Memorandum of Understanding
between the
Bureau of Land Management, Department of the Interior
and the
Nuclear Regulatory Commission, an Independent Agency

I. Introduction

This Memorandum of Understanding (MOU) provides for a cooperative working relationship between the Nuclear Regulatory Commission (NRC), an independent agency, and the Bureau of Land Management, Department of the Interior (BLM) (collectively "the Parties"). It forms a cooperative framework that supports common goals in furthering each agency's mission involving the development of uranium or thorium resources on public lands, including Federal mineral estates, under the administration of the BLM. The cooperating agency relationship established through this Memorandum of Understanding (MOU) will be governed by all applicable statutes, regulations, and policy, including the NRC's regulations in 10 CFR Part 51 and BLM's regulations in 43 CFR Parts 1600, 3500, and 3800.

This MOU is intended to improve interagency communication, facilitate the sharing of special expertise and information, and coordinate the preparation of studies, reports, and environmental documents associated with NRC licensing actions and BLM regulation of public lands, including Federal mineral estates.

II. Purpose

The purpose of this MOU is:

A. To provide for cooperation and coordination between the NRC and the BLM that will encourage routine communication, at the national and local levels, and lend mutual support, when feasible, in evaluating plans of operations, lease applications, or related documents received by the BLM or license applications, amendments or renewals received by the NRC.

B. To establish periodic meetings between NRC and BLM management to ensure coordination and identify points of contact, information gaps, and resource issues specific to a particular uranium or thorium recovery facility requiring an NRC license to operate on public lands under BLM's regulatory authority.

C. To provide for the exchange of data, analysis, research and other information that may assist either agency in carrying out its respective responsibilities.

D. To provide advance notice of agency actions so that the BLM field office or NRC staff can determine the level of participation the federal agency will have on development of a site-specific environmental document.

E. To provide a framework for negotiation of any schedules for a site-specific Environmental Assessment (EA), Environmental Impact Statement (EIS), or Supplemental Environmental Impact Statement (SEIS) between the appropriate BLM Office and NRC staff to ensure completion of a thorough site-specific environmental document in a timely and efficient manner.

F. 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 NRC to enter into and engage in the activities described in this MOU include, but are not limited to:

1. The Atomic Energy Act (42 U.S.C. 2011 et seq.).

2. Nuclear Regulatory Commission regulations (10 CFR 1 et seq.).

3. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

B. The authorities of the BLM to enter into and engage in the activities described in this MOU include, but are not limited to, authorities delegated from the Secretary of the Interior for administering mining claims and, on acquired lands, hardrock mineral leases, and implementing regulations, including:

1. Mining Law of 1872, 30 U.S.C. §§ 21- 42 (Mining Law).

2. Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1785 (FLPMA).

3. 43 CFR Parts 1600, 3500, and 3800.

4. National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA).

5. 40 CFR Part 1500; 43 CFR Part 46.

6. Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099; 5 U.S.C. Appendix.

IV. Roles and Responsibilities

A. Bureau of Land Management Responsibilities:

The BLM's responsibilities under these laws include, but are not limited to:

- Managing and protecting the 265 million acres of public lands and 700 million acres of Federal mineral estate under the principles of multiple use and sustained yield.

- Processing a properly filed plan of operations for a mining claim or, on acquired lands, an application for a hardrock lease.

- Preparing or supervising the preparation of environmental and related documents, as appropriate, to fulfill National Environmental Policy Act (NEPA) Section 102 responsibilities, including the Council on Environmental Quality regulations for implementing NEPA, contained in 40 CFR 1500 through 1508, as well as the

Department of the Interior's regulations for implementing NEPA, contained at 43 CFR Part 46 (73 FR 61292, Oct. 15, 2008). Applicable Department of the Interior and BLM guidance is contained in Part 516 of the Departmental Manual, as well as BLM Handbook H-1790-1.

- Issuing a record of decision or finding of no significant impact that provides for the terms and conditions of approval of the submitted plan of operations or lease application, or a record of decision providing reasons for denial of the submitted plan or application.

- Ensuring that a reclamation bond, acceptable to BLM, is in place before operations begin. The bonding level is set to cover the full cost of reclamation as if performed by a third party contractor.

B. Nuclear Regulatory Commission Responsibilities:

The NRC's responsibilities under these laws include, but are not limited to:

- Evaluating NRC license applications, amendments or renewals for milling facilities, which include those using In-Situ Leach Uranium Recovery processes.

- Preparing or supervising the preparation of EAs, EISs, or SEISs to fulfill NEPA Section 102 responsibilities when appropriate as part of the NRC evaluation process. The NRC's environmental review regulations implementing NEPA Section 102(2) are contained in 10 CFR Part 51.

