UNITED STATES NUCLEAR REGULATORY COMMISSION

BRIEFING ON URANIUM RECOVERY PROGRAM ACTIVITIES, PART 1

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THURSDAY

December 11, 2008

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The Commission convened at 9:30 a.m., the Honorable Dale E. Klein, Chairman presiding.

NUCLEAR REGULATORY COMMISSION

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GREGORY B. JACZKO, COMMISSIONER

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P-R-O-C-E-E-D-I-N-G-S

CHAIRMAN KLEIN: Good morning. I think this is uranium day. So, we will start initially with our staff and get an update and then we will hear from EPA and the Department of Interior through the Bureau of Land Management. And then this afternoon we'll hear from some Native Tribes, state governments, industry and public groups. So, this is a busy morning. Any comments before we start?

COMMISSIONER JACZKO: If I could just make one. I know one of the subjects for our discussion today and we're going to hear from EPA about is the rulemaking on the in-situ leach mining that the Commission is developing right now.

I know I had asked for a copy of the current status of the rulemaking, but I would certainly encourage the staff to make that available. We're going to hear from EPA about their views on that today.

I think at some point it would make sense for us to make whatever we have publicly available. I don't know if there's any challenges with that at this point. And I don't know if there's objections from EPA.

We've talked about it a lot. There's been a lot of discussion about it and as I said we're going to hear from EPA about it today. So, that discussion may be an odd discussion in a public session when we're trying to talk about something that we've said that we're not going to release -- not that we're not going to release it, but we haven't released it yet.

I think the Commission has an extensive voting record on these issues, too, that I think would also probably benefit ultimately making that public.

So, I hope that that is something that we will be able to do in relatively short order as we go forward with this. But I look forward to, I think, what will be a very interesting series of meetings today. Thanks.

COMMISSIONER LYONS: I would just add that I very much also look forward to the presentations today, certainly, starting with this panel and moving through multiple panels. We're going to hear a number of different perspectives and I think that will be very important to the Commission.

CHAIRMAN KLEIN: Bill, would you like to begin?

MR. BORCHARDT: Good morning. Over the past few years the NRC's Uranium Recovery Program has undergone a significant change in focus. It was only a few years ago that we were projecting that the majority of our efforts would be on reclamation and decommissioning of former uranium sites.

However, with the potential for new reactors worldwide there's been a dramatic increase in the level of uranium recovery activities.

This morning the staff will provide you with an overview of the NRC's Uranium Recovery Program, which is under the capable leadership of Dr. Charlie Miller, followed by presentations from representatives of the Environmental Protection Agency and the Bureau of Land Management.

I'll now turn the presentation over to Mr. Larry Camper who is the Director of the Division of Waste Management and Environmental Protection in the Office of

Federal and State Materials and Environmental Management Programs. Larry?

MR. CAMPER: Thank you, Bill. Can we have our cover slide, please? Good morning, Chairman, Commissioners. We welcome this opportunity to provide our first briefing to the Commission on the NRC's Uranium Recovery Program. The briefing includes staff from the NRC as well as other Federal and state regulators, representatives of Native American Tribes and stakeholders.

We will strive to limit our use of acronyms, but in case we slip in that regard the briefing package contains a list of acronyms. This information along with all of the slides is available through our public website.

Before providing my comments I'd like to mention the NRC presenters who will be followed by representatives from the Environmental Protection Agency, EPA, and the Bureau of Land Management. Slide 2, please.

I will provide an overview of the program. Bill von Till will discuss the status of Uranium Recovery Programs especially new applications. Greg Suber will discuss the environmental reviews associated with licensing uranium recovery facilities, including the Generic Environmental Impact Statement or GEIS, which we are preparing to support licensing of in-situ facilities. Gary Comfort will address the in-situ uranium recovery rule we are developing in cooperation with EPA. Rich Turtil will share with you our outreach activities with Native American Tribes.

Following the Commission question and answer session we will then be joined by Jonathan Edwards and Stephen Heare of EPA and Mitchell Leverette of

BLM to provide their agency's perspectives on uranium recovery activities. Slide 3, please.

My overview of the program will include certain key messages, a description of the scope of the program, background on the demand for uranium in our near-term forecast for Uranium Recovery Applications, actions taken to prepare for meeting this growing demand, our outreach efforts to both the Native American Tribes and stakeholders and finally, I will close by describing challenges as we move forward with the licensing of new facilities. Slide 4, please.

There are four key aspects of the program that I want to convey today. First, the staff is successfully implementing our regulatory framework to conduct safety reviews and we are taking necessary actions to accommodate the surge in license applications. We are on track to complete the reviews of all license applications we have accepted so far.

Due to delays in some expected submissions caused by the current economic recession, we now have adequate budgeted resources to perform safety evaluations of all applications that we expect to receive in fiscal 2009. However, the current Continuing Resolution, CR, will impact our ability to conduct reviews of applications received later in FY09.

Secondly, we are conducting all of the necessary environmental reviews to satisfy the National Environmental Policy Act, NEPA, requirements for in-situ recovery, ISR or sometimes referred to as in-situ leach, ISL, or in-situ extraction facilities, including the development of a Generic Environmental Impact Statement,

GEIS, and site specific environmental assessments.

The GEIS will allow us to evaluate those environmental impacts that are common to ISR facilities in a consistent manner. This approach coupled with and augmented by site specific evaluations of environmental factors provides us with an effective and efficient means to satisfy our obligations under NEPA and our regulations in 10 CFR Part 51.

It is important to note that for each conventional mill a supplemental Environmental Impact Statement, EIS, will be prepared for each site. On the environmental review side our FY2009 budget is somewhat more constrained than on the safety review side. In addition, the CR is expected to have a greater impact the longer it continues.

Next, you will recall that during the materials program reorganization approximately two years ago, the Uranium Recovery Program was absorbed by the Division of Waste Management at a critical moment in time just prior to the expansive growth. The UR program has been successfully integrated into the division and the staff levels are increasing at a measured rate to accommodate this growth.

Finally, I want to emphasize that we are working with Native American Tribes, stakeholders, and Congress to ensure that past and future uranium recovery licensing actions do not pose an unacceptable risk to the people or the environment. Slide 5, please.

Let me provide you with some background on the scope of the Uranium

Recovery Program. Currently, we have 32 sites undergoing decommissioning, either under Title I or Title II of the Uranium Mill Tailings Radiation Control Act of 1978 also known as UMTRCA.

Under the provisions of Title I of UMTRCA Congress addressed the problem of inactive, unregulated tailings piles and specified certain sites for remediation. We have 21 Title I sites.

Title II of UMTRCA addresses the issues of tailings produced at active sites licensed by the NRC or Agreement States. Title II amended the definition of byproduct material to include mill tailings and added specific authorities for the Commission to regulate this new category of byproduct material at licensed sites. We have 11 Title II sites.

In addition to decommissioning sites we have three operating uranium recovery facilities and two that are currently on standby status.

Right now we are expecting to have licensed or be in the process of licensing 28 new, expanded or restarted facilities through FY 2012. Four applications are currently in house and being reviewed by the staff.

We also have a cooperative rulemaking effort underway with the EPA to address groundwater remediation standards at in-situ uranium recovery sites and we will provide more information on that important topic later in our briefing.

In addition we have recently upgraded our guidance and I'll discuss that in a moment as well. Slide 6, please.

The NRC has not licensed a new uranium recovery facility in the past 20

years. However, about three years ago the price of uranium began to rise sharply due in part to the worldwide resurgence and interest in nuclear power.

While the contract price of uranium has remained relatively stable, as the graph shows the spot price of uranium has been fairly volatile and the current economic situation may exacerbate this situation.

The bottom line is that the demand for uranium is strong, but the associated market is fairly unpredictable. We need to be prudent in how we allocate staff to address new applications. We feel confident in our near-term estimates of submissions and we are taking a measured approach that phases in staff resources over time.

We need to remain vigilant in monitoring this situation and react as necessary. Bill von Till will describe our approach to projecting and refining our resource estimates in his talk. Slide 7, please.

This histogram depicts the best information we have to date regarding the number and type of applications we expect to receive in the next three years. In FY 2007, we received three applications to restart or expand an existing ISR facility and to date two have been completed.

We received four new ISR applications in FY 2008 which we are currently reviewing. This current fiscal year we expect to receive four new ISR applications, three ISR expansion applications and the new heap leach facility application. In FY 2010 and 2011, all but two of the applications are expected to be for new facilities.

Bear in mind that the graph depicts new receipts, but the processing of an application takes about two years, so the overall workload is much higher. Slide number 8, please.

Thus far, I have provided some indicators of the current state of the Uranium Recovery Program. Needless to say, it is a fast-paced, constantly moving target that challenges both managers and staff to be prepared for the workload without overstating the need for resources.

In terms of preparation to address this complex arena the Commission has allowed the Uranium Recovery Program to grow over the past few years to keep pace with the expected new applications.

The Commission has provided resources to allow us to work on safety and environmental reviews for all of the applications that are currently in house, although applications that come in during the current and following fiscal years may prove to be more of a resource challenge.

I want to express my appreciation to the Commission for one, recognizing that the pace of new submissions has exceeded what we were expecting just a few years ago. And two, providing us with the resources we hope will meet Agency and industry expectations.

Given the substantial increase and timing of applications in the near term we wanted to approach the development of the environmental reviews required under NEPA in a cost-effective, efficient manner.

