

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 (BLM), Department of the Interior. 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 MOU will be governed by all applicable statutes, regulations, and policy, including the NRC's regulations in 10 CFR Parts 40 and 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 BLM and the NRC 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 applications for licenses, license amendments or license renewals for the possession and use of source and byproduct materials received by the NRC.
- B. To establish periodic meetings between the BLM and the NRC 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 foster cooperation and coordination between the BLM and the NRC in satisfying the requirements of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).
- E. To provide advance notice of agency actions so that the BLM field office or the NRC staff can determine the level of participation the Federal agency will have on development of site-specific documents generated pursuant to NEPA and NHPA.

- F. 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 the NRC staff to ensure completion of a thorough site-specific environmental document in a timely and efficient manner.
- G. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the parties in the planning process.
- H. To enhance coordination on financial assurances for all uranium or thorium recovery operations by defining roles and promoting information sharing.

III. Scope

This MOU pertains to uranium or thorium recovery facilities and any activities related to such facilities that require an NRC license to possess and use source and byproduct materials, and are located on public lands under BLM's regulatory authority.

IV. 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. NRC regulations (10 CFR, Ch. 1);
 - 3. NEPA (42 U.S.C. § 4321 et seq.); and
 - 4. NHPA (16 U.S.C. § 470 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;
 - 3. 43 CFR Parts 1600, 3500, and 3800;
 - 4. 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; and
7. NHPA.

V. Roles and Responsibilities

A. BLM Responsibilities:

The BLM's responsibilities under these laws and regulations 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 operation 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 NEPA Section 102(2) responsibilities, including the Council on Environmental Quality regulations for implementing NEPA, set forth in 40 CFR 1500 through 1508, as well as the Department of the Interior's regulations for implementing NEPA, set forth at 43 CFR Part 46 (73 FR 61292, Oct. 15, 2008). Applicable Department of the Interior and BLM guidance is set forth in Part 516 of the Departmental Manual, as well as BLM Handbook H-1790-1.
- Preparing memoranda of agreement where proposed actions have, or could have, adverse effects on historic properties in accordance with the Advisory Council on Historic Preservation (ACHP) regulations, which implement Section 106 of the NHPA (Section 106), at 36 CFR Part 800.
- 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 the 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. NRC Responsibilities:

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

- Evaluating applications for licenses, license amendments or license renewals for the possession and use of source and byproduct materials at uranium or thorium recovery facilities, including those facilities using *in-situ* leach uranium recovery processes.

- Preparing or supervising the preparation of EAs, EISs, or SEISs to fulfill NEPA Section 102(2) responsibilities when appropriate as part of the NRC application evaluation process. The NRC's regulations implementing NEPA Section 102(2) are set forth in 10 CFR Part 51.
- Preparing memoranda of agreement where proposed actions have, or could have, adverse effects on historic properties in accordance with the ACHP regulations, which implement Section 106 of the NHPA.
- Preparing a Safety Evaluation Report as part of the licensing review process. The NRC's safety regulations for the extraction, milling and other processing of uranium and thorium are set forth in 10 CFR Part 40.
- Requiring documentation of adequate financial assurance from an applicant for purposes of decommissioning any facility constructed to extract, mill or otherwise process uranium and thorium.

C. Coordination:

The BLM and NRC will:

1. Develop a clear communication process at the national and local level and maintain a list of contacts for reference by each agency. The BLM agrees to provide the NRC with advance notice of, and to coordinate actions related to, any plans of operation or lease applications for uranium or thorium recovery facilities, including but not limited to *in-situ* recovery operations. The NRC agrees to provide the BLM with advance notice of, and to coordinate actions related to, any applications for licenses, license amendments, or license renewals for the possession and use of source and byproduct materials at uranium or thorium recovery facilities on or affecting public lands, including but not limited to *in-situ* recovery operations. Additionally, the BLM and the NRC will continue to coordinate and share information, as appropriate, on financial assurances for all uranium or thorium recovery facilities. The communication process will involve periodic joint meetings, either at the staff or senior management 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, including the exchange of draft documents.
4. Establish a "steering committee" comprised of no more than three senior level representatives from each agency (Steering Committee).

