- BLM line officers will consult with tribes during the initial planning stage, proposal development stage, and implementation stage of actions. Communication with tribes will be in the form of telephone calls, letters, face-to-face meetings, or other forms of interaction.
- Final decisions on Departmental actions with tribal implications will be communicated in writing to affected tribes with a summarized explanation of the final decision.

The agency implements its responsibilities to consult with tribes using a phased approach. As required by the Secretary's draft policy, the BLM has made continuing efforts to engage with Indian tribes regarding the proposed solar energy program.

*8. How will BLM use ethnographic data to meet its affirmative responsibilities to consult with tribes regarding the solar energy program?*

The BLM Washington Office contracted with SWCA Environmental Consultants to produce an ethnographic overview of six tribes within the Great Basin region. These tribes were the Moapa Band of Paiute Indians, the Paiute Indian Tribe of Utah, the Timbisha Shoshone Tribe, the Duckwater Shoshone Tribe, the Pahrump Paiute Tribe, and the Confederated Tribes of the

Goshute Indian Reservation. Tribes were selected based upon their expressed interest and willingness to cooperate with the research necessary to produce an ethnographic overview. Results of the ethnographic contract will be used to produce an overview of tribal concerns in the Great Basin area relative to solar energy development. The overview will be based on existing literature and ethnographic data. An ethnographer interviewed tribal members in the field to discuss places of religious and traditional use and tribal concerns regarding the impacts of solar development on cultural landscapes. Information gained during the ethnographic research will be used to identify traditional cultural properties, significant ethnobotanical resources, visual resources, and tribal perspectives on the direct and indirect effects of solar development on tribal interests. Due to concerns over information sensitivity, the contract's Statement of Work stipulates that only the BLM Washington Office will receive a complete report. Any information to be shared with the public must first go through a redaction and approval process by the concerned and affected tribes.

*9. What about other tribes?*

Based on the results of the ethnographic studies mentioned above, the BLM is contacting tribes with cultural and/or historical ties to all lands available for development. The draft ethnographic reports from the southern Great Basin (available on the Solar PEIS project Web site at <http://solareis.anl.gov>) will give the BLM the opportunity to recognize and consider tribal concerns for particular site types before finalizing the PEIS. These reports have summarized key findings and concerns and the BLM Washington office is now writing to other tribes asking if they have similar issues or concerns. The findings of the ethnographic reports are presented at a very general level. Concerns raised about trails, plant gathering areas, or rock art sites, for example, give the agency the opportunity to ask if those are the types of sites or issues that other tribes care to bring to the agency's attention for SEZs in their regions.

*10. Will more ethnographic studies be carried out in the future?*

Government-to-government consultation and project-specific consultations with tribal staff will be used as opportunities for tribes to identify traditional cultural properties or sacred sites. However, there may be times when BLM line officers need new ethnographic research to provide sufficient information to adequately consider the effects of solar development on issues and resources of concerns to tribes. The BLM Field Office cultural staff, including specialists assigned to Renewable Energy Coordination Offices, in consultation with their Deputy Preservation Officer, will recommend to the responsible BLM line officers whether new ethnographic data are required for a given solar application. If new ethnographic research, studies, or interviews are necessary, the BLM cultural staff, in consultation with tribal officials, will recommend to BLM line officers the appropriate scope of the study as well as provisions for safeguarding data confidentiality.

*11. When will other cultural resource data be acquired and included in a future site-specific Plan of Development?*

Solar companies must submit a complete and acceptable application before the responsible BLM line officer will initiate processing of the right-of-way grant. Line officers will schedule a

number of pre-application meetings with the applicant in which required cultural resource studies will be identified. Decisions regarding any required ethnographic studies will be made following tribal consultation. All cultural resource inventories and ethnographic studies will be completed and referenced in a final application before consideration of the request can proceed. The responsible line officer may deny an application if the applicant does not provide the additional information requested in a timely manner. The terms and conditions of the right-of-way grant will require that a Plan of Development include documentation of a completed BLM-approved cultural resources mitigation program(s) before ground disturbance and construction begins. Requirements to meet the BLM's responsibilities under NHPA are also likely to be specified within Memoranda of Agreement (MOA) or specific Programmatic Agreements developed for the solar project.

*12. What level of cultural resource inventory will be required for future solar applications?*

The responsible BLM line officers will require that solar company officials meet with them prior to the submission of a formal Plan of Development. The BLM Instruction Memorandum No. 2011-061 dated February 7, 2011, describes the pre-application and screening procedures required for solar and wind energy applications. Agency policy requires at least two pre-application meetings with the applicant. The purpose of these meetings is to identify needed cultural resource studies and tribes are encouraged to participate. However, screening criteria encourage the responsible BLM line officers to prioritize the processing of applications for areas with the lowest potential for conflicts, including cultural resource concerns.

Based on the company's initial plans for development, the Field Office cultural resources staff will determine the Area of Potential Effect (APE) for the proposed undertaking. This APE will include reasonably foreseeable direct and indirect effects.

New Class III cultural resource inventories for archeological and architectural resources, as appropriate, will be normally be required for the entire APE, except where (in the judgment of the responsible BLM cultural resources staff) reliable Class III inventory data already exist or where geomorphological or human-caused land disturbances would preclude the existence of historic properties. Those portions of the APE requiring new cultural resource inventories will usually be surveyed at one time. The agency must approve a phased survey approach in advance. Complete survey results facilitate development of mitigation plans and tribal consultation. Depending on the geologic conditions, geomorphological testing may need to be included as part of site identification strategies.