Thus, at your direction, we have undertaken the development of the GEIS

for in-situ uranium recovery facilities. Greg Suber will discuss this in more detail, but the intent of the GEIS is to allow the staff to evaluate those environmental factors that are common to potential locations to determine the possible environmental effects and impacts.

The staff would then focus through a site specific environmental assessment on those critical factors that affect the specific location. It is important to keep in mind that the GEIS does not preclude the site specific EIS if warranted and that the GEIS does not apply to conventional mill facilities.

We are currently evaluating 18 uranium recovery program guidance documents to determine if they need to be updated to reflect new policy or regulatory or technical changes and many of those have not been updated for 15 years and clearly that is needed.

The two process issues we are evaluating include an interest in clarifying pre-construction standards for ISRs, similar to those in Part 50 and to address from a licensing perspective the varying size and composition of the different types of ISRs. Some are self-contained extraction and processing facilities, while others are composed of central processing facilities with numerous satellite extraction facilities.

The question of when a new license would be required for those satellite facilities may have implications for the fees that are assessed to licensees. Slide 9.

During our public meetings on the GEIS in New Mexico, Wyoming, and

South Dakota we took the opportunity to meet with certain Native Americans to discuss the GEIS development as well as to listen to their concerns and comments regarding the licensing of new uranium recovery facilities.

We have also established a new Website to articulate the licensing process and describe our outreach with the Indian Tribes.

Finally, we are setting up government-to-government meetings with Native American Tribes in New Mexico and Wyoming to discuss topics related to our regulatory role. Slide number 10.

We have organized numerous outreach activities associated with uranium recovery. As part of this effort our office has been participating in the House Oversight Committee meetings that are looking at impacts from past uranium milling and mining activities. In addition, the NRC is working on a five-year plan to address those impacts.

We are working with the Federal family to address technical and policy issues associated with the licensing and safe operation of uranium recovery facilities including working with EPA on a rule to provide remediation standards for groundwater at ISRs and with BLM to develop a Memorandum of Understanding to assist them in meeting their NEPA requirements and providing efficiency in government.

We have met with representatives of the states in which new facilities may be located and have established processes to ensure that we are coordinating our efforts. For example, we have conducted calls with the State of Wyoming, a

cooperating agency on the GEIS, and we met with the State of New Mexico during the recent GEIS public meetings held there.

We have supported the National Mining Association's annual meeting for the past several years, which last year drew over 250 attendees and we continue to meet with them on various issues important to uranium recovery.

We have conducted 11 public meetings on the GEIS as part of the scoping process and comment gathering on the draft GEIS. These meetings were held in New Mexico, South Dakota, Wyoming and Nebraska. We also extended the comment periods for the GEIS during both the scoping process and during review of the draft GEIS.

Finally, we have enhanced our website to provide a better description of the licensing process and a list of current and expected future site applications. Slide 11, please.

In conclusion, we still face challenges, some of which I've alluded to. We are balancing the need to ensure that we have sufficient staff in place to review the new applications against the uncertainty with submission schedules and budget constraints.

We are overcoming this challenge by using a measured and phased approach to staff increases. In this regard, we will continue to pulse the industry for information on their timelines for submission of applications. Indications are that some of the timelines may have slipped due to the economic situation, but the applications are still coming to us.

Some of the potential new in-situ recovery sites may require site specific EIS rather than an evaluation under the GEIS followed by a site specific EA. An important take-away is that the development of the GEIS does not rule out the possibility of needing a supplemental EIS and, of course, the conventional mill projects will each require a site specific supplemental EIS.

In addition, there exists significant legacy from past operations that needs to be considered and there is significant cultural history that must also be taken into account for any new licensing.

The uncertainty in future demand for yellowcake will require constant vigilance, especially with the current state of the economy. We have requested and received credible letters of intent from potential applicants outlining when and what type of facility application they expect to submit.

Furthermore, it is essential that we continue to explain the current approach for regulating uranium recovery and clarify its differences from the past approach in a manner that is sensitive to concern regarding past activities.

In closing, I want to emphasize that we are prepared for the new applications. We are conducting our safety and environmental reviews and developing the necessary documents to support our evaluations. Under the GEIS, which we plan to finalize by June 2009, it will allow us to fulfill our NEPA responsibilities while completing our reviews in a timely manner.

With that, I'll turn the discussion over to Bill von Till, the Branch Chief for the Uranium Recovery Licensing Branch. He will discuss the status of applications

and provide a few more details about our regulatory oversight for the uranium recovery program. Thank you.

MR. VON TILL: Thank you, Larry. Good morning Chairman, Commissioners. My name is Bill von Till. I'm the Chief of the Uranium Recovery Licensing Branch. As Larry had mentioned, I'll be discussing the status of uranium recovery applications. Slide number 2, please.

My key message this morning is that the reviews are on track for new applications received to date and that we have a process to plan for and provide timely review of future applications. Slide number 3, please.

My discussion topics will include review procedures for new applications, the process for projecting and planning for new applications, a summary of projected applications and applications received to date and the status of new application reviews. Slide number 4, please.

The new application review process begins with a thorough 90 day acceptance review. The goal of this acceptance review is to identify fatal flaws and significant deficiencies so resources are not committed to full detailed reviews of inadequate applications. Detailed review of new applications are conducted in the order in which they're found acceptable.

Once an application has been accepted for full review a notice of opportunity for hearing is issued. The Division goals are to issue a request for additional information within 150 days from acceptance and to complete the review process within two years.

Schedule efficiencies may be gained with in-situ recovery applications if environmental assessments are used, that tier off the Generic Environmental Impact Statement rather than preparing detailed site specific Environmental Impact Statements.

The Generic Environmental Impact Statement is currently under development and will be discussed next by Gregory Suber. Hearings associated with any license applications may extend the process past two years. The safety and environmental reviews are integrated through close communication between safety and environmental project managers and reviewers and the milestones for each review are tracked in the Division operating plan. Slide 5, please.

The staff has continuously estimated the number of applications since a resurgence in the industry began. Once we realized that a wave of potential applications was a reality we held a first of its kind uranium recovery workshop here in Rockville, Maryland on February 8th, 2007.

This workshop was well attended by industry and concerned stakeholders and focused on informing industry and the public of our license application process. To increase the accuracy of our license review projections, we are requiring credible letters of intent from companies that plan to submit new uranium recovery applications. To date, we have received letters of intent for 28 projects.

Uranium recovery staff has also held and continues to hold meetings with potential applicants to discuss pre-licensing issues. In addition, the staff supports the National Mining Association's Annual Uranium Recovery Workshop in Denver,

Colorado to discuss licensing issues and other uranium recovery topics of interest.

Over 250 representatives from industry, Federal and state agencies, Indian Tribes and stakeholders attended the 2008 Uranium Recovery Workshop. Slide 6, please.

This slide summarizes the number and type of applications that we are expecting to receive over the next several years. The dominant type of uranium recovery application is for in-situ recovery facilities; however, there are uranium ore bodies in this country that do not have the right conditions for in-situ recovery and therefore conventional mining and milling techniques must be used.

In your background information you will find a complete list of estimated applications showing the company, site name, type of facility, estimated application date and date of each letter of intent.

We keep in close communication with potential applicants on schedule changes and due to the economic issues of late some schedules have slipped and one project has been dropped.

Based on communication with industry there are still 21 applications estimated from fiscal year 2009 to 2012, which when combined with the seven applications received in fiscal year 2007 and 2008 will result in a total of 28.

We have a methodology for forecasting resources needed for these reviews based on the estimated workload from historic experience, the complexity of sites, the facility type and the estimated environmental and stakeholder issues.

As with any commodity, this is a highly dynamic market and a challenge for

us to forecast application dates with a high degree of certainty. This has caused us to take a measured and phased approach to staffing up as Larry mentioned earlier. Slide number 7, please.

This next slide shows the applications that have been received to date and the status of the reviews. All applications thus far are for in-situ recovery facilities. For new applications, three have been accepted for full review and one is in the acceptance review process. Requests for additional information letters have been issued for the first three applications. For expansions and restarts of existing facilities --

COMMISSIONER JACZKO: I'm sorry; can I just ask you a question? We talked about the importance of the acceptance review. Were there any applications that were received that were not accepted as a result of the acceptance review?

MR. VON TILL: We had one application with some acceptance issues and they withdrew and then resubmitted.

For expansions and restarts of existing facilities, two reviews have been completed in the past years and one is in progress. To date, all applications for new facilities have been in the State of Wyoming.

In addition to project based contacts with the State of Wyoming we have been holding quarterly conference calls with the Land Quality and Water Quality Divisions of the Wyoming Department of Environmental Quality to discuss new licensing and existing license site issues. Also an increased focus on coordination

with states and Federal agencies has occurred to make the process more effective and efficient.

The completion of these applications assumes our two year schedule; however, with the scheduled timing of the completion of the Generic Environmental Impact Statement in June of 2009 and if environmental assessments lead to a finding of no significant impact license reviews could be completed earlier.

This would only be the case if staff can conclude that the operation is protective of human health and the environment and meets our regulatory criteria. Failure of applicants to provide timely responses to staff questions would result in schedule delays.

Once the license reviews are completed the program focus will turn more to oversight and inspection. Region IV, with uranium recovery support from headquarters, will inspect these facilities to assure safety.

As additional facilities are licensed more inspection resources are forecasted. Ground water protection is one of the primary concerns with in-situ recovery facilities. We have increased our focus in this area at operating facilities and with new application reviews. Slide number 8, please.

