

## 6 CONSULTATION PROCESS FOR THE DOE ULP PEIS

DOE is complying with E.O. 13175 and Section 7 of the ESA by engaging in consultation on a Government-to-government basis with Indian tribal governments and with the USFWS, respectively. Sections 6.1 and 6.2 describe the consultation process undertaken to date.

### 6.1 TRIBAL GOVERNMENT-TO-GOVERNMENT CONSULTATION

The Federal Government formally recognized its relationship with Indian tribal governments on November 6, 2000, with E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. In addition, DOE Order 144.1, *DOE American Indian Policy*, and memos from the DOE Secretary require that DOE consult and coordinate with Indian tribal governments, Indian tribal communities, and tribal individuals whose interests might be directly and substantially affected by DOE activities. On January 9, 2012, DOE initiated consultation and communication on the ULP PEIS with six Indian tribal governments that are known to have interests in the area and were identified for a previous NEPA effort. These six tribes are: (1) the Hopi Nation; (2) the Navajo Nation; (3) the Southern Ute Indian Tribe; (4) the Ute Indian Tribe; (5) the Ute Mountain Ute Tribe; and (6) the White Mesa Ute Tribe. DOE sent follow-up letters to each of the six tribes on May 2, 2012. Those letters expressed DOE's desire to continue to look into ways to improve the Government-to-government consultation process with the Indian tribal governments and encouraged the tribes to participate during the public participation opportunities provided in the NEPA process for the ULP PEIS. Two tribes (the Navajo Nation and the Southern Ute Indian Tribe) chose to participate in the development of this ULP PEIS as cooperating agencies, while the remaining four chose to participate as commenting agencies.

On September 28, 2012, DOE also contacted 19 additional tribes to consult on the ULP PEIS. These 19 tribes were identified based on BLM's previous activities in the areas around the ULP lease tracts and its knowledge of the ancestral range of tribes connected with the Mesa Verde region. DOE sent follow-up letters to each of the 19 tribes on November 20, 2012, similar to the May 2, 2012, letters to the six tribes contacted above. Three tribes (the Pueblo of Acoma Tribe, the Pueblo de Cochiti Tribe, and the Pueblo of Isleta Tribe) chose to participate in the development of this ULP PEIS as cooperating agencies, while the remaining 16 chose to participate as commenting agencies. The list of cooperating and commenting agencies for the ULP PEIS, and their respective roles on their participation with regard the ULP PEIS process, are included in Section 1.9.

Since January 2012, monthly telephone conferences have been held between DOE and the cooperating agencies to develop the Draft ULP PEIS.

All letters were sent to the tribes by Mr. David W. Geiser, Director, DOE-LM. Facsimiles of all the letters sent are presented in Appendix F. Table 6.1-1 lists the tribes and the lead for the each tribe.

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2**TABLE 6.1-1 Indian Tribal Governments Contacted by DOE with  
Regard to Their Interest in Being Consulted on the ULP PEIS**

	Name of Tribe	Tribal Lead
1	Hopi Tribal Council	The Honorable Leroy Shingoitewa
2	Jicarilla Apache Tribal Council	The Honorable Levi Pestata
3	Kewa Pueblo Tribe	The Honorable Sisto Quintana
4	Navajo Nation	The Honorable Ben Shelley
5	Pueblo de Cochiti Tribe	The Honorable Phillip Quintana
6	Pueblo of Acoma Tribe	The Honorable Randall Vicente
7	Pueblo of Isleta Tribe	The Honorable Frank E. Lujan
8	Pueblo of Jemez Tribe	The Honorable Joshua Madalena
9	Pueblo of Laguna Tribe	The Honorable Richard B. Luarkie
10	Pueblo of Nambe Tribe	The Honorable Phillip A. Perez
11	Pueblo of Picuris Tribe	The Honorable Gerald Nailor
12	Pueblo of Pojoaque Tribe	The Honorable George Rivera
13	Pueblo of San Felipe Tribe	The Honorable Anthony Ortiz
14	Pueblo of San Ildefonso Tribe	The Honorable Terry Aguilar
15	Pueblo of Sandia Tribe	The Honorable Malcolm Montoya
16	Pueblo of Santa Ana Tribe	The Honorable Ernest J. Lujan
17	Pueblo of Santa Clara Tribe	The Honorable Walter Dasheno
18	Pueblo of Taos Tribe	The Honorable Lorian B. Romero
19	Pueblo of Tesuque Tribe	The Honorable Ramos Romero
20	Pueblo of Zia Tribe	The Honorable Wilfred Shije
21	Southern Ute Indian Tribe	The Honorable Pearl Casias
22	Ute Indian Tribe	The Honorable Irene Cuch
23	Ute Mountain Ute Tribe	The Honorable Gary Hayes
24	White Mesa Ute Tribe	The Honorable Elayne Atcitty
25	Zuni Pueblo Tribe	The Honorable Arlen P. Quetawki, Sr.

