

# Board of Supervisors

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**Katie Howard**  
Clerk

August 1, 2012

Bill Childress, District Manager  
Las Cruces District Office  
Bureau of Land Management  
1800 Marquess Street  
Las Cruces, NM 8805-3371

RE: County Cooperating/Coordinating Agency Status in the Preparation of the Proposed EIS and Potential Land Use Plan Amendments for the Southline Transmission Line Project.

Dear Mr. Childress:

We thank you for your letter dated July 18, 2012 accepting our request for Coordinating Agency status in the preparation of the proposed Environmental Impact Statement (EIS) and potential BLM land use plan amendments for the Southline Transmission Line Project (project). However, in your response letter, paragraph one reads:

*"The Bureau of Land Management (BLM) and Western Area Power Administration (Western) have received your request to participate as a **Cooperating** Agency..."* Furthermore, paragraph two begins: *"As a **Cooperating** Agency your participation may include those activities included in 40 CFR 1501.6(b).*

However, per our letter dated May 10, 2012, we had requested *Coordinating Agency* status. As you know, legal authority for our position as a Coordinating Agency is found in several laws and regulations, the most relevant of which is the Federal Land Policy and Management Act (FLPMA) of 1976. FLPMA creates a mandatory independent responsibility for BLM to coordinate (emphasis added) with other units of government (43 U.S.C. 1712(c)(9)). As stated, the BLM must, to the extent practicable, seek to maximize consistency with the plans and policies of other government entities. Cities and counties within a planning area possess special expertise regarding local land use plans and policies relevant to BLM requirements for land use plan coordination and consistency (43 CFR 1610.3-1, 3-2). Local governments also possess expertise on the environmental, social, and economic impacts of a proposal and specialized local data and information.

Furthermore, in 43 CFR 46.155 (DOI) Inviting participation – "The Responsible Official must whenever possible consult, coordinate (emphasis added), and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities."

The role Cochise County is requesting includes but is not limited to:

- Working with the appropriate BLM office to develop a Memorandum of Understanding (MOU) that identifies Cochise County as a coordinating agency.
- Identifying significant issues associated with Southline Transmission Line Project.
- Participating fully as an equal partner in the NEPA process. For example, it would be appropriate for Cochise County to help in identifying data and inventory needs as well as anticipated management issues and concerns. It is expected that Cochise County would collaborate in assessing scoping comments.
- Identify connected, similar, and cumulative actions.

Since energy development is considered in the BLM Resource Management Plan, Cochise County also requests coordination under 43 CFR 1610.4-2 (BLM) Development of planning criteria. (a) “The Field Manager will prepare criteria to guide development of the resource management plan or revision, to ensure:

- (1) It is tailored to the issues previously identified.... (b) Planning criteria will generally be based upon applicable law, Director and State Director guidance, the results of public participation, *and coordination with any cooperating agencies and other Federal agencies, State and local governments, and federally recognized Indian tribes (emphasis added).*”

According to 43 CFR 46.155 (DOI) Consultation, coordination, and cooperation with other agencies - “The Responsible Official must whenever possible consult, coordinate (emphasis added), and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities.”

The BLM has a duty to coordinate even if a formal relationship with local agencies is not established. In accordance with FLPMA, the BLM’s coordination responsibilities include maximizing consistency with the plans and policies of other government entities and providing for meaningful public involvement of other Federal, State, local, and tribal government officials in the development of land use decisions (see above).

During the planning process, a key element of the coordinating agency relationship includes BLM sharing of predecisional documents with Cochise County. Absent extraneous factors such as protection of proprietary or contractual information or ensuring compliance with State public records or public meetings requirements (“sunshine laws”), predecisional documents can and should be shared with coordinating agencies in accordance with the terms of the MOU that directs the activities within the relationship. Sharing of predecisional documents should occur as part of the BLM’s coordination activities. Sharing of predecisional documents should be guided by the detailed written MOU between the parties.

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We request the BLM work with us to develop an MOU that will accomplish the following:

- Designate Cochise County as a coordinating agency in the NEPA process.
- Identify the lead agency that has responsibility for the completion of the planning or NEPA effort.
- Focus on defining a coordination framework that is acceptable to both parties.
- Describe the framework for coordination between the lead agency and Cochise County that will ensure successful completion of the NEPA effort in a timely, efficient, and thorough manner.
- Describe the respective responsibilities, jurisdictional authority, and expertise of each of the parties in the NEPA process.
- Specify that predecisional documents will remain confidential to the extent allowed by law.
- Describe how connected and cumulative actions of Cochise County as a coordinating agencies will be analyzed during the NEPA process to improve overall interagency coordination.

Cochise County will designate a representative and alternate representative to ensure coordination between the County and the lead agency during the NEPA process.

These aforementioned Acts and regulations mandate that Federal agencies coordinate with the County if we choose to exercise our authority to do so which is granted to us by Congress. If we participate in a Cooperating Agency capacity and fail to exert our right for simultaneous coordination, we are forfeiting an important tool which the Congress has provided local government in protecting its rights and the rights of its citizenry.

Cooperating Agency status alone does not have the success that simultaneous coordination provides; real success is achieved through Cooperating Agency status with agencies which have come to recognize the value of simultaneous and complementary coordination.

While Cooperating Agency status certainly is important, it functions more meaningfully if it is used concurrently with Coordination Authority. This dual relationship requires Federal agencies to not only

listen to the County, but *hear* us as well, because coordination requires Federal agencies to provide local government equal footing, and then must make every effort to make Federal plan implementation consistent with the plans and policies of local governments, including Cochise County's Comprehensive Plan. The value this provides is that with concurrent Cooperation and Coordination, Federal agencies are directed, not guided, to use every possible means to achieve consistency.

Sincerely,

Richard R. Searle, Chairman  
Cochise County Board of Supervisors

Cc: Patrick G. Call, District 1 Supervisor  
Ann English, District 2 Supervisor  
Michael J. Ortega, County Administrator  
Katie Howard, Clerk of the Board