In conclusion, we have a successful process for estimating applications and managing reviews and we are on track for timely reviews for all new applications received to date.

I will now turn to Gregory Suber for the next staff presentation. Thank you.

MR. SUBER: Thank you, Bill. Good morning. My name is Gregory Suber and I am the Chief of the Environmental Review Branch. My Branch is responsible for preparing environmental reviews for uranium recovery licensing actions.

Today I will discuss the typical review process for Environmental Impact Statements followed by a description of the Generic Environmental Impact Statement or GEIS process and how it differs from a traditional review.

I will also discuss the status of the GEIS and present the schedule. And lastly, I will provide a brief description of the site specific environmental review process for individual ISL applications and conclude with a description of how our coordinating efforts with the Bureau of Land Management are progressing. May I have the next slide, please?

In the typical process, the environmental review begins when an applicant or licensee submits an application to the NRC. Once the application is deemed acceptable for detailed review the Environmental Review Branch issues a Federal Register Notice of intent to prepare an Environmental Impact Statement and conduct the scoping process.

The NRC scoping process consists of at least one public scoping meeting that is held near the proposed site.

The NRC gathers information from a wide variety of areas that affect the human environment. Consultation is initiated with a number of entities like state and Federal agencies and Native American Tribes.

If the NRC staff has questions about materials submitted with the application the staff submits a request for additional information to the applicant. After all of this information is collected the staff performs its NEPA evaluation and documents the finding in a draft EIS, which is issued for public comment and a second public meeting is held to receive comments.

Once public comments are received and addressed by the staff the NRC issues a Final Environmental Impact Statement with conclusions on the environmental impacts of the proposed action along with any other alternative that's being considered. Next slide, please.

The GEIS process is similar in many respects, but it differs in a few, which I will now discuss.

GEIS development was not the result of a specific application submitted for agency review. It was envisioned by the NRC staff as a means to fulfill our regulatory and statutory obligations of reviewing new licenses in a manner that was comprehensive yet efficient.

The staff proposed a process to develop the programmatic environmental review that could form the basis of site specific reviews through the NEPA tiering process set forth by the Council on Environmental Quality.

Identical to the typical EIS process, the staff conducted a series of scoping meetings near proposed sites and engaged local, state, Federal and Tribal stakeholders. During this process the State of Wyoming was admitted as a cooperating agency.

The NRC staff identified potential areas and gathered information on the affected environment by considering three factors: areas of past uranium recovery activity, places where potential applicants had expressed interest in ISL milling, and regions of known uranium deposits in states where the NRC had licensing authority.

It is important to note that this approach provided an analysis of four regions, which is considerably more information than would have been gathered and analyzed under a single site specific EIS for a given site.

After gathering and evaluating this information the NRC prepared and issued a draft GEIS in July 2008. Identical to the typical EIS process, the NRC conducted numerous public meetings to discuss the preliminary findings of the draft GEIS and to accept public comments. Next slide, please.

The public comment period for the draft GEIS closed on November 7th. The staff received over 2,000 comments from individuals, local, state and Federal agencies, public interest groups and the nuclear industry.

Comments ran the entire spectrum of our review from highly technical comments on groundwater to comments covering economic, cultural and environmental justice issues. The staff is currently processing and preparing responses to comments and where appropriate supplementing the GEIS. Next slide, please.

Here is the current schedule for the GEIS and you can see the next major milestone is issuing the final GEIS in June of 2009. Next slide, please.

Finally, I would like to highlight the process for reviewing site specific applications. The environmental review approach using the GEIS and site specific reviews will result in a more comprehensive review and an increase in the effective and efficient use of staff resources. The NRC will save at least seven full-time equivalents or FTE and over $4 million on the first 12 environmental reviews completed.

Each application accepted for review by the NRC will receive its own site specific review. That review will begin as an environmental assessment and consider the degree to which the conclusions of the GEIS are bounding for a given site.

If the review can be concluded with a finding of no significant impact the environmental assessment will be issued for public comment. This is an additional comment opportunity outside of the normal GEIS process resulting in three opportunities for comment gathering as compared to two opportunities under a site specific only scenario.

It will allow the public to comment on how the GEIS was used in the site specific application and raise questions about the evaluation in the environmental assessment.

If the review cannot be concluded in a FONSI the staff will issue a notice of intent to prepare a supplemental EIS and begin the scoping process. This will result in two additional public meetings, one for scoping and one for the draft comment period.

Therefore, the current process of using the GEIS results in increased public participation and increased opportunity for the public to comment and be involved. Next slide, please.

The staff has started discussions with the Bureau of Land Management who also has responsibilities to approve plans of operation for ISL milling activities on Federal land.

During our recent round of public meetings on a draft GEIS we met with several BLM officials in regional offices and also here at headquarters in Washington, D.C. Presently, we are working on a Memorandum of Understanding with the BLM on how we can work collaboratively in the ISL licensing process. Last slide, please.

In summary, I would like to state that the GEIS implements a tiering process that is consistent with NEPA. It results in an effective and efficient review that eliminates redundant evaluations. The review is being conducted in a manner that expands opportunities for public participation and the NRC is actively engaging with stakeholders on various levels.

This concludes my presentation and I look forward to any questions you may have. I would like to turn it over to Mr. Gary Comfort.

MR. COMFORT: Thank you, Greg. Good morning, Mr. Chairman, Commissioners. Cover slide, please.

As stated earlier, my name is Gary Comfort. I'm a Senior Project Manager in the Rulemaking Branch and I'm responsible for the development of the

proposed rule on groundwater protection at in-situ recovery facilities, known as ISRs.

Today I will update you on the status of the proposed rule. Throughout the development of this rulemaking, the NRC staff has worked closely with staff from the U.S. Environmental Protection Agency, also known as EPA, and state representatives. At this time I would like to thank them all for their active participation in improving this rulemaking. May I have the next slide, please?

The Commission initially directed the staff to undertake this rulemaking effort in 2006 to specifically address groundwater protection programs at ISRs. At that time, the Commission directed that the rule should focus on eliminating dual regulation at ISRs by the NRC and EPA.

This was planned to be accomplished by making the rule consistent with groundwater restoration requirements and EPA's underground injection control program. After initial interactions between the staff and EPA in late 2006, EPA notified NRC that our technical basis for the proposed groundwater regulation was incorrect and that groundwater restoration requirements for ISRs were required by the Uranium Mill Tailings Radiation Control Act of 1978, also known as UMTRCA, to be consistent with the conservative requirements in UMTRCA rather than those in EPA's underground injection control program.

As a result, although the current proposed rule tries to minimize the impact of dual regulation by EPA and NRC at these facilities, it does not allow for deferral by itself. Nevertheless, the proposed rule would not prohibit such deferral from

occurring on a site by site basis through implementation of a Memorandum of Understanding or other agreement.

This deferral could occur if EPA or an EPA authorized state requires the individual facility to meet the same or more conservative groundwater restoration requirements that NRC is required to implement under UMTRCA. Slide 3, please.

After informing the Commission in 2007 about these impacts to the Commission's initial direction the staff expanded the rulemaking working group to include two new members from EPA and one new member representing the Conference of Radiation Control Program Directors. These additions augmented the existing working group which previously was made up of NRC staff and a representative of the Organization of Agreement States.

According to the Atomic Energy Act the Administrator of EPA is given a concurrence role in the development of NRC regulations related to the management of mill tailings. During the rulemaking the staff has held numerous meetings with EPA staff to resolve significant issues brought forward by EPA to help clear the path for this concurrence.

In addition, the NRC staff has already provided the proposed rule to the Agreement States for comment and considered those comments in the proposed rulemaking. Next slide, please.

The proposed rulemaking is based on the standards that EPA promulgated under UMTRCA. NRC already has regulations in Appendix A of 10 CFR Part 40 based on those EPA standards that are applicable to uranium recovery facilities.

However, the existing requirements are focused on conventional uranium mills and not ISRs. The proposed ruling which itself was based on existing NRC guidance documents, certain license conditions and existing ISR licenses, and certain requirements found in EPA's underground injection control program regulations.

By using the existing NRC guidance and license conditions and the EPA requirements the staff expects the proposed rulemaking to clarify groundwater protection requirements at ISRs. The proposed rule would also provide a greater consistency between EPA and NRC requirements and thereby reduce the impact of dual regulation while still meeting the requirements in UMTRCA. Slide 5, please.

The proposed rule would add a new Criterion 14 to Appendix A and 10 CFR Part 40 that would be applicable only to ISRs and consist of requirements that NRC is determined are necessary to ensure groundwater protection at the site.

Specifically, the rulemaking would require site characterization, pre-operational monitoring for radiological and non-radiological constituents, well design and construction specifications, establishment of an operating plan and a monitoring plan, development of a groundwater restoration plan, and corrective action to resolve any excursions as they are detected. Next slide, please.

As noted earlier EPA has a concurrence role in this rulemaking. Although NRC is not asking EPA for concurrence until the final rule, the NRC is working with EPA to resolve a few remaining issues that EPA recently introduced while the

rulemaking package was under NRC management review.

The staff and EPA most recently met on November 24the to resolve these new issues which include discussion on what the length of the stabilization monitoring period should be after a well-field is restored, the implementation of secondary EPA maximum contaminant levels instead of using maximum concentrations for lead and silver currently found in Appendix A of 10 CFR Part 40, a recommendation to directly reference EPA regulations instead of maintaining a separate list of hazardous chemicals in Criterion 13 of Appendix A, and provide a definition for corrective action in the proposed rule.