- Performing a safety review resulting in a Safety Evaluation Report (SER) as part of the licensing review process. The NRC's safety regulations are contained in 10 CFR Part 40.

- Requiring documentation of adequate financial assurance from the licensee for decommissioning the facility.

C. Coordination:

The BLM and NRC will:

1. Develop an open communication process at the national and local level and maintain a list of contacts for reference by each agency. BLM and NRC offices will provide advance notice of anticipated plans of operations or lease applications, and license applications, respectively, for uranium or thorium recovery activities to ensure that each agency is informed about activities and issues related to uranium or thorium recovery facilities requiring an NRC license to operate on public lands under BLM's regulatory authority. The communication process will involve periodic joint meetings, either at the staff or Steering Committee level.
2. Apprise the other agency of projects, studies, or other initiatives that could be of common interest.

3. Exchange data, analysis, research, and other information that may assist either agency in carrying out its respective responsibilities. This may involve exchange of draft documents, or providing information within each agency's area of expertise.
4. Establish a Steering Committee comprised of no more than three senior level representatives from each agency.

D. Agency Representatives and NRC/BLM Steering Committee:

1. Each agency will designate a representative and an alternate to ensure coordination between the BLM and the NRC. Each agency may change its representative by providing written notice to the other agency.
2. The NRC/BLM Steering Committee will meet periodically to ensure coordination, discuss any pending issues related to interagency cooperation regarding the development of uranium or thorium resources, and resolve any conflicts identified by the working group or staff. Additional meetings may be called by the Steering Committee or at the request of the NRC or the BLM.

E. National Environmental Policy Act

1. The BLM and the NRC agree to provide advance notice and coordinate on any plans of operations, lease applications or related documents, and/or license applications, amendments or renewals received for uranium or thorium recovery facilities requiring an NRC license to operate on public lands under BLM's regulatory authority, and to offer the other agency the opportunity to participate in the NEPA process.
2. Each agency has discretion to decide whether to participate (fully or partially) or decline to participate based on resources or other constraints.
3. Each agency may, as appropriate, provide input to the documents in areas related to its expertise.
4. The Parties agree to participate in the NEPA process in good faith and make all reasonable efforts to resolve disagreements.
5. Each Party agrees to fund its own expenses associated with the site-specific NEPA process.
6. Implementation

a. To the fullest extent possible, consistent with each agency's determination of the efficiency and cost-effectiveness of doing so, the BLM and the NRC will participate either as lead agency, co-lead, or cooperating agency on preparation of site-specific environmental documents. Environmental documents for the purposes of this MOU are EAs, EISs, SEUSs, findings of no significant impact (FONSI) and Notices of Intent (NOI) as defined in 40 CFR Sections 1500-1508.

1. If the NRC receives a license application, amendment, or renewal before the BLM receives a plan of operations, lease application, or related document, the NRC will serve as the lead agency and BLM will be the cooperating agency.

2. If the BLM receives a plan of operations, lease application, or related document before the NRC receives a license application, amendment, or renewal, the BLM will serve as the lead agency and the NRC will be the cooperating agency.

3. When possible in terms of the timeframe in which the BLM receives a plan of operations, lease application, or related document and the NRC receives a license application, amendment, or renewal on the same site, and consistent with each agency's determination that it can fully comply with its statutory and other obligations, the BLM and the NRC will explore the feasibility of preparing a combined site-specific environmental document and/or coordinating any public meetings or public comment periods during the NEPA process.

   A. If it is possible to prepare one environmental document for both actions, each agency agrees to serve as a co-lead on the preparation of the environmental document. Notwithstanding a co-lead designation, each agency will prepare a separate record of decision/decision record for its action. Establishment of a co-lead relationship is contingent on each agency's ability to support the other agency's schedule for its action. Each agency reserves the right to complete a separate environmental document if mutual agreement on the schedule for a jointly-prepared environmental document cannot be achieved.

   B. If it is not possible to prepare one joint environmental document to support both actions, each agency agrees to offer the other agency the opportunity to participate as a cooperating agency on the preparation of its environmental document.

b. The lead agency will provide information on the project timelines to the cooperating agency and the cooperating agency will make a good faith effort to support the lead agency's timeline.

c. Each agency will provide the other agency with copies of environmental and other documents that could assist the other agency, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final environmental documents, subject to each agency's information handling requirements.

d. To the fullest extent consistent with its responsibility, each agency will utilize the comments, recommendations, data, and/or analyses provided by the other agency in the NEPA process, giving particular weight to those topics on which that agency is acknowledged to possess special expertise, as summarized below.

