

Solar Regional Mitigation Planning Frequently Asked Questions (FAQs)

1. What is Solar Regional Mitigation Planning (SRMP)?

Solar Regional Mitigation Planning (SRMP) is a unique approach to mitigating the unavoidable adverse impacts associated with developing and operating utility-scale solar power generation facilities on public lands within solar energy zones (SEZs) identified through the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Solar PEIS). In short, the approach calls for a more strategic, systematic, and collaborative approach for identifying, implementing, and monitoring the outcomes of off-site mitigation actions.

2. What is off-site mitigation and does SRMP fit?

Off-site mitigation is covered under current BLM policy and consists of compensating for resource impacts by replacing or providing substitute resources or habitat at a different location than the project area.¹ Off-site mitigation is supplemental to on-site mitigation and is used to enhance the BLM's ability to fulfill its mission of providing multiple uses on the public lands, while ensuring its resource management objectives are met.

Solar regional mitigation planning for SEZs would be considered a strategic approach to off-site mitigation, one that specifically identifies compensation priorities based on landscape-level or other ecological, recreation, or socioeconomic objectives. Any off-site mitigation and compensation, including regional mitigation planning for SEZs, would be triggered *only* for unavoidable impacts that could not be measurably avoided or minimized to an acceptably low significance level.

3. Why is the BLM looking to change the way mitigation is handled for solar development?

Comments on the Solar PEIS revealed discontent with the current process from both the development and conservation perspectives and requested that opportunities be sought for a new way of addressing mitigation. Some commenters pointed out that the current process of having solar project developers propose specific off-site mitigation actions for BLM consideration is inefficient and frustrating. Other commenters contended that the current process of selecting off-site mitigation actions and where these actions will occur lacks a larger context which, if considered, could focus mitigation actions on activities and in places that would magnify the positive outcomes of the mitigation actions.

¹ This is also sometimes called "compensatory mitigation".

4. How is regional mitigation planning different from the way mitigation has been handled in the past?

Most of the impacts associated with developing utility-scale solar power generation facilities on the public lands are either avoided, by bounding the area where development can occur so as to avoid conflicts with other resource values, or are minimized, by requiring the users to implement design features or standards and/or best management practices. Despite these on-site mitigation measures, the construction and operation of many types of utility-scale solar power generation do result in unavoidable adverse impacts. Where unavoidable impacts are found to be significant, the BLM requires off-site mitigation.

Currently, mitigation plans are developed on a case-by-case basis. Each plan applies and tailors the ‘avoid and minimize’ strategy to the specific site and the proposed facility. Where off-site mitigation is stipulated, the BLM generally provides solar developers with off-site mitigation objectives. The developers then develop a proposals for consideration by the BLM (which may involve acquiring preliminary agreements with private land owners). If the BLM finds a proposal sufficient, it is approved. If not, the developer goes ‘back to the drawing board’ to try again. Going round-and-round with proposals and rejections is a source of frustration for solar developers.

Under the SRMP approach, the BLM will execute a collaborative process to:

1. Identify the unavoidable adverse impacts that will be mitigated off-site
2. Establish quantifiable off-site and/or regional mitigation objectives
3. Establish transparent means to quantify off-site or regional mitigation costs or obligations
4. Identify actions and locations of these actions designed to mitigate the identified unavoidable impacts. Decisions on the location of mitigation actions will take into consideration the conditions and trends of the applicable ecological, social, and/or economic systems, and how and where impacts might be most efficiently and effectively mitigated.
5. Establish, where appropriate, off-site or regional mitigation fees as an option for developers that is equitable, cost efficient, and pools obligation to meet mitigation objectives.
6. Monitor the outcomes of mitigation actions and adapt as necessary to achieve the mitigation objectives.

5. Under what authority is the BLM authorized to carry out regional mitigation planning?

The BLM’s authority to address the mitigation of impacts on public lands associated with a use authorization issued by the BLM derives from the Federal Land Policy and Management Act (FLPMA). The congressional declaration of policy for FLPMA states

that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values....” FLPMA §102(a)(8). In addition, the use, occupancy and development of public lands must be regulated by the Secretary of the Interior, subject to other applicable law, through easements, permits, leases, licenses, or other instruments. FLPMA §302(b), 43 U.S.C. § 1732(b).