## 6.2 CONSULTATION WITH THE U.S. FISH AND WILDLIFE SERVICE

DOE has entered into consultation with the USFWS, in compliance with Section 7 of the ESA, concerning DOE's management of the ULP. Section 7 of the ESA requires Federal agencies to consider the effect of their undertakings on species listed under the ESA and to consult with the USFWS to ensure that their actions, or the actions that they fund, authorize, or permit, are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the critical habitat of such species.

DOE initiated the informal consultation with a letter dated November 7, 2011, from Ms. Tracy A. Ribeiro of DOE to Ms. Patty Gelatt indicating this intent to the USFWS (see Appendix F). A response from Ms. Pamela Repp of the USFWS was received on November 17, 2011 (see Appendix F). The USFWS letter acknowledged receipt of the DOE letter requesting informal consultation. A meeting between DOE and the USFWS was held in the Grand Junction Office of the USFWS on November 9, 2011. The following points summarize the proceedings of that meeting.

- Since the ESA consultation is in support of a NEPA evaluation, the USFWS does not enter into formal consultation until a preferred alternative has been identified. Informal consultation based on current information regarding a preferred alternative can be conducted, and consultation might need to be redone if later in the PEIS process, the preferred alternative is different.
- The USFWS would respond in writing to DOE's letter of request to enter into informal consultation with the USFWS.
- Prior to the November 9, 2011 meeting, the USFWS had performed a preliminary review of the list of species provided on the DOE letter dated November 7, 2011 (described above). The USFWS provided initial feedback on which species it determined were not an issue based on the species locales. The USFWS also provided initial feedback on which species DOE should continue to review.
- The biological assessment (BA) that would be prepared should consider the entire 25,000 acres (10,000 ha).
- The BA would consider all listed species, even those not potentially present in the area.

In addition to the above discussion, the USFWS also discussed potential activities that could lead to water depletion and that could, in turn, adversely affect the four endangered fish species in the Colorado River; they asked that both water quality and water depletion be addressed in the BA. The USFWS has determined that there would be no impact on these four species and that consultation is not required for them if the water-related activities deplete less than 0.1 ac-ft/yr (32,585 gal/yr). Further, water rights have no bearing on water depletion

1 determinations; that is, any amounts of water depleted from the Colorado River Basin as a result  
2 of ULP activities must be addressed, regardless of water rights or ownership.  
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4 Water quality as it relates to the listed fish species is being evaluated in the BA. With  
5 regard to water that would be brought onto the ULP lease tracts to support mining operations,  
6 some public water entities had previously consulted with the USFWS about water depletions. If  
7 the ULP lessees obtain water from these public water entities, these volumes will not need to be  
8 entered into the total volume counted as water depleted. However, since it will not be possible to  
9 determine the exact source of the water to be utilized for future ULP mining activities, the  
10 evaluation in the BA will assume that all consumptive water utilized is water depleted from the  
11 Colorado River basin. For water that would be removed during mining operations and then  
12 ponded, treated, and released, the water depletions and water quality related to the temporarily  
13 ponded water will be evaluated in the BA. Cumulative depletions for mining actions on the ULP  
14 lease tracts will also be evaluated.  
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16 DOE and USFWS are continuing the informal consultation process. DOE has kept the  
17 USFWS informed about the ULP PEIS schedule, has provided the USFWS with up-to-date  
18 information on the ESA consultation and the BA preparation relative to the overall ULP PEIS  
19 project schedule, and has provided the USFWS with status updates on June 19, July 10,  
20 October 17, and November 19, 2012.  
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