   1. The BLM authorizes mineral exploration, mining and reclamation actions on the public lands and manages the public lands for a variety of uses, and is responsible for preventing unnecessary or undue degradation of the public lands. As a result, the BLM has special expertise in determining the level of acceptable impacts to public land resources associated with plans of operations or lease applications, and in determining reclamation requirements and level of bonding required.

2. The NRC statutory authority includes issuance of licenses for the possession and use of byproduct and source material after making a determination that the licensed activities are protective of public health and safety and consistent with the NRC's responsibilities for the common defense and security of the nation by protecting it from radiological hazards. As such, the NRC has special expertise in determining the radiological health and safety impacts for operating facilities possessing and using radioactive materials, decommissioning those facilities, and funding the decommissioning.

f. When given cooperating agency status, an agency will work with the lead agency to coordinate, prioritize, identify and manage tasks to provide information, comments, and technical expertise to the lead agency regarding those topics, and related data and analyses, in which it has special expertise or for which the lead agency requests its participation.

    1. The agencies will identify staff to implement and coordinate these activities.

    2. Each agency's staff will identify and coordinate on critical dates for completion of important steps in the process. The staff will seek to reach consensus on the dates by which each agency will provide its input and/or complete its review for each of those steps. (Attachments A, B and C provide sample documents that can be used for negotiating tasks and schedules for specific sites.)

    3. When a cooperating agency prepares technical analyses or provides data sets, it must provide the data and other information within the specified timeframe to ensure its consideration by the lead agency. The lead agency reserves the right to proceed with preparation of the environmental documents to meet its schedule if information or comments are not received within the specified timeframe.

g. Within its area of special expertise, a cooperating agency may participate in activities including, but not limited to: identifying data needs, identifying effects of alternatives, identifying effects of cumulative impacts, suggesting mitigation measures, and providing written comments on working drafts of the draft and final environmental documents and supporting documents.

h. The lead agency retains final responsibility for the content of the Draft EA, EIS, or SEIS and the Final EA, EIS, or SEIS. The lead agency's responsibilities include determining the purpose of and need for the proposed action to be analyzed in the EA, EIS, or SEIS; selecting alternatives for analysis; identifying effects of the proposed alternatives; making recommendations on the proposed action; and evaluating appropriate mitigation measures. In meeting these responsibilities, the lead agency will follow all applicable statutory and regulatory requirements.

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 its jurisdiction. Nothing in this MOU shall require either Party to act beyond its authority.

B. *Financial obligations.* Nothing in this MOU shall require either Party 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 person or organization having a financial interest in the outcome of the decision-making process for purposes of plan development, environmental analysis, or BLM or NRC representation, including officials, employees, or third party contractors.

E. *Documenting disagreement or inconsistency.* Where the NRC and the BLM disagree on significant elements of the environmental document, such as designation of the alternatives to be analyzed or analysis of effects, and these disagreements cannot be resolved, the disagreements can be discussed in the established Steering Committee. If a cooperating agency status is established, the non-lead agency may document its views and submit them as comments to the draft and the proposed/final environmental documents.

F. *Management of information.* The Parties acknowledge that all data and information provided will become part of the NRC's and the BLM's official records and will be available for public review, except as restricted by the National Historic Preservation Act, Freedom of Information Act, and/or the Privacy Act. The Parties agree that internal working drafts for the development of environmental documents will not be made available for review by individuals or entities other than the Parties to this MOU, unless agreed to by both parties. All draft documents are part of the official record and may only be released by a Party to the extent allowed by the National Historic Preservation Act, Freedom of Information Act and/or the Privacy Act. The Parties agree that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public.

G. *Responsibility for decision making.* While the Parties agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that the lead agency retains final responsibility for the decisions identified in the environmental documents.

H. *Coordination with federal contractors.* The Parties agree to communicate with a Federal contractor through the Federal agency representative responsible for administrating the contract.

VI. Administration of the MOU

A. *Approval.* This MOU becomes effective upon signature by the authorized officials of both Parties.

B. *Amendment*. This MOU may be amended through written agreement of both Parties.

C. *Termination*. This agreement will remain in effect unless it is amended or terminated. This agreement may be terminated by one agency by giving 120 days written notice of the agency's intent to terminate to the other agency.

D. *Entirety of Agreement*. This MOU, consisting of 11 pages, may be supplemented by site-specific attachments that will be negotiated between BLM and NRC staff (see, e.g., Attachment B).

VII. Effective Date of this Memorandum.

This agreement will take effect on the last date of signature.