The BLM initially issued an Interim Off-site Mitigation policy, WO-IM-2005-069 on February 1, 2005, and a revised policy, WO-IM-2008-204, on September 30, 2008. The initial scope of the 2005 policy was limited to oil, gas, geothermal, and energy rights-of-way programs while excluding all other resource programs. The BLM issued the 2008 policy to broaden the scope of off-site mitigation by including other BLM program areas and further defining appropriate use of the policy.

6. What are the goals of Solar Regional Mitigation Planning (SRMP)?

The goals of SRMP are to:

- Develop a consistent, regional approach to mitigating impacts.
- Reduce uncertainty about mitigation requirements and streamline the process for mitigating unavoidable adverse impacts.
- Establish science-based or other objective criteria to identify unavoidable impacts that warrant mitigation and effective mitigation actions.
- Establish on-site avoidance and minimization requirements that support build-out plans for the SEZ.
- Obtain concurrence from the various regulatory agencies regarding the need for mitigation and the appropriate off-site mitigation strategy.
- Potentially reduce the costs, complexity, and timeline associated with off-site mitigation activities and obtaining project approvals.
- Establish a simple mitigation fee structure, and create an opportunity to pool funds collected from multiple developers and apply the pooled funds to mitigation projects that will produce the most significant results for the dollar.
- Support the BLM’s implementation of an adaptive management approach to solar energy development.
- Provide relevant information for determining mitigation requirements for projects on variance lands.
- Achieve a greater degree of stakeholder collaboration throughout the mitigation planning process.

7. What will a Solar Regional Mitigation Plan contain?

A Solar Regional Mitigation Plan will be developed for each of the 17 SEZs established through the Solar PEIS. The Solar PEIS describes the affected area and the potential impacts associated with the development of each SEZ for utility-scale solar power

generation. The Solar PEIS also establishes required design features that are meant to minimize impacts.

The Solar Regional Mitigation Plan for each SEZ will incorporate by reference the description of the affected area, the description of the impacts, and the design features found in the Solar PEIS. The Solar Regional Mitigation Plan will contain sections addressing the following questions:

1. What are the unavoidable impacts associated with the development of the SEZ?
2. Which unavoidable impacts should the BLM require off-site mitigation for? (Which impacts represent significant threats in the region? Are there ways to avoid and/or minimize these unavoidable impacts?)
3. What are the mitigation objectives?
4. What mitigation projects/actions will be undertaken to off-set the selected impacts, and where will they occur?
5. How will the mitigation actions be implemented? (e.g., What are expected costs of mitigation actions and how will these costs be equitably allocated to streamline and incentivize SEZ solar right-of-way permitting?)
6. How will the outcomes of the mitigation actions be monitored, and what will happen if they are not achieving the desired results?

8. Will the regional mitigation planning approach eliminate the need to develop a mitigation plan specific to each proposed project in a SEZ?

No. Since each proposed development will be unique in terms of the project design and the associated impacts, each will require a site-specific mitigation plan. However, it is expected that these site-specific plans will be consistent with and make use of (to the extent practicable) the regional mitigation plan for the SEZ. This will result in a reduced level of effort as compared to the BLM's current process for individual projects.

9. Under what authority is the BLM authorized to collect fees to fund off-site mitigation?

The BLM may accept an offer of monies from individual applicants for the purpose of pooling funds towards completion of larger off-site mitigation efforts. This is especially efficient for mitigating the impact of multiple actions when it is not feasible to require individual applicants to manage their own off-site mitigation efforts. Such monies are only to be used for on-the-ground projects, purchases of land and conservation easements, and associated monitoring and administrative costs. In order to qualify as off-site mitigation, the funds collected must be identified for specific types of mitigation projects, and either the BLM or other parties should be identified as responsible for implementation of the project(s), depending on its location, whether on or off BLM lands. Before accepting money intended for expenditure off of the BLM-managed lands, the authorized officer must confirm that he/she has sufficient authority to expend funds in the

proposed manner, such as grant or cooperative agreement authority. Often this authority may be found in FLPMA section 307(c), 43 U.S.C. § 1737(c), or in the Wyden Amendment, 16 U.S.C. § 1011.¹ The BLM, however, will not waive or forgo on-site mitigation of impacts through payment of monies. The NEPA analysis and decision document must be specific regarding what types of projects will be funded and how the projects will contribute to the BLM's long-term resource management goals.