During the November 24th meeting NRC and EPA staff resolved the latter three issues; however, both staffs agreed that the issue on the stabilization monitoring period would require additional evaluation and discussion. Slide seven, please.

Except for the remaining open issues I just discussed the rulemaking package is ready for Commission review. The staff will continue to meet with EPA to reach an acceptable resolution on the last open issue and will incorporate the agreed upon changes into the rulemaking package.

The staff plans to submit the proposed rule package to the Commission as soon as these open EPA issues are resolved. This is expected to be no later than April 2009. Once the Commission approves the proposed rule it will be published in the Federal Register for public comment.

In closing, the staff believes that the proposed rule will clarify the

groundwater protection requirements at an ISR, thereby providing regulatory predictability and stability to our licensing process.

With that, I'll turn the discussion over to Richard Turtil, the Branch Chief of the Intergovernmental Liaison Branch who will discuss the status of Native American Tribe outreach.

MR. TURTIL: Thank you, Gary. Good morning. My name is Richard Turtil of the Intergovernmental Liaison Branch within FSME. My Branch has responsibility for assisting NRC's efforts in establishing and maintaining communications and working relationships between NRC and Native American Tribal Governments when needed.

Through the technical divisions we provide case specific support as necessary to support information sharing and consultative communications at a government-to-government level. Next slide, please.

I wish to briefly highlight three key components used by FSME in its Native American Tribal liaison efforts associated with uranium recovery licensing and Generic Environmental Impact Statement activities.

First, staffs recognition of the policy, programmatic and technical issues that are of interest and concern to certain Native American Tribes coupled with identification by staff of those Tribes that could potentially be affected by NRC's licensing activities.

This approach has helped to identify Tribes located in or near areas associated with actual and potential uranium recovery activities and recognizes

Tribes with historical interest in these activities.

Second, staff have employed affirmative outreach efforts to meet with and communicate with Tribes and Tribal governments identified through these efforts. Various scoping and other information sharing meetings have been held regarding the GEIS effort beginning in the summer of 2007. I'll address more on that In my next slide.

Finally, staff are pursuing government-to-government meetings with individual Native American Tribes in regions of the country in and near areas with rich uranium deposits that are being considered by industry for mining and milling activities. All of these staff efforts are informed by and reflect the spirit of Executive Order 13175, which is entitled "Consultation and Coordination with Indian Tribal Governments", signed in November of 2000 by the President. Next slide, please.

As Greg earlier discussed, staff held GEIS scoping meetings on August 7th and the 9th in 2007 in Casper, Wyoming and Albuquerque, New Mexico respectively to solicit both oral and written comments from interested parties.

During the scoping process NRC made the decision to add a September 27th, 2007 public meeting as well in Gallup, New Mexico. The meeting was added in response to public request, particularly Indian Tribal interests for a meeting to be held closer to Indian country.

At the Gallup, New Mexico meeting located 27 miles from the Navajo Nation capital of Window Rock, Arizona staff provided for a Navajo translator.

Admittedly, this was met with mixed success. Translation slowed the progression of the meeting and participants from the Navajo Nation requested curtailment of translation during the question and answer period.

Consistent with FSME's scoping development and draft GEIS activities FSME and Office of the General Counsel reached out to senior level Navajo Nation leadership. During both the 2007 scoping meetings and the 2008 draft GEIS comment meetings, NRC met with Stephen Etsitty, Executive Director of the Navajo Nation EPA to discuss activities associated with the Uranium Recovery GEIS.

During those meetings Mr. Etsitty reiterated the Navajo Nation position on uranium recovery opposing all uranium mining and milling activities on Navajo lands. NRC also met with leaders of the Oglala Sioux in South Dakota.

Following the scoping and draft GEIS meetings staff last month undertook scheduling efforts to meet individually with 10 Indian Tribes or Tribal organizations located in Arizona, Montana, Wyoming, South Dakota and New Mexico for early 2009. For these governments-to-government meetings staff plans to discuss NRC's uranium milling facility licensing process, the draft GEIS for ISRs, and further actions and communications with NRC should a site specific application for uranium milling be pursued in the local geographic area. Next slide, please.

Thus far I have focused my briefing on outreach and communication associated with NRC's ISR GEIS. Beyond the GEIS I will briefly address two other current avenues which have shaped the way in which staff and management have

developed enhanced communication with Native American Indian communities and Tribal governments.

Since late 2007, staff has participated with the U.S. EPA, the U.S. Department of Energy, the U.S. Bureau of Indian Affairs and the Indian Health Service in multiple briefings and roundtable discussions with the Navajo Nation in the development of a five-year plan to address uranium, mine and mill waste in Navajo country.

The agencies drafted a plan to address uranium contamination on Navajo lands and proposed solutions. These are issues raised by U.S. House Representative Henry A. Waxman in an October 2007 hearing on Capitol Hill.

In addition to numerous meetings with senior Navajo government officials as part of this effort NRC staff briefed the Navajo Nation Resources Committee in Window Rock, Arizona on the NRC portion of the plan in April of 2008. Also present were representatives of the Navajo Nation EPA and the Navajo Nation Department of Justice.

While this effort has been contentious at times it has also further developed relationships between NRC staff and management and Navajo government officials. Legacy waste on Hopi Tribal lands has also been considered in this effort.

Staff also has taken steps to enhance communications through its external Website. In 2008 staff updated the uranium mill portion of NRCs external Website with an Indian Tribe Outreach Strategy document entitled "U.S. Nuclear

Regulatory Commission's Strategy for Outreach and Communication with Indian Tribes Potentially Affected by Uranium Recovery Sites".

In that document staff discusses how it is implementing or improving a number of government-to-government initiatives to provide outreach to and communication with American Indian Tribes on major licensing actions in which Tribes may have an interest or may be affected.

The web piece addresses NRC trust responsibilities, general approach for outreach to American Indian Tribes and the license application review process and strategy for outreach to American Indian Tribes. Next slide, please.

Difficult challenges face NRC and Tribal governments with interest in uranium recovery activities. In April '05 the Navajo Nation signed into law enactment of the Dine' Natural Resources Protection Act of 2005 which states that "The Navajo Nation Council finds that the mining and processing of uranium ore on the Navajo Nation and in Navajo Indian country… has created substantial and irreparable economic detriments to the Nation,… that there is a reasonable expectation that future mining and processing of uranium will generate further economic detriments to the Navajo Nation."

Accordingly, the Act seeks to ensure that "…no further damage… occurs because of uranium mining… and processing until all adverse… effects from past uranium mining and processing have been eliminated or substantially reduced…"

This Navajo Nation Act preceded a four part series of articles published in November of 2006 in the L.A. Times entitled "Blighted Homeland" which chronicles

the legacy of uranium mining and abandoned operations in Navajo country and the result in health effects. The series of articles form the basis for Congressman Waxman's committee on oversight and government reform request for the five agency approach to address legacy waste and abandoned uranium mines, which was completed in June 2008.

Finally, in June of 2007 the All Indian Pueblo Council representing 19 Indian Pueblos located in New Mexico resolved to have Federal and state agencies declare unsuitable for mining certain areas held sacred and culturally significant to Indian Tribes, including the uranium ore rich area near Mt. Taylor in New Mexico.

These are representative examples of policy positions recently and officially established by Indian Tribes with regard to uranium recovery activities. As it reaches out to establish trust between NRC and Native American Tribes staff have become more cognizant of this history and recognize its negative impacts on building trust with Native American Tribes. May I have my final slide, please?

In conclusion, staff continues to focus on outreach and communication to Native American Tribes having interest in uranium recovery activities. Further, staff are aware of and acknowledge Indian Tribal Government policy positions as they relate to the activities that NRC licenses and regulates.

Many of the activities associated with Uranium Recovery, be it licensing, environmental remediation and environmental impact analyses associated with these activities, are opposed by Native American Tribes located in or near areas rich with uranium ore deposits.

Staff will continue to address these challenges and will strive to achieve success in its outreach and communications efforts using the budgeted travel and other support resources made available to it.

Finally, I wish to acknowledge interest raised at Tuesday's Equal Employment Opportunity briefing with regard to NRC Tribal interactions. As reflected in my presentation on Tribal outreach and uranium recovery the staff continues to implement a case specific approach to addressing the interests of Native American Tribes in NRC's licensing and policy actions.

Additionally, staff is considering other tools to enhance this case specific approach, such as development of internal agency guidance on government-to-government communications and enhanced Web features that simplify access to information important to Native American Tribes and their governments.

Staff are also reviewing other Federal agency Tribal policies such as those of the Department of Energy and the Environmental Protection Agency to determine how those policies benefit the needs of the Native American Tribes and those Federal agencies.

We thank you for the opportunity to present this morning. This concludes the staff's presentations and we welcome your questions and comments.

MR. BORCHARDT: The staff is complete. Thank you.

CHAIRMAN KLEIN: Well, thank you very much for a very comprehensive and wide ranging set of presentations. We will begin our

questions with Commissioner Jaczko.

COMMISSIONER JACZKO: I want to correct one thing I said before we start. The voting record and the papers that my staff has now informed me for the ISL issue, that is publicly available. It was incorrect information that I had lodged in the back of my brain somewhere.

MR. CAMPER: We will strive to complete the rulemaking and make it as public as soon as we can, sir.

COMMISSIONER JACZKO: As I said, I think the staff has a draft and in the past the Commission has made draft versions available. I don't see any reason why we wouldn't do that in this case. I think it's only beneficial as we develop the rule further that it's posted on the website, not for comment at this point in the formal process.

