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From: Bubar, Patrice - FSME
Sent: Tuesday, July 07, 2009 2:05 PM
To: mitchell_leverette@blm.gov
Cc: rick.deery@blm.gov; Bjornsen, Alan; Kock, Andrea; Olmstead, Joan
Subject: Final Draft BLM-NRC MOU
Attachments: draft BLM-NRC MOU-7-1-09--co-lead.doc

Mitch - attached is a final draft of the MOU between BLM and NRC. We had a very good call last week to go over the comments provided by BLM's Solicitors office as well as some final comments NRC has.

The attached version incorporates the comments we have received from BLM.

We have discussed this version with management in the Materials program as well as in our General Counsel's office.

Please give this your review. Let us know if you are ready to put this into review and concurrence at BLM.

We are ready to provide this to you formally in a letter but wanted to get your reaction first.

Please let us know if you have further questions. Thanks. We are getting closer to a final MOU.

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U.S. Nuclear Regulatory Commission
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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 land and 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's oversight of public land and federal mineral estates under BLM's regulatory authority.

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 operation or lease applications 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 recovery facility requiring an NRC license to operate on public lands and federal mineral estate 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 NEPA document.
- E. To provide a framework for negotiation of any schedules for a site-specific Environmental Assessment (EA), Supplemental Environmental Impact Statement (SEIS) or Environmental Impact Statement (EIS) between the appropriate BLM Office and NRC staff to ensure completion of a thorough site-specific NEPA 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 hardrock minerals on acquired lands, 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.).
5. 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 300 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 application for a hardrock lease on acquired lands.
- Preparing or supervising the preparation of an environmental assessment or environmental impact statement, as appropriate, to fulfill National Environmental Policy Act (NEPA) Section 102 responsibilities. The BLM's environmental review regulations implementing NEPA Section 102(2) are contained in [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.

- 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 EAs, SEISs or EISs 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 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 receipts of 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 recovery facilities requiring an NRC license to operate on public lands and federal mineral estate 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 3 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, and/or license applications, amendments or renewals received for uranium recovery facilities requiring an NRC license to operate on public lands and federal mineral estate 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 site-specific NEPA documents.
 1. If the NRC receives a license application amendment or renewal, before the BLM receives a Plan of Operation, the NRC will serve as the lead agency and BLM will be the cooperating agency.
 2. If BLM receives a Plan of Operation 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.
 - b. When possible in terms of the timeframe in which the BLM receives a plan of operations or a lease application and the NRC receives an 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 NEPA document or coordinating any public meetings or public comment periods during the NEPA process.
 1. If it is possible to prepare one NEPA document for both actions, each agency agrees to serve as co-leads on the preparation of the NEPA document, but could prepare separate records of decision or decision records for their respective agency action. Establishment of a co-lead relationship would be contingent upon the agencies being able to support each others schedules for their respective

projects. The agencies reserve the right to complete separate NEPA documents if mutual agreement on the schedule for the NEPA document cannot be met.

2. If it is not possible to prepare one NEPA document for both actions, each agency agrees to offer the other agency the opportunity to participate as a cooperating agency on the preparation of their respective NEPA documents.
- c. 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.
- d. Each agency will provide the other agency with copies of NEPA documents that could assist the other agency, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final NEPA documents, subject to each agency's information handling requirements.
- e. 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 protecting important environmental, historic, cultural and scenic values. As such, the BLM has special expertise in determining the level of impacts to public land resources associated with plans of operations, lease applications, 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.

Attachment D also includes a list of topics typically reviewed by each agency during their NEPA process.

- 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 reach consensus on the deliverables (if any) and delivery dates; anticipated products and periods of

performance. (Attachment A, B, C and D 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 precede with preparation of the NEPA 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 NEPA documents and supporting documents
- h. The lead agency retains final responsibility for the content of the Draft (EA, SEIS or EIS) and the Final (EA, SEIS or EIS). The lead agency's responsibilities include determining the purpose of and need for the (EA, SEIS or EIS); 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 NEPA document 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 NEPA 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 at 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 NEPA documents.

Attachment A

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

	(EA, SEI or EIS) 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, SEIS or EIS)	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, SEIS or EIS). 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, SEIS or EIS)	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 data and information identified under Section IV(B)(2) of the MOU to NRC	Within [] calendar days of MOU signing by NRC and BLM representatives
2	Review and comment on preliminary draft (EA, SEIS or EIS) and attend draft (EA, SEIS or EIS) review meeting	Within [] business days of receiving preliminary draft (EA, SEIS or EIS) for review
3	Optional, CA may choose to submit public comments on draft (EA, SEIS or EIS).	Within public comment period.
4	Review compilation of public comments (EA, SEIS or EIS) and assist in responding to public comments.	Within [] business days of receiving draft compilation of public comments.
5	Review and provide comments on preliminary final (EA, SEIS or EIS) and attend final (EA, SEIS or EIS) review meeting	Within [] business days of receiving preliminary final (EA, SEIS or EIS) for review