D. Agency Representatives and 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 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 either the NRC or BLM staff. Additional meetings may be called by the Steering Committee or at the request of the NRC or the BLM.

E. NEPA and Section 106 Processes

1. The BLM and the NRC agree to provide each other the opportunity to participate in each agency's NEPA and Section 106 processes for those proposed agency actions concerning uranium or thorium recovery facilities, including but not limited to *in-situ* recovery operations. With respect to the Section 106 process and in consideration of the other provisions in this MOU, the BLM and the NRC will cooperate and coordinate with each other, to the extent feasible, to satisfy the various requirements of the implementing regulations for Section 106 at 36 CFR Part 800. These requirements include the identification of historic properties, consultation, assessment of the effect of the proposed action upon any historic properties, and attempts at resolution of adverse effects.
2. Each agency has discretion to decide whether to participate in the other agency's NEPA or Section 106 process 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 BLM and the NRC agree to participate in the NEPA and Section 106 processes in good faith and make all reasonable efforts to resolve disagreements.
5. Each agency agrees to fund its own expenses associated with the site-specific NEPA and Section 106 processes.
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. Site-specific environmental documents include EAs, Findings of No Significant Impact (FONSIs), EISs, SEISs, Records of Decision (RODs), and Notices of Intent. Similarly, the BLM and the NRC will cooperate in the preparation of Section 106 memoranda of agreement (see

36 CFR 800.6(c); the term “memorandum of agreement” is defined at 36 CFR 800.16(o)).

1. If the NRC receives an application for a license, license amendment, or license 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 an application for a license, license amendment, or license 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 an application for a license, license amendment, or license renewal concerning 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 (a) preparing a combined site-specific environmental document and/or Section 106 memorandum of agreement and/or (b) coordinating any public meetings or public comment periods during the NEPA and Section 106 processes.
 - A. If it is possible to prepare one site-specific environmental document and/or one Section 106 memorandum of agreement for both agency actions, the BLM and the NRC will decide on a case-by-case basis the lead agency for the preparation of such document. If both the BLM and the NRC agree, both agencies can serve as co-lead on the preparation of such document. Notwithstanding a co-lead designation, each agency will prepare a separate ROD for its action; if appropriate, each agency may prepare a separate FONSI for its action if an EA was prepared. 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 site-specific environmental document or Section 106 memorandum of agreement if mutual agreement on the schedule for a jointly-prepared document cannot be achieved.
 - B. If it is not possible to prepare one joint site-specific environmental document or Section 106 memorandum of agreement to support both agency actions, each agency agrees to offer the other agency the opportunity to participate as a cooperating agency on the preparation of its site-specific environmental document or Section 106 memorandum of agreement.

- 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 site-specific environmental documents, Section 106 memoranda of agreement, and other relevant documents that could assist the other agency, including technical reports, data, analyses, comments received, and working drafts and final documents related to the NEPA and Section 106 reviews, subject to each agency's information handling requirements.
- d. To the fullest extent consistent with its statutory and regulatory authority, each agency will utilize the comments, recommendations, data, and/or analyses provided by the other agency in both the NEPA and Section 106 processes, 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 and lease applications, and in determining reclamation requirements and the level of bonding required.
 - 2. The NRC statutory authority includes issuance of licenses for the possession and use of source and byproduct materials 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.
- e. When given cooperating agency status, each 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 BLM and the NRC 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 each process (NEPA and Section 106). 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.
- f. 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 site-specific environmental documents and Section 106 memoranda of agreement.
 - g. The lead agency retains final responsibility for the content of the draft and final site-specific environmental documents and Section 106 memoranda of agreement. The lead agency's responsibilities include determining the purpose of and need for the proposed action to be analyzed in the site-specific environmental documents; selecting alternatives for analysis; identifying effects of the proposed alternatives; making recommendations on the proposed action; and evaluating appropriate mitigation measures.