Again, when we're discussing the details it's always easier to -- as I was going through the slides I realized that I was going to be incapable of truly understanding what those slides meant without actually looking at the rule text. So, I think now that we've discussed it it's probably simple to just put the text that we have on the website and people can look at it and make those determinations.

Greg, I wanted to talk a little bit about the GEIS process just to clarify a couple things. I have been supportive of the staff's efforts in these areas and I do appreciate in particular the staff emphasizing today that while we're doing GEIS it doesn't necessarily mean that there won't be site specific Environmental Impact Statements. There absolutely will be site specific environmental assessments that

are done at the sites.

Maybe you can talk a little bit more, though, about the specific sites where we have done scoping meetings and other meetings as part of the GEIS itself and how those relate then to the sites where we're anticipating actual applications, so that we really hone in on the sites.

I think when you talked in your discussion about the fact that there will be more meetings there isn't necessarily the case that in any given location there will be more meetings if we happen to have a location that wasn't near one of the meetings -- the locations for meeting we did with the GEIS. Maybe you can talk a little bit about that.

MR. SUBER: Well, so far the applications that have come in have been all from the State of Wyoming and we've had meetings in several regions in Wyoming. We've had meetings in Casper, Wyoming and Gillette and we've also had meetings in the nearby areas in South Dakota and Nebraska. Those meetings do fairly represent the areas for the applications that we presently have.

COMMISSIONER JACZKO: So, you're comfortable that in any location we would have -- without the GEIS if we had gone through and done just a site specific EIS we would have captured one of those particular areas for any of the specific sites?

MR. SUBER: Yes, sir. I'm thinking in particular of a couple of applications that we have coming up. We intentionally, as part of our process, looked at where the applications were coming in. When I talked about my criteria

we talked about places where we have letters of intent that there is interest in uranium and ISL milling. We use that information when we decided to have public meetings.

We had over eight public meetings on the draft GEIS. We had one in South Dakota, one in Nebraska and if you add them all up its three in Wyoming. I do believe the staff was extremely conscientious and tried to cast as broad a net as possible to make sure we were touching all the areas.

COMMISSIONER JACZKO: Good. I appreciate that. I think that's important. As we go forward I think this will certainly be important to see how the site specific environmental assessments come out and what information that gives us then as we go forward.

One of the other comments that you made was that we got about 2,000 comments on the GEIS. Staff right now -- and I think Larry you mentioned they have resources to do these things, but I just want to clarify in particular that we have the resources to deal with those 2,000 comments in order to stay --

MR. CAMPER: We do have the resources to review the comments. We also are working with the Center for Nuclear Waste Resource Analysis in San Antonio as a contractor on the GEIS. We have been having active meetings with them. Yes, we are staffed. We're viewing the comments and on schedule.

COMMISSIONER JACZKO: Good. Thanks. A couple of other issues that I wanted to turn to. Specifically on the ISL rulemaking there were four issues at this point that are still in discussion. I think we're going to hear from EPA

a little bit more later about some of those areas. Maybe you could highlight a little bit more the one issue where there's still some discussion and what the scope of that issue is and what the staff's views are on that.

MR. COMFORT: Certainly. The primary issue that's still open is on the groundwater restoration stability monitoring period. Effectively once we determine -- under the proposed regulation you're going to determine that groundwater has been restored adequately at a minimum of following four quarters that the constituents and the groundwater after it's been cleaned up aren't changing. We don't want to see it trend up.

We have specific limits that are set in Criterion 5B that were saying in the ISL rule do apply to ISLs. That's basically where the primary standard of doing background or to MCLs and then if you can't do those on individual constituents you may be able to go to alternative concentration limit.

Once you've shown that you've met those limits we're looking, as I said, to do a minimum of one year of groundwater monitoring on a quarterly basis showing that it stayed.

In addition, we have a separate portion of the rule that says once you've reached that we expect you to continue monitoring that on some period to be determined while you still have a license.

Where EPA has concerns about is under UMTRCA, the only real mention of groundwater stability monitoring is for the mill tailings piles themselves, which is 1,000 years, at least a minimum of 200 years that you're supposed to plan for to

make sure that it remains stable.

We're not sure that that should really apply because you're looking at -- that's a waste site where you have a source term that's staying there, whereas under the mill tailing -- under the ISRs you're cleaning up the material to a great extent getting it back to background or MCL. So, should you really have to apply that long.

In addition, if you say that doesn't apply they're looking at well, maybe RCRA requirements for a waste site restoration or clean up I should say -- or stabilization I guess I should say -- is when they close down the RCRA site there is a requirement to monitor for at least 30 years. That's another alternative.

As I said that's kind of a big difference between the minimum of one year that we're basically suggesting; however, as I stated we would require longer monitoring under our rule. It's more of a performance based standard that they would monitor until their license has ended and they basically will close these wells in a series.

So, the early wells will have longer periods of monitoring so when you get to the final shutdown of the site those you can rely on the older data to say, "Did it remain stable or did we see fluctuations?" But instead of going for 30 or 200 or 1,000 years --

COMMISSIONER JACZKO: What's our current approach right now for stabilization?

MR. COMFORT: Under the guidance that we currently have it

basically says it's determined by site by site. Most of the license applications -- licenses that we have we have license conditions for six to nine months is all that the period of stabilization monitoring and no monitoring after that. This is actually a little bit of an increase on what we're proposing to do.

COMMISSIONER JACZKO: Okay. I appreciate that. As I said, I think we'll hear from EPA as well on their thoughts on this. I think it will be an interesting issue to continue to resolve. I guess we'll do a second round? Thanks.

CHAIRMAN KLEIN: Commissioner Lyons?

COMMISSIONER LYONS: I appreciate the briefing on a very, very complex and very, very important issue. Rich, I appreciated your comments on following up on suggestions that I made earlier this week on the possibility of exploring a policy statement on Native American interactions.

I think what you outlined certainly is very positive. You emphasized that what we have been doing is case specific and I was suggesting on Tuesday that to the extent that we could develop -- and I recognize it will be challenging -- a more general policy that could perhaps avoid some of the need for a case or site specific choices that that might be a benefit.

I appreciate that you mentioned reviewing policy statements for some other Federal entities that have developed general statements, and I hope that out of that we can perhaps see if there are some lessons for the NRC in terms of developing a general statement. But I very much appreciated your comments.

Gary, I very much appreciated your discussion on the status of the

rulemaking. My probably most specific concern in the rulemaking -- and I just appreciate your comment that this is consistent with the direction -- is to try to reduce wherever possible the dual regulation and let's say redundant approaches between different Federal agencies. Am I correct that that is so very much a direction that you're pursuing?

MR. COMFORT: Yes, that's correct. In fact a lot of the proposed rule language that we're doing is based upon the EPA underground injection control program language so that it's very consistent and if you basically meet one you're effectively meeting the other one to a great extent. The biggest difference is on groundwater restoration requirements.

COMMISSIONER LYONS: I appreciated Commissioner Jaczko's comments on releasing the draft rule. I don't see any reason not to release it, especially after we've had this much discussion on it. So, I appreciated Greg's raising that and unless I'm completely missing the point on why that's somehow protected in government-to-government interactions at this point, I think releasing it I would second what you said, Greg, as far as releasing it.

I'm turning to several of the comments, Greg, that you made -- other Greg -- on the status of the GEIS. Certainly, my compliments as I think Commissioner Jaczko also gave you on the extent to which you have worked to involve interested stakeholders.

In your comments you emphasized that there would be a number of opportunities for interactions at each specific site; that there would be some extent

of site specific interactions quite independent of whether the GEIS is completed or not.

I know that has been a contentious issue with certainly New Mexico and probably some of the other stakeholders. How have we communicated to New Mexico or to other entities that the GEIS does not preclude site specific interactions?

MR. SUBER: Yes, sir. We've had several interactions with the state of New Mexico and at each public meeting and at each interaction we had with the New Mexico Environment Department we emphasize that at the site specific level that there would be opportunities both for the state and for the public to comment.

We also emphasized that each review would receive its own site specific analysis and that analysis would start off, and rightfully so, with an environmental assessment. If that environmental assessment can be closed with a finding of no significant impact, then that's where the analysis would end. If it could not, then we would go on to do a supplemental EIS which again, as I stated in my presentation, presented two additional opportunities for the public to interact with the agency.

MR. CAMPER: Let me add to that, Commissioner. When we were in New Mexico doing the GEIS public meetings, I took the opportunity to meet with John Goldstein of the State of New Mexico and also with Sara Cottrell, the Governor's adviser on environmental and energy issues to explain the process and the opportunities for public comment, why we were doing what we were doing

and so forth.

I think they appreciated those meetings and I intend to meet with them again when we're out there meeting with the Tribes for government-to-government meetings to continue that communication.

COMMISSIONER LYONS: Well, I very much appreciate that you have gone to that extent in trying to communicate that. I look forward to the testimony from New Mexico this afternoon and perhaps that will help me understand why these assurances that you've provided in apparently a number of different fora have not satisfied the concern, at least based on the written testimony we've received. We're going to hear that concern again this afternoon. But let's wait for that testimony. I will be interested in following up this afternoon with the New Mexico representative.

Greg, you also mentioned that Wyoming has requested cooperating agency status on the GEIS. Are they the only state? Have there been other expressions for a request for cooperating agency?