10. How will the BLM decide how and where to implement mitigation actions, including the allocation of mitigation fees?

One of the most important parts of SRMP is a strategy for how and where the unavoidable impacts of solar development can be most efficiently and effectively mitigated off-site.

In developing such a strategy, the BLM will take into consideration:

- The condition and trend of appurtenant ecological, social, and/or economic values and systems, and where these systems are most at risk;
- The relative risks posed by the development of the SEZ on these systems;
- The BLM's resource management goals, as articulated in the applicable Resource Management Plan(s)
- The degree to which lands and resources, if protected and/or restored, would most efficiently and effectively mitigate the unavoidable adverse impacts of solar development in the SEZ.

In order to implement this strategy, the BLM, in collaboration with stakeholders, will develop and implement a process for soliciting, screening, selecting, and monitoring mitigation projects designed to implement the SRMP. This process is similar to the way mitigation funds are allocated under a habitat management plan.

11. Will the payment of a mitigation fee relieve applicants of the need to carry-out on-site mitigation activities?

No. BLM Policy states clearly that fees may not be used for on-site mitigation and that every effort should be made to mitigation impacts on-site before any off-site mitigation is considered.

12. Will SRMP encourage development within the SEZs delineated in the Solar PEIS?

The concept of Solar Regional Mitigation Planning has been designed to be an incentive for development within SEZs. Meeting the goals for SRMP outlined in the response to Question 6 above will serve to encourage development within the SEZs. These goals

include to develop a consistent, regional approach to mitigating impacts; reduce uncertainty about mitigation requirements; establish science-based or other objective criteria for determining which unavoidable impacts will be mitigated and selecting mitigation actions; establish on-site avoidance and minimization requirements; obtain concurrence from regulatory agencies for mitigation requirements; potentially reduce the costs, complexity, and timeline associated with off-site mitigation activities; establish a simple mitigation fee structure; support the BLM's adaptive management approach; provide relevant information; and achieve a greater degree of stakeholder collaboration through the mitigation planning process.

13. How does SRMP apply to applications received for lands identified as 'variance areas' in the Solar PEIS?

Regional Mitigation Plans have been designed to be an incentive for development within SEZs. These plans will be specific to the development expected within SEZs. Projects developed in proximity to SEZs would be considered as part of the cumulative impacts assessment for SEZs. While projects in variance areas will not be offered the same incentives as projects in SEZs by way of a Regional Mitigation Plan, projects in the vicinity of SEZs may be able to use an existing Regional Mitigation Plan to identify off-site mitigation objectives and opportunities.

14. How does SRMP relate to BLM Resource Management Planning?

BLM policy for off-site mitigation requires that, for an unavoidable impact to 'qualify' for off-site mitigation, it must pose a threat to BLM resource management goals and objectives articulated in a Resource Management Plan (RMP). In identifying unavoidable impacts associated with SEZs the BLM will review existing RMPs. The BLM will also use existing RMPs to establish mitigation objectives and potential mitigation opportunities.

15. How does SRMP relate to land-use plans developed and managed by other agencies in the region?

In identifying unavoidable impacts associated with SEZs the BLM will review land-use and other plans developed and managed by other agencies in the region (e.g. county-level documents). The BLM will also use these existing plans to aid in establishing mitigation objectives and identifying potential mitigation opportunities.