VI. Other Provisions

- A. *Authorities not altered.* Nothing in this MOU alters, amends, affects, limits, or supersedes the statutory or regulatory authorities and responsibilities of the BLM or the NRC. Nothing in this MOU shall require either the BLM or the NRC to take any action that is beyond its statutory or regulatory authority.
- B. *Financial obligations.* Nothing in this MOU may be interpreted to require either the BLM or the NRC to assume any obligation or expend any sum in excess of authorization and appropriations available.
- C. *Immunity and defenses retained.* Each agency 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 BLM and the NRC 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 BLM or NRC employees, or third party contractors.
- E. *Documenting disagreement or inconsistency.* Where the NRC and the BLM disagree on significant elements of a site-specific environmental document or a Section 106 memorandum of agreement, 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 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 or final site-specific environmental documents or the Section 106 memorandum of agreement, as appropriate.

- F. *Management of information.* Each agency acknowledges 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 NEPA, Freedom of Information Act, and/or the Privacy Act. Each agency agrees that internal working drafts for the development of site-specific environmental documents and Section 106 memoranda of agreement will not be made available for review by individuals or entities other than the employees and contractors of the BLM or the NRC, unless agreed to by both agencies. All draft documents are part of the official record and may only be released by the BLM or the NRC to the extent allowed by NEPA, Freedom of Information Act and/or the Privacy Act. Each agency agrees 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 both agencies 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 contractors.* Each agency agrees to communicate with a contractor through the BLM or the NRC representative responsible for administering the contract.
- I. *Legal effect.* This MOU is intended solely for efficient management within the Executive Branch of the Federal Government. This MOU does not create any right or benefit, substantive or procedural, or trust responsibility, enforceable by law or equity, by persons who are not party to this agreement, against the BLM or the NRC or any other agency of the Federal Government, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the BLM and the NRC. Nothing in this MOU may be interpreted to cause either the BLM or the NRC to take any action in violation of the Anti-Deficiency Act. Nothing in this MOU may be interpreted to be a regulation or to require the promulgation of a regulation by either the BLM or the NRC.
- J. *Section 106 Memoranda of Agreement.* In addition to memoranda of agreement, as defined by 36 CFR 800.16(o), the term "Section 106 memoranda of agreement" as used in this MOU also includes programmatic agreements, as that term is defined in 36 CFR 800.16(t).
- K. *2009 MOU Superseded.* Once signed by the duly authorized officials of the BLM and the NRC, this MOU shall supersede, in entirety, the MOU entitled "Memorandum of Understanding between the Bureau of Land Management, Department of the Interior and the Nuclear Regulatory Commission, an Independent Agency," dated November 30, 2009.

VII. Administration of the MOU

- A. *Approval.* This MOU becomes effective upon signature by the authorized officials of both the BLM and the NRC.
- B. *Amendment.* This MOU may be amended through written agreement of both the BLM and the NRC.
- 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 may be supplemented by site-specific attachments that will be negotiated between the BLM and the NRC (see, e.g., Attachment B).

VIII. Effective Date of this Memorandum.

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

/RA/

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

Mark A. Satorius, 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 Preparation of Site-Specific Environmental Documents or Section 106 Memoranda of Agreement (MOA)

	Site-Specific Environmental Document or Section 106 MOA 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 the draft site-specific environmental document or Section 106 MOA	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 the preliminary draft site-specific environmental document or Section 106 MOA. The CAs may provide written, public comments on the 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 site-specific environmental document or Section 106 MOA	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 site-specific environmental document or Section 106 MOA and attend draft review meeting.	Within [] business days of receiving preliminary draft for review.
3	Optional, CA may choose to submit public comments on draft site-specific environmental document or Section 106 MOA.	Within public comment period.
4	Review compilation of public comments site-specific environmental document or Section 106 MOA 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 site-specific environmental document or Section 106 MOA and attend final review meeting.	Within [] business days of receiving preliminary final 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]**