MR. SUBER: No, sir. Wyoming, during the scoping process for the first scoping meeting for the GEIS expressed their interest to be a cooperating agency. Subsequent to that no other state has requested that status.

COMMISSIONER LYONS: Okay. Well, I'm very pleased that we have granted that to them. Am I correct?

MR. SUBER: Yes, sir. They have been cooperating throughout the remainder of the scoping process and throughout the production of the draft GEIS.

They are an official cooperating agency with a signed a Memorandum of Understanding.

COMMISSIONER LYONS: Again, we'll have the opportunity this afternoon to hear from a representative from Wyoming, but I think it's very, very positive that they have expressed that interest and that level of involvement in the process.

MR. CAMPER: We developed an MOU and put in place the cooperating agreement with them and also the state has expressed some interest now in perhaps being a cooperating agency during the environmental assessment phase as well, which we are talking with them about.

COMMISSIONER LYONS: It strikes me as very appropriate and very positive. A question for Bill. You mentioned the number of applications that we've received. You mentioned that there had been one case where an application had been withdrawn when we had some concerns or questions on it.

I'm just curious in general if you could characterize the excellence or the quality that you're seeing in these applications, whether in general you are seeing suitable quality and whether any concerns on that quality reflect back on the status of the guidance documents, such as they're currently available today?

MR. VON TILL: Thank you. Overall, the quality of these applications is very high and I think part of the reason for that is early in the process we met with these companies, some of them up to six times before the application came into us. So, I think the quality is quite high. There hasn't been an application like

this, as Larry mentioned, for 20 years.

They're trying to ramp up and point people out from retirement and things like that out West trying to come up with these applications. I think we've done a good job of working with them to make sure that the applications are overall high quality.

Some of the reoccurring types of issues that we are looking at we're going to present in the National Mining Association Conference or workshop this April to the community and go over that and maybe even have a panel discussion on that; things like dose limits at the boundary, groundwater restoration issues, things like that. But overall, the application quality is very high.

COMMISSIONER LYONS: From what you're saying, then, the combination of the pre-meetings and the existing guidance are leading to applications in general of adequate quality?

MR. VON TILL: Yes. I should also mention that we're in the process, as Larry mentioned, of updating regulatory guides that are over 20 years old. We just completed one of them, Regulatory Guide 3.11 in November. And we're ongoing a process of updating those regulatory guides.

COMMISSIONER LYONS: Excellent. Did you want to add to that, Larry?

MR. CAMPER: I think on the one that we did have discussions with which was withdrawn it really came down to choice of assumptions in dose modeling that were problematic. They made some adjustments and came back

with an acceptable approach. And also an understanding, as Bill mentioned, allowed dose limits at site perimeter boundaries and just how that was to be interpreted.

COMMISSIONER LYONS: Thank you, Mr. Chairman.

CHAIRMAN KLEIN: Commissioner Svinicki?

COMMISSIONER SVINICKI: Thank you. I thank everyone for their presentations. Larry, I just wanted to follow up on -- you mentioned the 18 Reg Guides that are under review right now for potential update. I think you said 15 years old some of them and Bill just said 20 years.

Is that budgeted for in '09 and possibly '10 to do the number of updates that you might need there? Or is that something you're looking at? If you're just assessing which ones to update maybe you don't know the entire work scope.

MR. CAMPER: Thank you. Actually, we have them under review and actively updating them as we speak. In all candor to a large degree we are taking full advantage of our rehired annuitants. We have two individuals working with us that have a great deal of experience in uranium recovery.

We think it's an excellent opportunity for knowledge management transfer and we're relying heavily upon them to do that. We're also working with the Office of Research as part of its overall guidance update program looking at some of these. And we are also using staff, but mostly it's our rehired annuitants that interface with Research.

COMMISSIONER SVINICKI: If I interpreted your remarks correctly

you mentioned that there are sufficient staff resources for technical reviews through '09, but that that wasn't necessarily the case for the environmental reviews.

Could you elaborate on that a little bit and say how significant is the projected shortfall there and any management strategies you're thinking of in that area?

MR. CAMPER: Let me do the safety review side first. We're stronger in terms of total resources on the safety review side than on the environmental side. We have enough budgeted resources obviously implications of a CR are obvious, but we have budgeted resources to do the cases that we are receiving in '09 for safety review.

We're a bit more constrained on the environmental review side in terms of budgeted resources. The longer the CR goes on the more the impact will be on the environmental review side. But in general terms on the environmental review side we have a shortfall in budget space on the order of one to two FTE and somewhere between $200,000 to $300,000. We're seeing, therefore, the delay in our review work on two applications. If the CR --

COMMISSIONER JACZKO: What fiscal year are we talking about?

MR. CAMPER: Current fiscal year. If the CR continues, let's say for example to a full year, it's going to impact the environmental review of four applications. So, in general terms, it's approximately that shortfall.

The safety review side the CR is impacting us, of course, although we are

budgeted we have it and we don't have it, of course. Currently, we have four cases that we envision being deferred as a result of a CR going until March.

If the CR continues for the full year it would impact about seven cases. So, a total of 11 cases under a one year full CR. So, the distinction between budgeted resources which frankly the Commission has been good about and we appreciate that as I said in my remarks, we're all wrestling with the CR and there are some deferrals.

COMMISSIONER SVINICKI: I thank you for that. And I think the Commission will likely as we know more in the coming calendar year regarding what our appropriations is going to look like, I think that staff will be likely updating the Commission on however long the CR lasted and what the impacts were and then going forward when we know more. So, I appreciate it. It sounds like you're monitoring that very actively. I know the Commission will be interacting with the staff not just on uranium recovery but in all areas of the agency's budget.

Greg, I wanted to ask you, you had mentioned in passing the MOU with BLM. Is there some additional status you could give on that? Obviously, you have an ongoing and active working relationship with your BLM counterparts, but in terms of the MOU itself is the draft under review?

MR. SUBER: Yes. Presently, in fact just a day or two ago we had a meeting with Mr. Leverette at the headquarters here at BLM. We have commented, we've created an MOU with input collaboratively between the working level staff at the NRC and BLM and now we have given that back to BLM. I think

that they are processing that through their Office of General Counsel, or whatever they call that appropriate Counsel Office at the BLM to comment on.

COMMISSIONER SVINICKI: Okay. So, it sounds like there's good movement forward on that. I assume our General Counsel will also be engaged if they haven't already.

MR. SUBER: Yes, they have. They have been engaged and have been very helpful in both oral conversation and initially drafting the MOU.

COMMISSIONER SVINICKI: Okay. Gary, I was struggling with how to formulate this question. You talked about the groundwater issue that the difference of opinion that remains with EPA, that a meeting was conducted on November 24. I think you talked about staff will continue to work with their counterparts at EPA.

What I'm struggling with is the notion of at what point -- I think that the difference is pretty well articulated. At least I've heard from you and I think we will hear from your counterparts at EPA. I don't know other than continued meetings, I'm not sure where you really go from here. I think it's an unfair question on my part because it really puts you on the spot.

It sounds like the 24th you made really good progress because you had four issues and you came close to resolving three of those. I don't know, but there must be a point of diminishing returns in terms of the expert difference of opinion.

MR. COMFORT: There's really two levels of issues remaining on that one issue on stability. One is a legal issue. What parts of UMTRCA apply

that may define that we may have to do those longer periods of performance. The other is really just a presentation to make sure that we're complete.

The current version -- EPA is probably correct -- basically says this is what we're doing in the statements of consideration, but it really needs to be expanded to discuss that we've looked at these other things and considered the longer periods of time even if we do go forward. So, they do have a good point on that.

COMMISSIONER SVINICKI: Okay. As I think about and reflect on your answer to that on the presentations we've heard, it sounds like we're almost real time polling here on release of the draft rule as it stands.

I will admit that I'm just confused and perhaps in this moment not ready to take a position on this. When an item like this is in interagency coordination and you've mentioned the EPA Administrator has the statutory concurrence role under the Atomic Energy Act, I think about the public, should they come to our website every week for a different version of this?

We go out with a draft. We go out with a proposed final later. So, I'm struggling with what's the most meaningful thing to be posting as something in a very interactive interagency coordination. Should it real time just be every version? Every week I could come to you and probably get a different version of this thing.

So, I struggle and I'm sure I'll confer with my colleagues on what's the most meaningful. I'm just not sure on any given day I don't know as things are in concurrence if it's meaningful to post them.

So, thank you, Mr. Chairman. You can react to that, but I don't have any further questions.

MR. CAMPER: I think that the focus of the continuing discussions between the two agencies will have to get around this issue of the legal precedent or statutes to which EPA legal staff feels they can turn to for required monitoring period as juxtaposed against the practical consideration that these ISR facilities are remediated.

They have been remediated to background MCLs or ACLs on a site specific basis. Even if they're ACLs they have to be as low as reasonably achievable. So, you have to juxtapose legal precedent versus practicality and try to find some path forward. And that's what we'll strive to do.

CHAIRMAN KLEIN: Thank you. I guess my first question was probably directed to Larry. And that is obviously we're all struggling with the CR and what impact that will have. It would be nice to have some clarity on that particularly since our budget is 90% recovered from those we license, but we get caught up in that process.

Obviously, your chart on the spot price of uranium shows some dynamic nature to it. In addition the economic downturn that we're facing will probably have some impact. And so, trying to juggle all of those issues sometimes gets to be a challenge.

I guess my question is -- and maybe on the spot price of uranium -- is there any threshold value that you've seen for which ISR would take a dramatic increase

if the spot price drops below X dollars?

