Memorandum of Understanding
between
The Department of the Interior, Bureau of Land Management, Phoenix District Office
and
The Arizona Game and Fish Commission
for the
Sonoran Solar Energy Project Environmental Impact Statement

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's Phoenix District Office (BLM) and the Arizona Game and Fish Department (AGFD or Cooperator) for the purpose of preparing an Environmental Impact Statement (EIS). The BLM is the lead federal agency for development of the Sonoran Solar Energy Project EIS (Sonoran Solar EIS). The BLM acknowledges that the Cooperator has jurisdiction by law and special expertise applicable to this EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the AGFD as a Cooperating Agency and the BLM (the Parties).

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1620.3-1, and the Department of the Interior Manual (516 DM 2.5).

II. Purpose

The purposes of this MOU are:

A. To designate the AGFD as a Cooperating Agency in the EIS process.
B. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the EIS in a timely, efficient, and thorough manner.
C. To recognize that the BLM is the lead agency with responsibility for the completion of the EIS and the Record of Decision (ROD).
D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
    1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
    2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

B. Regulations implementing the above authorities:
   1. Council on Environmental Quality regulations (40 CFR 1501 et seq.).
   2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.).

C. The authorities of the Commission to enter into this MOU include, but are not limited to:
   1. The Commission is authorized to enter into agreements pursuant to A.R.S. 17- 231.B.7.
   2. The AGFD is the wildlife authority for the state of Arizona and is charged with the duty to protect, propagate, manage, conserve, and distribute protected wildlife throughout the state of Arizona.

IV. Roles and Responsibilities

A. BLM Responsibilities:
   1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft EIS, the Proposed Final EIS, and the ROD. The BLM's responsibilities include determining the purpose of and need for the EIS, selecting reasonable alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
   2. Select a Third-Party EIS Contractor and Third-Party Project Management Assistance Contractor (PMAC). The BLM shall direct the activities of the Third-Party Contractors to ensure compliance with all applicable agency regulations.
   3. Ensure that disclosure statements are properly executed by the Third-Party Contractors to confirm that they have no financial or other interest in the outcome of the project.
   4. Ensure that all Third-Party Contractors understand the responsibilities of the Cooperator as defined in this MOU.
   5. Ensure that all representatives for the Cooperator are notified of the Third-Party Contractors' names, addresses, phone numbers, e-mail addresses, and points-of-contact.
   6. Coordinate the exchange of information among the Cooperator and the Third-Party Contractors and subcontractors.
   7. Maintain the Administrative Record for the project, protecting proprietary information and data collected by the Third-Party Contractors and subcontractors. Any information furnished to the BLM under this MOU is subject to the Freedom of Information Act (FOIA).
   8. Establish goals and an EIS schedule with the Cooperator's concurrence. The BLM will provide the Cooperator adequate time to review documents, including administrative draft versions of the Draft EIS and Final EIS, technical reports, and cultural reports.

9. Develop a Public Involvement Plan (PIP) with the Cooperator's concurrence. The PIP will address public involvement in developing the scope of issues to be addressed in the EIS; communication between the lead agency and the public; communication between the lead agency and the Cooperator; decisions to be made regarding public meetings; the compilation of mailing lists and brochures; and the preparation and distribution of fact sheets, news releases, announcements, and public notices necessary during all phases of the EIS process.
10. Advise, in writing, Native American Tribes and state and local agencies with jurisdiction over any aspect of the project and invite them to participate in the EIS process.
11. Inform the Applicant about the progress of the EIS, additional data needs, and changes needed in the terms of the Third-Party Contracts and other aspects of document preparation.
12. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the EIS planning process, giving particular consideration to those topics on which the Cooperator has jurisdiction by law or special expertise.
13. The BLM will provide the Cooperator with copies of documents underlying the EIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and the Draft EIS and Final EIS.

B. Cooperating Agency Responsibilities:

1. The AGFD is a Cooperating Agency in this EIS process and is recognized to have jurisdiction by law and special expertise in the following areas:
    a. Act as a Cooperating Agency to the project.
    b. Inform the Lead and Cooperating Agencies of communications concerning preparation of the EIS.
    c. Assist Lead and Cooperating Agencies in the preparation of the EIS, ensuring that AGFD interests are incorporated as part of the EIS. Review relevant documents and submit comments to the BLM Project Manager within agreed-upon time frames.
    d. Provide the BLM Project Manager with information to assist in the development of a range of reasonable alternatives and in the analysis of effects on wildlife and fish.
    e. Participate in communications regarding the EIS for the project, including, but not limited to, conference calls, meetings, and e-mails. When appropriate, send a representative or representatives to attend EIS-related meetings scheduled by the BLM.
    f. With the Lead and Cooperating Agencies, participate in public meetings to identify issues and take comments on the EIS.

g. Provide written comments on EIS-related documents within time frames provided by the BLM. These documents include, but are not limited to, draft versions of the Draft EIS and Final EIS, technical reports, and public notices.
h. Respond to comments on the Draft EIS that pertain to AGFD interests and advise the Lead Agency if the findings of the EIS do not support AGFD decision-making needs.

