

6 CONSULTATION PROCESS FOR THE DOE ULP PEIS

DOE is complying with E.O. 13175, Section 7 of the ESA, and Section 106 of the NHPA by engaging in consultations with respective tribes, government agencies, and local historical groups. Sections 6.1, 6.2, and 6.3 describe the consultation efforts 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 Community. 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 only 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 only 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, as needed, 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.

1
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	The Honorable Sisto Quintana
4	Navajo Nation	The Honorable Ben Shelley
5	Pueblo de Cochiti	The Honorable Phillip Quintana
6	Pueblo of Acoma	The Honorable Randall Vicente
7	Pueblo of Isleta	The Honorable Frank E. Lujan
8	Pueblo of Jemez	The Honorable Joshua Madalena
9	Pueblo of Laguna	The Honorable Richard B. Luarkie
10	Pueblo of Nambe	The Honorable Phillip A. Perez
11	Pueblo of Picuris	The Honorable Gerald Nailor
12	Pueblo of Pojoaque	The Honorable George Rivera
13	Pueblo of San Felipe	The Honorable Anthony Ortiz
14	Pueblo of San Ildefonso	The Honorable Terry Aguilar
15	Pueblo of Sandia	The Honorable Malcolm Montoya
16	Pueblo of Santa Ana	The Honorable Ernest J. Lujan
17	Pueblo of Santa Clara	The Honorable Walter Dasheno
18	Pueblo of Taos	The Honorable Loriano B. Romero
19	Pueblo of Tesuque	The Honorable Ramos Romero
20	Pueblo of Zia	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 Community	The Honorable Elayne Atcitty
25	Zuni Pueblo Tribe	The Honorable Arlen P. Quetawki, Sr.

6.2 CONSULTATION FOR THE ESA

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 the need for consultation with the USFWS (see Appendix E, Table E-1). A response from Ms. Pamela Repp of the USFWS was received on November 17, 2011 (see Appendix E, Table E-1). 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 by DOE 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.

3
4 Water quality as it relates to the listed fish species is evaluated in the BA. With regard to
5 water that would be brought onto the ULP lease tracts to support mining operations, some public
6 water entities had previously consulted with the USFWS about water depletions. If the ULP
7 lessees obtain water from these public water entities, these volumes will not need to be entered
8 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 assumes 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 are also evaluated in the BA. Cumulative depletions for mining actions on the ULP
14 lease tracts are also evaluated.

15
16 DOE has kept the USFWS informed about the ULP PEIS schedule, provided the USFWS
17 with up-to-date information on the ESA consultation and the BA preparation relative to the
18 overall ULP PEIS project schedule, and provided the USFWS with status updates on June 19,
19 July 10, October 17, and November 19, 2012. DOE submitted the Final BA on May 14, 2013.
20 DOE received the biological opinion (BO) from the USFWS on August 13, 2013. The USFWS
21 indicated that with the findings as stated in the BO, the formal and informal consultation on the
22 DOE ULP is concluded. The USFWS concurred with DOE's determination that was presented in
23 the Final BA (dated May 14, 2013; see Appendix E for the full version).

24
25 The USFWS, through the BO, indicated the following recommendations be considered
26 by DOE for inclusion in the Final ULP PEIS: (1) reinstate consultation if conditions changed
27 from those described in the discussion on the Gunnison sage-grouse and the yellow-billed
28 cuckoo; (2) conduct surveys prior to on-the-ground ULP activities that could have impacts on the
29 Gunnison's prairie dog; (3) promote conservation of sensitive plant species; (4) conduct annual
30 monitoring of retention and sedimentation ponds; and (5) make corrections to errors found
31 (e.g., map or text). These recommendations have been incorporated into this PEIS.

32 33 34 **6.3 CONSULTATION FOR THE NHPA**

35
36 DOE has initiated programmatic consultation, in compliance with Section 106 of the
37 NHPA, concerning DOE's management of the ULP. Section 106 of the NHPA requires Federal
38 agencies to consider the effect of their undertakings on historic properties and to consult with the
39 appropriate SHPO, American Council on Historic Preservation (ACHP), and other parties that
40 have an interest in the effects of the undertaking on historic properties. For the ULP, per the
41 procedure that has historically been and is currently still being carried out, DOE has addressed
42 consultation through the BLM and the lessees on specific undertakings when ULP
43 activities/plans have been proposed. However, since the NHPA allows for the utilization of a
44 programmatic agreement (PA) to govern large or complex projects, and since PAs can be used
45 when effects on historic properties are expected to be similar and repetitive or regional in scope

1 or when these effects cannot be fully determined prior to approval of an undertaking, DOE has
2 initiated the development of a PA for the ULP.
3