MR. CAMPER: I would probably defer to the industry representatives this afternoon who are closer to it than I am, but numbers that are in play today even at $55 per pound, which is the last number I saw this morning, is still a very comfortable range of profitability, especially on ISR facilities.

I think if you get down to $25, $30 a pound there may be some reconsiderations, but my impression right now is not that there's so much concern about the fluctuation of the price of uranium, because I think that many of them believe it will be good for long-term. But it's really the availability of capital in the current recession which has caused some slippages in the schedule. There were 29 we were looking at; now it's 28. Only one has fallen off the table. Some slippages, but it's more about finding capital as opposed to concerns about the price being at 55.

Again, I would defer to industry to give you a better answer than I could.

CHAIRMAN KLEIN: Certainly, with the expected world demand for uranium, all indications are that would continue to grow with China, India and other countries with their expansion.

MR. CAMPER: I would agree with that Chairman. I was reading just yesterday in a periodical called "Southwest Hydrology". There was an excellent article in there that was pointing at that very point. If one looks at the number of operating reactors, those that are under construction, those that are planned, and then look at the available uranium, clearly, demand will go up. So we shall see.

CHAIRMAN KLEIN: Well, Greg, a question for you on the GEIS meetings that you've had. Could you talk about the attendance and what your perception is of the interest of the GEIS as you held these meetings?

MR. SUBER: Yes, sir. The attendance has been pretty dramatic. When we had our first round of meetings they were very well attended, specifically the meetings in New Mexico. In fact, at one particular venue it exceeded our expectations and almost exceeded the capacity of the room. So, there's been a lot of interest particularly in New Mexico.

In Wyoming the story is a little different. We get very active participation, but nowhere near the numbers that we've gotten in New Mexico. New Mexico a meeting with 150 to 200 residents was not a strange meeting. That was pretty typical, whereas when we went to Wyoming, which I think is a little more sparsely populated and a little more spread out the audiences ranged from about 50 to maybe 75, usually under 100 people.

But there was a lot of passion at many of the meetings, particularly the meetings in New Mexico. And what was obvious is that this issue is kind of dividing some communities. We got a lot of support -- well, the industry got a lot of support for their new initiatives for uranium recovery, but the legacy issues in places like New Mexico still speak very strongly and people are very passionate and very emotional about the fact that they believe that a lot of the past legacy material needs to be cleaned up before new activities are begun.

That sentiment is not relegated only to the Navajos in New Mexico. There's

a strong voice speaking to the fact that the Federal government as a family needs to come together and do something about the legacy sites.

CHAIRMAN KLEIN: I'd like to comment a little bit on Commissioner Lyons' point about the misunderstanding that's out there about the GEIS and thinking that that's the only environmental study that will be done. That seems to have taken on a life of its own and no matter what we say we can't seem to get that message across.

I'm baffled at the fact that it's been stated so many times by so many people at so many hearings, but it still seems to not be registering. Any thoughts of how we might communicate that in a stronger way?

MR. CAMPER: It troubles us as well and certainly I've heard these criticisms. We've taken every opportunity that we can to explain why a programmatic environmental impact statement was justified in this instance; how we believe that it is a more thorough analysis given that you're looking at four geographical regions and looking for commonality of geology considerations as well as ISR technology.

The result is you're actually doing a more of a comprehensive examination then if you were to do only to do a site specific review. We have tried very hard to convey the number of opportunities for public comment. In fact, as Greg pointed out there's more than if you were doing a site specific. But I think some people have developed a view that because you're not doing a site specific EIS that there will not be an adequate analysis.

I think if we can try to convey something stronger it would be that we will follow the process. If you look at our NUREG 1748, which identifies the findings of significance and you look at our regulations in Part 51, the criteria for reaching a FONSI is not an easy criteria. The bar is high.

We will subject each of these sites -- we will review the environmental report provided by the applicant. We will review the bounding conditions of the GEIS. We will compare the site specific considerations that are germane to each site, things such as hydrology, cultural history, things like that.

And only if it passes muster will it result in a FONSI. So, I guess we'll have to try to emphasize more what the threshold is for significance of impact. Is that fair, Greg?

MR. SUBER: Yes, sir.

CHAIRMAN KLEIN: One final question. I had traveled out to Wyoming and had visited an ISR and was fascinated by the process and the techniques. I was also fascinated by the temperature conditions that occur out there in the winter.

One of the issues that has come up is how do you balance preparatory work when you can't do some of the preliminary activities during harsh conditions when we haven't yet completed activities? Have you thought of how we can balance the needs of some work that needs to be done that can't be done in the cold winter time with the public involvement and the processes that we go through? Have you thought about how you can balance that activity?

MR. CAMPER: Clearly, the question of what can you do before you get a license has come up. We have a regulation in 10 CFR 40.32 which basically says you can only do certain limited things, such as site exploration, roads necessary to do site exploration, boring to determine foundation conditions or other pre-construction monitoring. These are things you can do.

Now, what we have told industry thus far after conferring with the Office of General Counsel is there is no limited work authorization pathway in Part 40 as there is in Part 50. The way to do it is an exemption. You may seek an exemption to do some of these things.

We would entertain that exemption, obviously. We would probably try to review those in somewhere on the order of three to four months. The limited work authorization approach or the three tiered approach which industry has discussed with us and with you at some of their drop-ins may be a model that we could use in considering the exemptions.

On one hand, it's going to require an exemption. On the other hand, we think we have a model or a pathway to a limited work authorization approach that can be used as a good foundation for reviewing those exemptions.

CHAIRMAN KLEIN: Thanks. Commissioner Jaczko?

COMMISSIONER JACZKO: I guess I would just make a couple of comments. One, Larry, I think I agree with your point on the GEIS. One of the points that I don't think we've emphasized enough is the fact that the GEIS is not necessarily the end product. We will have to do a site specific environmental

analysis.

I think part of the challenges that we've talked a lot about this is a resource savings. The resource savings only happens if we get a FONSI. If there is no FONSI, in fact, we're probably expending more resources than if we had done site specific environmental impact statements.

So, on the one hand I think we're saying there's a real high threshold for the FONSI and there's maybe not going to be FONSIs. On the other hand, we're saying it's going to be a resource savings, which would I think, lend to the suggestion that we expect FONSIs.

So, I think maybe there's a disconnect in our communication there that is not what we're intending, but perhaps is coming across that way. And that one way we might able to do that is really focus on the fact -- again, I've supported the GEIS. I've been very clear throughout the process.

I don't anticipate necessarily that we're going to get a lot of FONSIs. We may wind up doing site specific EISs at a lot of sites, which I think is fine. That may be some of the disconnect that we're having in communicating the process.

I would perhaps just make a comment on just the last point that the Chairman raised with the 40.32(e). I'm very reluctant -- I've put myself in a box here because I gave a RIC speech about exemptions. Regulating by exemption is in my mind not the optimal way to regulate and I don't really think it's a good way to regulate.

If we want to allow limited work authorization for uranium recovery facilities

we need to do a rule change. I don't think we should be encouraging exemptions as the way to get around the fact that the regulation does not allow that provision -- or not allow that.

So, while that is one way to do it, I personally would not be very supportive of using the exemption route because as I said if we're going to do that I think there's a petition for rulemaking could be presented and we could go through it and examine the merits of some kind of limited work authorization for that.

I personally don't think that encouraging the use of exemptions -- I'm not suggesting that you were saying that, but from my perspective that's not the optimal way to go forward. In particular, when I think the regulation is pretty clear about what is allowable activity in that regard. I don't think the intent of that regulation was to establish that principle and then allow us to get around it with exemptions. I think that there are some challenges with that.

MR. CAMPER: You're certainly right. We haven't encouraged. We've been asked the question and we've explained that's the regulatory pathway available. The rulemaking -- I think ISR is an area frankly where there probably is value in looking at it more broadly, whether it be the issue that Gary and the working group is working with the EPA on, this point I made a while ago about the nature of an ISR as compared to some of these other things, or how invasive is an ISR as compared to the building of a nuclear power plant where you have an LWA available. So, it does cry out for a good intellectual look at it.

Unfortunately, a rulemaking from a timing standpoint, though, would be

problematic for those that are early in the queue and are striving to find supporters for their projects and so forth. Clearly, a rulemaking and putting everything on the table and subjecting it to the appropriate scrutiny would be the way to go.

I do want to comment just real quickly if I might, though, on the EIS savings and so forth. In Greg's projection of savings, we did assume -- we did do some analysis to try to figure out how many of those would result in EISs versus just doing an EA.

The other point I would make is when we say an environmental assessment I think, Chairman, going back to your question, I think another thing that sometimes gets lost is we use the term "environmental assessment", we will be doing a complex environmental assessment. The environmental assessment will be somewhere on the order of 30 to 50 pages, which is more on the heavy side compared to some that other agencies do.

Be that as it may, I think you are right. Certain of the sites will probably not reach the FONSI threshold. I'm particularly concerned in New Mexico in particular because of cultural history issues, but we have to run the process. We have to be true to the process and see where it takes us.

COMMISSIONER JACZKO: I appreciate that. NEPA sometimes is simpler than everyone wants it to be or simpler than it, I guess, than it winds up being. It is a process statute. If we follow the process we'll get to the right outcome.

MR. SUBER: I'm sorry. I did want to make one other clarification

with respect -- I think you made the statement that if we did a site specific EIS that it would end up costing more than had we done one initially as opposed to doing it in conjunction with the GEIS. I don't believe that's a proper statement.