*13. Who pays for the acquisition of cultural resource data for consideration in future site-specific applications for solar development?*

The applicant must provide sufficient funding to acquire any needed archeological, historical, or ethnographic data. Applications for solar energy facilities are processed as right-of-way authorizations under Title V of the Federal Lands Policy Management Act and Title 43, Part 2800 of the Code of Federal Regulations. The developer must submit a completed and acceptable application before the responsible line officer will initiate processing the right-of-way application. Most proposals under the solar program will be full cost recovery applications.



Right-of-way authorizations will contain appropriate stipulations relating to all aspects of project development including cultural resources mitigation and monitoring. Appendix A of the PEIS discusses a set of design features to reduce adverse impacts of solar energy development on the public lands. Unless cultural resources are absent from the APE, required design features attached to all solar energy applications must include a Cultural Resources Management and Mitigation Plan. Terms and conditions of each right-of-way grant will require that these plans be included in the Plan of Development and that the holder of the grant fully comply with the provisions of the plans.

*14. How has the BLM consulted with tribes under Section 106 of the National Historic Preservation Act?*

In June 2008, BLM State Directors informed tribes that the PEIS was being prepared, asked if tribes wished to participate as cooperating agencies, and offered government-to-government consultation. In July 2009, the California Desert District Manager announced that public scoping was being extended and invited tribal views and comments on the PEIS and proposed solar energy study areas within the six southwestern states. The letter stated that a PA would be developed to facilitate compliance with Section 106 of the NHPA for the new solar energy program. Tribes were told that more information about the PA would be forthcoming. In February 2011, the BLM Assistant Director, Minerals and Realty Management, wrote to tribes with a request for comment on the Draft PEIS, and a draft PA was enclosed for tribal review.

At public scoping meetings held in 2008 and 2011, the BLM took public testimony from tribes and tribal members. These public meetings, while addressing concerns over the Draft PEIS, were also used as information gathering opportunities for tribal comment on the draft PA. The BLM line officers at both the State and Field Office level continue to meet with tribal officials to explain the proposed solar energy program and how the PA will determine the process by which the agency will comply with Section 106 of the NHPA.

The BLM recognizes that its national solar energy program is currently very broadly defined. When site-specific applications for solar development are received, whether within the proposed SEZs or on other lands available for application, BLM line officers will continue consultation with affected tribes. The agency will seek information and insight on a site-specific basis, which will be used for the evaluation of historic properties. Tribal consultation results will be fully taken in account when the responsible line officer decides whether a proposed project may or may not be allowed to proceed. The agency will consult with tribes regarding programs of mitigation, monitoring, and eventual plans for remediation and retirement of solar facilities.

Ongoing government-to-government consultation relative to cultural resources will focus on identifying, evaluating, considering the effect upon, and mitigating impacts to historic properties of concern to Indian tribes. Although procedures pertaining to the agency's compliance with Section 106 of the NHPA may dominate some discussions with tribes, tribes will also have the opportunity to raise any issues regarding other resources in meetings and correspondence with the agency as part of the BLM's government-to-government consultation. The agency acknowledges that it has broad responsibilities to consult with tribes and will involve the

appropriate program specialists and managers in consultations so that all issues of concern can be addressed.

*15. How will Section 106 responsibilities for future solar undertakings be met and what is the relationship between the new solar program Programmatic Agreement and individual state protocol agreements?*

The establishment of a national solar energy program will identify and prioritize development in locations best suited for this purpose. Amendments to BLM land use plans in the six-state area will then adopt those elements of the new solar energy program that pertain to planning. This program represents an interstate undertaking that could have direct and adverse effects upon National Historic Landmarks or National Register-eligible properties of national significance. For these reasons and because the development of the solar program is highly controversial, the BLM requested review and involvement of the Advisory Council on Historic Preservation (ACHP) to resolve potential adverse effects of solar energy development under terms of the national Programmatic Agreement. Negotiations currently underway among the BLM, the ACHP, and the six State Historic Preservation Officers (SHPO) for the affected six southwestern states will result in creation of a PA for the solar energy program. Indian tribes have been invited to participate as Consulting Parties in the development of the PA. The PA will replace and supersede the Section 106 compliance procedures that the six BLM states usually follow according to their state-specific protocol agreements with individual SHPOs created under the terms of the national PA. Tribal consultation for future project-specific applications, therefore, will follow the procedures contained within the new PA. This interaction may differ somewhat from consultation steps currently taken by the local BLM Field Offices for more routine undertakings; however, the existing BLM cultural resource manuals and handbooks will still apply, as will the Departmental tribal consultation policy when finalized.

The full effects of the implementation of the solar energy program on historic properties cannot be fully determined prior to approval of the program. The PA is being created to specify how the BLM will continue its consultation with tribes, the ACHP, and SHPOs in order to meet its Section 106 responsibilities for future site-specific applications for solar development. This step-down, customized approach for meeting an agency's Section 106 compliance obligations is authorized by 36 CFR 800.4(b)(2) and 36 CFR 800.14(b)(3). A final solar PA will be executed prior to the signing of the Record of Decision.

## Acronyms Used in this Question and Answer Fact Sheet

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect
BLM	Bureau of Land Management
CFR	Code of Federal Regulation
NHPA	National Historic Preservation Act
PA	Programmatic Agreement
PEIS	Programmatic Environmental Impact Statement
SEZ	Solar Energy Zone
SHPO	State Historic Preservation Officer