2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the EIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:
   a. The AGFD will provide NEPA review assistance and data and information that pertain to wildlife and fish resources, to identifying potentially affected wildlife and fish resources, to evaluating project-related impacts on wildlife and fish resources, and to developing alternatives and mitigation strategies related to wildlife and fish resources.
3. Within the areas of its jurisdiction or special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to, providing guidance on public involvement strategies and issues identification; identifying, gathering, and analyzing data; collaborating in the formulation of reasonable alternatives to the proposed action; analyzing the effects of alternatives and suggesting mitigation measures; collaborating in the selection of the preferred alternative for the Draft EIS; providing written comments on working drafts of the EIS and supporting documents; and assisting with the response to public comments on the Draft EIS and Final EIS (see also Section C.4 of this MOU).

C. Responsibilities of the Parties:
1. The Parties agree to participate in this EIS process in good faith and make all reasonable efforts to resolve disagreements. Where procedural or substantive disagreement may impede effective and timely completion of the Sonoran Solar EIS, the Parties agree to utilize the facilitation and conciliation procedures described below (see Section V.G of this MOU).
2. The Parties agree to comply with the EIS schedule provided as Attachment B, which includes dates for EIS milestones and time frames for the Cooperator's reviews and submissions.
3. Each Party agrees to fund its own expenses associated with the Sonoran Solar EIS process, except that the BLM may contract with the Cooperator for technical studies within its jurisdiction or special expertise.
4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act

exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C. App.).

V. Other Provisions

A. *Authorities not altered.* Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

B. *Financial obligations.* Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.

C. *Immunity and Defenses Retained.* Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. *Conflict of interest.* The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or Third-Party Contractors, having a financial interest in the outcome of the Sonoran Solar EIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution. The State may terminate this agreement upon a finding that a state employee that was significantly involved in the creation of the agreement is, at the time the agreement is in effect but no later than three years after its termination, an employee or consultant to any other party in the agreement.

E. *Documenting disagreement or inconsistency.* Where the BLM and the Cooperator disagree on substantive elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft EIS and Final EIS. The BLM will also describe substantial inconsistencies between its proposed action or actions and the objectives of state, local, or tribal land use plans and policies.

F. *Management of Information.* The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the FOIA and other federal statutes. Unless required under Arizona's public records law, AGFD will not disclose supporting materials and draft documents that are not subject to release under federal law.

G. *Conflict Resolution.* The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that BLM retains final responsibility for the decisions identified in the Sonoran Solar EIS and ROD.

H. *Contractors.* SWCA serves as the BLM's Third-Party EIS Contractor. The EIS Contractor is responsible to the BLM for preparing an EIS that meets the requirements of NEPA and applicable NEPA procedures. Logan Simpson Design

Inc. serves as the BLM's Third-Party PMAC to assist the BLM with NEPA coordination. NEPA authorizes the preparation of an EIS by contractors paid by the Project Proponent (Section 1506.5(c)). Under Section 1506.5(c), the BLM must select and direct the activities of Third-Party Contractors, even though the Project Proponent pays for the cost of preparing the EIS. The Cooperator may provide information and comments directly to the contractors and collaborate with the contractors' technical staff and subcontractors on matters within the Cooperator's jurisdiction or special expertise.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the Cooperator and the BLM during the EIS process. Each Party may change its representative at will by providing written notice to the other Party.

VII. Administration of the MOU

A. *Approval*. This MOU becomes effective upon signature by the authorized officials of the BLM and the Cooperator.
B. *Amendment*. This MOU may be amended through written agreement of all signatories.
C. *Termination*. If not terminated earlier, this MOU will end when the ROD for the Sonoran Solar EIS is approved by the BLM Phoenix District Manager. Either Party may end its participation in this MOU by providing written notice to the other Party.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086

_____ _____
Larry Voyles Date
Secretary to the Commission, and Director

Bureau of Land Management
21605 North 7th Avenue
Phoenix, AZ 85027-2929

_____ _____
Angelita Bulletts Date
Acting District Manager

Attachment A
Cooperating Agency Participation in the Sonoran Solar Energy Project Environmental Impact Statement

	Environmental Impact Statement (EIS) Stage	**Potential Activities of the Cooperating Agency within its Acknowledged Areas of Expertise**
1	Conduct scoping and identify issues requiring analysis	Provide input on the Public Involvement Plan; provide coordination requirements based on the Cooperator's plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide nonfinancial sponsorship of public forums with the BLM; collaborate in assessing scoping comments; identify connected, similar and cumulative actions; identify other relevant agencies.
2	Identify, gather, and analyze data related to affected environment	Identify data needs; provide data and technical analysis within the Cooperator's jurisdiction and expertise.
3	Formulate reasonable alternatives to proposed action	Collaborate with the BLM in developing alternatives; suggest land allocations or management actions to resolve identified issues. **[Decision to select alternatives for analysis is reserved to the BLM.]**
4	Analyze effects of alternatives on affected environment	Provide effects analysis within the Cooperator's expertise; suggest mitigation measures for adverse effects.
5	Select the preferred alternative; issue Draft EIS	Collaborate with the BLM in evaluating alternatives and developing criteria for selecting the preferred alternative; provide input on Preliminary Draft EIS. The Cooperator may provide written public comments on the draft EIS, if desired. **[Decision to select a preferred alternative and to issue a Draft EIS is reserved to the BLM.]**
6	Respond to comments	As appropriate, review comments within the Cooperator's expertise and provide assistance in preparing the BLM's response.
6a	Issue Proposed Final EIS	**[Action reserved to the BLM.]**
7	Sign Record of Decision (ROD)	**[Action reserved to the BLM.]**
7a	Resolve protests; modify Proposed Final EIS, if needed; sign ROD	**[Action reserved to the BLM.]** A Cooperator that has provided information relevant to a protest may be asked for clarification.