Attachment C
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 D

Topics reviewed by each agency during implementation of NEPA process

Items in Red have been added by BLM, since they are a part of our requirements

Items in Blue indicate BLM comments

DESCRIPTION	NRC	BLM
1 Introduction (Some of the sections with different names may duplicate one another, but we would need to compare descriptions of the sections to determine this.)		
Proposed Federal Action	X	X
Purpose and Need	X	X
Alternatives	X	X
Scope	X	X
Existing analyses to be incorporated by reference/tiering	X	X
Issues		X
Approvals	X	X
Review Process	X	X
Major Authorizing Laws and regulations for each agency (FLPMA, 3809 Regs, plan review, bonding, inspections, etc.)	X	X
Relationship to BLM Policies, Plans, and Programs	X	X
Relationship to non-BLM Policies Plans and Programs		X
Federal Permits Licenses and other Entitlements to Obtain to Implement the Proposal	X	X
Summary of Effects	X	
2 Description of the Proposed Action and Alternatives		
BLM's Preferred Alternative (could be added as a note to an alternative – also, since BLM has different decisions and alternative components than NRC and EPA, we may need parts of alternatives that refer just to BLM, or wholly separate agency alternatives)		X
Proposed Action	X	X
Site Description	X	X
General Location (and maps)	X	X
Proposed Facilities (Description)	X	X
Design Features That Would Minimize Potentially Significant Impacts	X	X
Construction	X	X
Operation	X	X
Aquifer Restoration	X	X
Decommissioning	X	X
No Action	X	X
Alternatives	X	X
Site Description	X	X
Proposed Facilities	X	X
Construction	X	X
Operation	X	X
Aquifer Restoration	X	X
Decommissioning	X	X

Attachment D

Topics reviewed by each agency during implementation of NEPA process

Items in Red have been added by BLM, since they are a part of our requirements

Items in Blue indicate BLM comments

3 Affected Environment	X	X
4 Impacts (Site-Specific) Environmental Effects (usual BLM title)	X	X
5 Cumulative Impacts (including long- and short-term, direct & indirect) (Usually part of "Environmental Effects" in BLM EIS)	X	X
Land Use	X	X
Land Use Plan Conformance		X
Farmlands (Prime or Unique)	X	X
Wilderness	X	X
Transportation	X	X
Geology and Soils	X	X
Water Resources	X	X
Surface Water	X	X
Floodplains	X	X
Wild and Scenic Rivers		X
Wetlands	X	X
Riparian lands		X
Groundwater	X	X
Ecology	X	X
Vegetation		
Terrestrial	X	X
Invasive, Non-native Species	X	X
Aquatic	X	X
T&E Species	X	X
Areas of Critical Environmental Concern	X	X
Wildlife		
Terrestrial	X	
Aquatic	X	
T&E Species	X	
Areas of Critical Environmental Concern	X	X
Noise	X	X
Air Resources	X	X
Meteorology	X	
Climatology	X	
Air Quality	X	
Climate Change	X	X
Historical and Cultural Resources	X	X
Native American Religious Concerns	X	X
Visual and Scenic Resources	X	X
Socioeconomics	X	X
Demographics	X	X
Income	X	X
Housing	X	X
Employment	X	X
Local Finance	X	X
Education	X	X

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Topics reviewed by each agency during implementation of NEPA process

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Items in Blue indicate BLM comments

Health and Social Services	X	X
Utilities	X	X
Emergency Services	X	X
Environmental Justice	X	X
Public and Occupational Health	X	X
Waste Management	X	X
Radiological	X	
Solid Wastes	X	
Liquid Wastes	X	
Non-Radiological	X	
Solid Wastes	X	
Liquid Wastes	X	
Hazardous Wastes	X	
6 Mitigation		
Best Management Practices	X	X
Planned Management Actions (for appropriate resources in Chap 3)	X	X
7 Monitoring (This section colored green would normally be part of mitigation in a BLM document)		
Radiological	X	X
Air	X	X
Soil	X	X
Vegetation & Wildlife	X	X
Surface Water	X	X
Groundwater	X	X
Non-Radiological	X	X
Groundwater	X	X
Soils	X	X
Ecological (wildlife)	X	X
Air Quality	X	X
8 Consultations and Coordination		
Public Involvement and Scoping	X	X
Meetings:	X	X
Those Consulted:		X
Federal Agencies	X	X
Tribal	X	X
State Agencies	X	X
Local Agencies	X	X
Organizations	X	X
Individuals	X	X
Unresolved Environmental Issues of Conflicts Discussed	X	X
List of Recipients to Receive Final EIS	X	X

Attachment D
Topics reviewed by each agency during implementation of NEPA process

Items in Red have been added by BLM, since they are a part of our requirements
 Items in Blue indicate BLM comments

9 Summary of Potential Impacts	X	X
10 List of Preparers	X	X
Individual's Names and Qualifications	X	X
Bibliography/References	X	X
Glossary	X	X
Index of Key Words	X	X
Appendices	X	X
FONSI/NOI (FONSI/Decision Notice - separate BLM document)	X	X