OCT 16 2009

Michael D. Nedd, Assistant Director Date
Minerals and Realty Management
Bureau of Land Management
U.S. Department of the Interior

Charles L. Miller 11/30/09

Charles L. Miller, Director Date
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission

Attachment A

Possible Opportunities for Cooperating Agency Participation in the (EA OR EIS)

	(EA, EIS, or SEIS) Stage	**Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise**
1	Conduct scoping and identify issues	Identify significant issues; identify relevant local and regional organizations and interest groups.
2	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
3	Formulate alternatives	Suggest alternatives to resolve issues. Decision to select alternatives for analysis is reserved to the lead agency.
4	Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.
5	Select the preliminary recommendation regarding the proposed action; issue Draft (EA, EIS or SEIS)	Collaborate with the lead agency project manager in evaluating alternatives and in developing criteria for selecting the preliminary recommendation regarding the proposed action; provide input on Preliminary Draft (EA, EIS or SEIS). The CAs may provide written, public comments on draft if desired. Decision to select the preliminary recommendation is reserved to the lead agency.
6	Respond to comments	Review comments within the CA's expertise and assist in preparing responses, as appropriate.
7	Select the final recommendation regarding the proposed action; issue Final (EA, EIS or SEIS)	Action reserved to the lead agency. CAs may provide written, public comments if desired.

Attachment B

Sample Schedule

	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise	**Input Needed By**
1	Provide [insert data and information identified for a specific site]	Within [ ] calendar days
2	Review and comment on preliminary draft (EA, EIS or SEIS) and attend draft (EA, EIS or SEIS) review meeting	Within [ ] business days of receiving preliminary draft (EA, EIS or SEIS) for review
3	Optional, CA may choose to submit public comments on draft (EA, EIS or SEIS)	Within public comment period
4	Review compilation of public comments (EA, EIS or SEIS) and assist in responding to public comments	Within [ ] business days of receiving compilation of public comments
5	Review and provide comments on preliminary final (EA, EIS or SEIS) and attend final (EA, EIS or SEIS) review meeting	Within [ ] business days of receiving preliminary final (EA, EIS or SEIS) for review

Attachment C
Site-Specific Agency Representatives

Nuclear Regulatory Commission

Primary Representative: **[insert name, title and phone number]**

Backup Representative: **[insert name, title and phone number]**

BLM

Primary Representative: **[insert name, title and phone number]**

Backup Representative: **[insert name, title and phone number]**

Attachment A

Possible Opportunities for Cooperating Agency Participation in the (EA OR EIS)

	(EA, EIS, or SEIS) Stage	**Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise**
1	Conduct scoping and identify issues	Identify significant issues; identify relevant local and regional organizations and interest groups.
2	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
3	Formulate alternatives	Suggest alternatives to resolve issues. Decision to select alternatives for analysis is reserved to the lead agency.
4	Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.
5	Select the preliminary recommendation regarding the proposed action; issue Draft (EA, EIS or SEIS)	Collaborate with the lead agency project manager in evaluating alternatives and in developing criteria for selecting the preliminary recommendation regarding the proposed action; provide input on Preliminary Draft (EA, EIS or SEIS). The CAs may provide written, public comments on draft if desired. Decision to select the preliminary recommendation is reserved to the lead agency.
6	Respond to comments	Review comments within the CA's expertise and assist in preparing responses, as appropriate.
7	Select the final recommendation regarding the proposed action; issue Final (EA, EIS or SEIS)	Action reserved to the lead agency. CAs may provide written, public comments if desired.

Attachment B

Sample Schedule

	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise	**Input Needed By**
1	Provide [insert data and information identified for a specific site]	Within [ ] calendar days
2	Review and comment on preliminary draft (EA, EIS or SEIS) and attend draft (EA, EIS or SEIS) review meeting	Within [ ] business days of receiving preliminary draft (EA, EIS or SEIS) for review
3	Optional, CA may choose to submit public comments on draft (EA, EIS or SEIS)	Within public comment period
4	Review compilation of public comments (EA, EIS or SEIS) and assist in responding to public comments	Within [ ] business days of receiving compilation of public comments
5	Review and provide comments on preliminary final (EA, EIS or SEIS) and attend final (EA, EIS or SEIS) review meeting	Within [ ] business days of receiving preliminary final (EA, EIS or SEIS) for review

Attachment C
Site-Specific Agency Representatives

Nuclear Regulatory Commission

Primary Representative: **[insert name, title and phone number]**

Backup Representative: **[insert name, title and phone number]**

BLM

Primary Representative: **[insert name, title and phone number]**

Backup Representative: **[insert name, title and phone number]**