Attachment B
Project Schedule for the Sonoran Solar Energy Project Environmental Impact Statement

	Draft Jojoba Schedule		
Project Start-up and Scoping	Days	Begin	End
Prepare Notice of Intent (NOI) Review by DO/SO. DO and SO will review it simultaneously Includes briefing paper and Powerpoint.	0	8-Jul-09	8-Jul-09
Comment Period	60	8-Jul-09	6-Sep-09
Public Scoping Meetings (w/in comment period) (grazing permittees also contacted)	2	4-Aug-09	6-Aug-09
Produce Scoping Report	14	21-Sep-09	5-Oct-09
Draft EIS			
Collect Baseline Data, Conduct Resource Surveys and Write Technical Reports (Proponent)	199	15-Jun-09	30-Dec-09
Agencies Develop Draft Alternatives Development/Impact Assessment Strategy/Mitigation Planning	84	24-Sep-09	17-Dec-09
Review and Process Comments for Incorporation into DEIS	84	24-Sep-09	17-Dec-09
Finalize Alternatives/Impact Assessment Strategy/Mitigation Planning based on Public/Agency/Tribal Comments	4	17-Dec-09	21-Dec-09
Prepare Preliminary Draft EIS (EIS Contractor Delivers Chapters for Review as They Become Available)	58	17-Dec-10	13-Feb-11
Internal Agency Review of PDEIS	39	5-Jan-10	13-Feb-10
Prepare Administrative Draft DEIS	7	13-Feb-10	20-Feb-10
Internal Agency Review of Administrative Draft DEIS	15	20-Feb-10	7-Mar-10
Prepare Final DEIS	14	7-Mar-10	21-Mar-10
Prepare Notice of availability (NOA) Review DO/SO/WO and Publish NOA for DEIS in Federal Register	80	14-Jan-10	4-Apr-10
Print and Distribute DEIS	14	21-Mar-10	4-Apr-10
DEIS Comment Period	45	4-Apr-10	19-May-10
DEIS Public Meetings/Open House (within Comment Period)	14	18-Apr-10	2-May-10
Final EIS			
Comment Summary Report	17	19-May-10	5-Jun-10
Agency Review Comments/ Formulate Responses/Identify Changes to FEIS	42	5-Jun-10	17-Jul-10
Prepare Preliminary Final EIS	14	17-Jul-10	31-Jul-10
Agency Review of Preliminary Final EIS (rolling)	30	24-Jul-10	23-Aug-10
Prepare Administrative FEIS	28	31-Jul-10	28-Aug-10
Prepare Record of Decision (ROD)	18	18-Oct-10	5-Nov-10
Agency Review of Administrative FEIS	30	28-Aug-10	27-Sep-10
Finalize Section 106 and Section 7 Consultation, as applicable	N/A	???	???
Finalize, Print and Distribute FEIS	21	27-Sep-10	18-Oct-10
Prepare NOA (review by DO/SO/WO) for FEIS in Federal Register	35	13-Sep-10	18-Oct-10
30-day Waiting period	30	18-Oct-10	17-Nov-10
ROD signed. Grant offered (rent and bond accepted prior to signing grant), if applicable.	0	17-Nov-10	17-Nov-10
Notice to Proceed (NTP), if applicable	0	17-Nov-10	17-Nov-10

Attachment C
Agency Representatives for the Sonoran Solar Energy Project Environmental Impact Statement

Bureau of Land Management

Primary Representative: Joe Incardine
National Project Manager
BLM Washington DC Office
400 West 200 South, Suite 500
Salt Lake City, UT 84101
Joe_incardine@blm.gov
Phone: (801) 524-3833

Alternate Representative: Kathleen Depukat
Project Manager
BLM Phoenix District Office
21605 North 7th Avenue
Phoenix, AZ 85027-2929
Phone: (623) 580-5681

Arizona Game and Fish Department

Primary Representative: Ginger Ritter
Project Evaluation Project Specialist, Habitat Branch
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086
gritter@azgfd.gov
Phone: (623) 942-3000

Alternate Representative: Dana Warnecke
Habitat Specialist–Region VI
Arizona Game and Fish Department
7200 East University Drive
Mesa, AZ 85207
dwarnecke@azgfd.gov
Phone: (480) 324-3547