16. How will the requirements of the National Environmental Policy Act (NEPA) be addressed in the SRMP process?

The development of a Regional Mitigation Plan in and of itself does not trigger NEPA. These plans will guide how future project authorizations will occur but do not authorize or force any action. Through the Solar PEIS and associated Regional Mitigation Plans, the BLM is not authorizing any solar energy development projects or eliminating the need for site-specific environmental reviews for any future utility-scale solar energy development project. The BLM will complete a site-specific environmental review of all solar energy ROW applications in accordance with NEPA prior to issuing a ROW authorization. Projects in SEZs will benefit from using Regional Mitigation Plans for developing individual mitigation plans/strategies. All project specific mitigation; however, would be analyzed under NEPA as part of the required site-specific NEPA for projects.

17. How will the success of the SRMP be assessed?

Assessment of SRMP success, in terms of resource management or landscape-scale objectives, and whether the approach streamlines SEZ permitting costs and predictability, will be collaboratively evaluated by the BLM with federal, state, and local agencies and other stakeholders. The BLM Solar Energy Long-term Monitoring Program provides the structure by which unavoidable impacts and off-site or regional mitigation would be measured.

18. What is the Dry Lake SEZ SRMP Pilot Project?

The Dry Lake SEZ SRMP Pilot Project is a Solar PEIS follow-on study that the BLM has initiated in response to public comment received on the Draft Solar PEIS and the Supplement to the Draft Solar PEIS between the years 2010 and 2012. (<http://solareis.anl.gov/eis/studies/index.cfm>). The Dry Lake SEZ SRMP Pilot Project effort will test and build on the Regional Mitigation Planning Framework and Solar Long-term Monitoring Program concepts proposed and published in the Solar PEIS Appendices 2.4 and 2.5 (<http://solareis.anl.gov/documents/fpeis/index.cfm>).

19. Why is the BLM doing a pilot project?

Early planning efforts for renewable energy on public lands, including evaluating the societal benefits of clean-energy generation as well as responses for potential adverse impacts on people and the environment, afford BLM the opportunity to both make best use of the federal estate and encourage other national, state, and local-area conservation objectives. The BLM Solar Energy Program is conducting a pilot project to develop and test ways to address potential unavoidable impacts of utility-scale solar energy

development within SEZs, as identified in the Solar PEIS, and to advance landscape-scale, ecosystem-based approaches to resource management and multiple use issues.

20. What are the goals and outcomes of the Dry Lake SEZ SRMP Pilot Project?

The goals of the Dry Lake SEZ SRMP Pilot Project are to: 1) Develop a Regional Mitigation Plan for the Dry Lake SEZ and 2) use the lessons learned to produce guidance for the development of regional mitigation plans for all the remaining SEZs. The outcomes will be a) Dry Lake SEZ Regional Mitigation Plan and b) Guidance and Recommendations for SEZ Regional Mitigation Planning.

21. What is the schedule for the SRMP Pilot Project?

The Dry Lake SEZ SRMP Pilot Project schedule extends from July 2012 through March 2013 and includes internal implementation activities by the BLM and its contractor Argonne National Laboratory, communication with participating public, and four open collaborative public workshops (August 29-30, 2012; October 24-25, 2012; December 5-6, 2012; and January 30-31, 2013). All Dry Lake SEZ SRMP Pilot Project workshops will be held in Las Vegas, Nevada, near the Dry Lake SEZ.

22. How will stakeholders be involved in the SRMP Pilot Project?

The BLM invites the public to engage and participate in the Dry Lake SEZ SRMP Pilot Project. The public may keep abreast of pilot project topics, workshop planning, agendas, and activities via the BLM Dry Lake SEZ SRMP Pilot Project web-site at: http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/dry_lake_solar_energy.html. The BLM will be posting workshop documents, data, and other information at this site.

BLM will primarily be communicating with the interested public via email and news releases, including the Solar PEIS subscriber list and workshop participant lists to notify and inform the public of pilot project activities.

¹ The Wyden Amendment, 16 U.S.C. 1011, provides: "For fiscal year 1997 and each fiscal year thereafter appropriations made for the Bureau of Land Management ... may be used by the Secretary of the Interior for the purpose of entering into cooperative agreements with the heads of other Federal agencies, tribal, State, and local governments, private and nonprofit entities, and landowners for the protection, restoration, and enhancement of fish and wildlife habitat and other resources on public or private land and the reduction of risk from natural disaster where public safety is threatened that benefit these resources on public lands within the watershed."