4 DOE initiated discussion regarding a PA with the BLM and the Colorado SHPO on
5 May 30, 2013, in a teleconference. During the call, the ULP activities were summarized, and the
6 related cultural resource activities were discussed. The SHPO suggested that a PA using a phased
7 approach could be utilized, and the initial list of consulting parties was discussed. Following the
8 teleconference, the BLM and DOE entered into discussions on how best to address coordination
9 of efforts between the three BLM Field Offices and DOE. On July 22, 2013, Mr. David Shafer of
10 DOE sent letters to the ACHP, the Colorado SHPO, and the BLM that formally requested the
11 initiation of consultation with these entities, invited them to be a consulting party, and proposed
12 pursuing a PA. On August 9, 2013, similar letters were sent to the 25 tribal groups originally
13 contacted for government-to-government consultation and the local historical commissions for
14 Mesa and San Miguel Counties. The letters to the tribes were addressed to the tribal leader, and
15 copies were sent to the cultural resources contact, if known. Facsimiles of all the letters sent are
16 presented in Appendix F (see Table F-2). During the weeks of August 19–23 and August 26–30,
17 2013, DOE-LM made calls to the ACHP, the tribes, and the historical commissions from which
18 responses had not yet been received. On September 16 and 17, 2013, an e-mail or second letter
19 was sent to the tribes and historical commissions from which responses had not yet been
20 received. On October 8, 2013, DOE provided the initial version of the PA to the groups that had
21 agreed to be consulting parties and hosted a conference call to discuss any questions or concerns.
22 All communications after this first conference call were distributed to all of the initially
23 identified parties, regardless of their response status, to ensure that the PA effort was made
24 known and to encourage full participation. DOE issued two iterative versions of the PA on
25 October 27, 2013, and November 29, 2013 requesting input and review. DOE hosted a second
26 conference call on November 4, 2013 to again address any questions or concerns. DOE requested
27 responses to the latest revision of the PA by December 12, 2013. The PA will be revised to
28 address input and review from the consulting parties, and then routed to the responsive parties
29 for concurrence. DOE-LM plans to have the PA in place before issuance of the ULP PEIS ROD.
30 The DOE-LM contact efforts and responses from the groups invited to be consulting parties are
31 summarized in Table 6.3-1.
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1 **TABLE 6.3-1 NHPA Consultation Efforts**

Group	Contact Attempts (if no response yet received)	Response to Invitation To Be a Consulting Party
CO SHPO		Yes
BLM		Yes
ACHP		No
White Mesa Ute Tribe	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up letter was sent 10/29/2013 – A letter was sent inviting participation in the PA process, providing a status of the PA process to date, inviting participation in a conference call on 11/04/2013, and providing a copy of the PA for input and review 11/06/2013 – A letter was sent inviting participation in the PA process and providing a summary of the conference call 12/03/2013 – A letter was sent inviting participation in the PA process and providing an updated version of the PA for input and review	
Southern Ute Indian Tribe		Yes
Ute Indian Tribe (Uintah & Ouray Reservation)	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	

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TABLE 6.3-1 (Cont.)

Group	Contact Attempts (if no response yet received)	Response to Invitation To Be a Consulting Party
The Navajo Nation		Yes
Hopi Tribe		No
Ute Mountain Ute Tribe		Yes
Jicarilla Apache Tribal Council		No
Kewa Pueblo	<p>08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up letter was sent 10/29/2013 – A letter was sent inviting participation in the PA process, providing a status of the PA process to date, inviting participation in a conference call on 11/04/2013, and providing a copy of the PA for input and review 11/06/2013 – A letter was sent inviting participation in the PA process and providing a summary of the conference call 12/03/2013 – A letter was sent inviting participation in the PA process and providing an updated version of the PA for input and review</p>	
Pueblo of Acoma	<p>08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review</p>	

TABLE 6.3-1 (Cont.)

Group	Contact Attempts (if no response yet received)	Response to Invitation To Be a Consulting Party
Pueblo de Cochiti	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	
Pueblo of Isleta		Yes
Pueblo of Jemez		Yes
Pueblo of Laguna		Yes
Pueblo of Nambe	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up letter was sent 10/29/2013 – A letter was sent inviting participation in the PA process, providing a status of the PA process to date, inviting participation in a conference call on 11/04/2013, and providing a copy of the PA for input and review 11/06/2013 – A letter was sent inviting participation in the PA process and providing a summary of the conference call 12/03/2013 – A letter was sent inviting participation in the PA process and providing an updated version of the PA for input and review	

TABLE 6.3-1 (Cont.)

Group	Contact Attempts (if no response yet received)	Response to Invitation To Be a Consulting Party
Pueblo of Picuris	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	
Pueblo of Pojoaque		Yes
Pueblo of San Felipe		Yes
Pueblo of San Ildefonso	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	
Pueblo of Sandia		No
Pueblo of Santa Ana		No
Pueblo of Santa Clara		Yes
Pueblo of Taos		Yes

TABLE 6.3-1 (Cont.)

Group	Contact Attempts (if no response yet received)	Response to Invitation To Be a Consulting Party
Pueblo of Tesuque	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	
Pueblo of Zia	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/16/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	
The Zuni Tribe of the Zuni Reservation		Yes, requested to be a signatory party
San Miguel Historical Commission		Yes
Mesa County Historical Commission		Yes

TABLE 6.3-1 (Cont.)

Group	Contact Attempts (if no response yet received)	Response to Invitation To Be a Consulting Party
Rimrocker Historical Society of Western Montrose County		Yes
Assiniboine and Sioux Tribes, Fort Peck Indian Reservation	08/09/2013 – Invitation letter was sent At least one phone call was made to Tribal Elder’s office and to Cultural Resource lead (if known) 09/17/2013 – Follow-up e-mail was sent 10/16/2013 – An e-mail was sent that provided a status of the PA to date 10/27/2013 – An e-mail was sent inviting participation in the PA process and providing a copy of the PA for input and review 10/28/2013 – An e-mail invitation was sent for participation in a conference call on 11/04/2013 11/06/2013 – An e-mail was sent inviting participation in the PA process and providing a summary of the conference call 11/29/13 – An e-mail was sent inviting participation in the PA process and providing an updated version of the PA for input and review	

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