The GEIS as it exists can still be used if we do a site specific supplement. What we would do is we would adopt as appropriate the portions of the GEIS for the site specific SEIS and still do a more detailed review in the SEIS. So, there still would be a cost savings associated with doing the GEIS followed by a site specific EIS.

COMMISSIONER JACZKO: Absolutely. Whether those -- if, in fact, we wound up doing site specific supplementals at every site, the numbers may in fact be the same or may in fact be more because there's a lot of minimal infrastructure that goes into an EIS regardless of whether it's supplemental.

Certainly, again, it would probably depend on a case by case basis whether in fact we would wind up with more resources one way versus another.

As I said, in the end that may be a perception that's out there. Again, perhaps Larry you hit on another point which is that generally EAs are something we do often. That's also a product of something we do when there really is not an environmental -- a true environmental impact in the sense of rulemaking activities or if it doesn't have a categorical exemption under our rules yet it's an activity that really has no true environmental impact, that's done in an EA.

So, the EA sometimes maybe has the impression of being something that is less than it is. I guess the important point is that we will be doing site specific

environmental reviews, whether that comes out to an impact statement or is done with a FONSI; that we'll have to see when we get to that point.

MR. CAMPER: We'll continue to take every opportunity to get that word out there. We've tried, but there are strong feelings about it, but we'll try to communicate more about it.

COMMISSIONER JACZKO: If I could just ask one more question because I think it's an important point that Commissioner Lyons raised in his discussion on the need for a policy statement perhaps on how we do Tribal interactions.

One of the questions I want to ask the staff is if staff has ever considered having within the Office of Congressional Affairs or some kind of position that would be dedicated to Tribal coordination, Tribal affairs? I don't know if the staff has ever considered something like that specific because again it's broader perhaps than just uranium recovery.

MR. BORCHARDT: I'm not aware of any recent consideration.

MS. CYR: In the past we have had a position for that and a lot of it was folded in when we had a separate Office of State Programs. At one point we called that the Office of State Programs and Tribal Interactions. That was the liaison. It was Tribal liaisons.

It moved into FSME and now the function is really here. It's not -- it's more of a branch or division, so the function is really there. It was at one point in time we had an Office of Congressional Affairs and Intergovernmental Relations and

also had a Tribal Relations and had a specific representative in the office at that time.

At the time that the Commission adopted following Executive Order in 2000 the Commission looked specifically at the issue of whether it would adopt an overarching policy statement or whether it would adopt as we have in fact had done case specific activities for MOUs or approaches.

I think they decided at the time because of the nature of the actions we were going to have and they might be very specific or different in terms of how you took approaches that it was going to be difficult looking at that time to how I would write an overarching one that I wouldn't also have to then try to come up with more specific agreements for activities like uranium recovery.

The Commission decided at that time to go on a case by case approach and that's why we have in the case of uranium recovery a very specific statement of how they're going to approach it because that's an area where it's developed.

We've also -- for instance, we have a Tribe which is now a cooperating agency on the renewal in Minnesota case. We now have some more experience in specific areas that may be an opportunity for the Commission to revisit whether or not it wants it overarching. But the Commission did consider at that time whether to take that approach and decided at that time around 2000 not to do it because they felt it would not in a sense -- it would be a statement of policy, but in terms of doing the specifics you were still going to have to go on a case specific basis. That seemed to be where they wanted to put their resources at the time.

COMMISSIONER JACZKO: I appreciate that. It's perhaps something we may want to revisit along with the idea the Commissioner Lyons suggested of revisiting the policy statement idea as well. Thank you.

CHAIRMAN KLEIN: Commissioner Lyons?

COMMISSIONER LYONS: Well, just to weigh in with a comment on the discussion that's just gone on on the possibility of rulemaking for something that would resemble a limited work authorization.

It just strikes me that ISR operations in general probably lend themselves, as I think you said, Larry, very readily to creation of such a limited work or maybe we call it something else. It strikes me that it should be quite possible to go through a rulemaking that could simplify this process.

I'd be very supportive of seeing us move in that direction. Recognizing that rulemaking will take a long time, however, I don't object to doing it on an exemption basis until rulemaking could be accomplished. I would be supportive of moving towards a rulemaking as well. Thanks.

CHAIRMAN KLEIN: Commissioner Svinicki?

COMMISSIONER SVINICKI: I wasn't going to, but I'll be provoked into following on that comment. I regret and I think we shouldn't fall victim to the -- I realize that rulemakings I'm coming to understand, believe me, that rulemakings are very long and can be a very painful processes.

But just because early applicants couldn't capture the benefits of this kind of rulemaking change I think is not a reason not to do it because then it's never in

place for subsequent applicants. So, I know we're always in the urgency of the now, but where something like this is called for and would eventually be of benefit when it can be put in place, I hate for us to fall victim to the fact that just because it's not helpful to applicants now it's something that we decide not to budget and resource for. I just regret that in a very general sense. Thank you.

CHAIRMAN KLEIN: Well, I have no additional questions, but I do have a couple comments. On the exemption area, I think exemptions have a place in our policies and that is we shouldn't, as Greg said, always rule by exemptions. But on the other hand, we should not rule them out because we're not so robotic that we can't think and can't take actions on specific requests. I think that should be a part of our processes that we evaluate as appropriate.

The other, since everyone else commented on the release of drafts, I feel that I should at least comment as well. I tend to side with Commissioner Svinicki that we should look at what our purpose is to release a draft and at what stage the draft is. I think we should be cautious that we don't add a lot of confusion to these drafts and they should be as complete as possible before we would evaluate releasing a draft.

I see Charlie Miller is waiting to make a comment.

MR. MILLER: Thank you, Chairman. This is Charlie Miller, Director of FSME.

I wanted to make a comment about what you just talked about with regard to release of the rulemaking and obviously we are always interested in working in

a very public manner. And we want to make sure that the public is fully aware of our activities.

But something that Commissioner Svinicki said earlier really rang with me and that is we don't want the public to be confused by what we're doing and if they're seeing something that may change weekly everybody doesn't get a chance to look at it weekly and everybody may be looking at different drafts.

So, if the Commission in its wisdom does want us to release it at this time, I'd like you to at least be aware of a number of things.

One, as Gary has pointed out, there's been a lot of work that's gone on between the staff and FSME and General Counsel and EPA. But the rulemaking as it is at this point in time given the nature of the subjects and the desire to close the gap on areas where our two agencies disagree, senior management hasn't reviewed that yet. So, we want to make sure what the public sees is really something that they would expect the Commission to get for consideration.

Or if we do release it earlier, we would have to caveat it on our website to make sure that they understood what they were getting was a work in progress and could change as we look at these issues and try to close them.

COMMISSIONER SVINICKI: Mr. Chairman, if I could just note the draft that the Commission was allowed to see does highlight even in this version of a draft for public comment it draws attention to this issue and specifically solicits public comment on this area.

So, that's some of the context of my comment is that you're not masking

any difference and when it eventually goes out as a draft you're specifically drawing the public's attention to this issue. Thank you.

MR. MILLER: With regard to another topic I think we've covered. The issue Commissioner Jaczko raised about more resources if we have to do a specific EIS. I just want to make sure that everybody understands that we still do believe that we're capturing a lot of the issues under the GEIS which will give us a resource savings.

Until we've gone through the process completely we'll have to see if the resource question bears that we get the savings that we can. We expect that in some sites it may and some sites it may not.

I do want to completely reiterate again something Larry said so there's no confusion. If it's a conventional mill there will be a specific EIS. The GEIS does not cover conventional milling. And that's been something that's been confusing, too, as we've had our public meetings with folks. Thank you.

CHAIRMAN KLEIN: Thank you. Let me thank the staff.

COMMISSIONER JACZKO: Could I just make one comment on the rule. I raised this issue and appreciate just to say a few comments. With all due respect to Commissioner Svinicki and the staff I don't think the public is that easily confused. I think they're interested in what we're doing.

This was something we had done as an interagency document. We have now talked about it in a public meeting. There is no harm in releasing that information to the public. They'll look at it. If it changes they'll look at it again. It's

not out there – it would be clear -- easily put on the website, this is not for public comment at this point. It is not the formal rule. It's simply a piece of paper that I looked at, I read, I was able to understand. It is in very good form. It is very close to being complete with some typos here and there, but it is not that much of a work in progress that it is something that's unintelligible to the public.

I think it's up to the public. They can always decide whether they get confused, but I think in general they're able to understand what's there and read it and have a better understanding of what path we're proceeding down. I think it will only make it easier if we come out with a product that we get a tremendous amount of opposition to.

It's only better for us to know that early or to be aware of it or have some inkling. That's all. I think we've made more of an issue out of this than perhaps it really warrants.

CHAIRMAN KLEIN: My comment is we just need to make sure that we don't add to the confusion and we pick very carefully when we issue these. And that we make sure our interagency process is complete to the extent practicable. Commissioner Lyons?

COMMISSIONER LYONS: I think I have to add something, too. I, too, recognize that we need to be very cautious about releasing work in progress in the interagency arena.

The reason that I did suggest, as Greg did, in this case is simply that we have discussed it extensively here and presumably will continue with our EPA

colleague. That was why I sided with Greg's comment. But in general, I will side on the side of caution on work in progress.

CHAIRMAN KLEIN: Thank you very much for the presentations. We will now move to our government colleagues and hear from the Environmental Protection Agency and the Department of Interior Bureau of Land Management. Thank you.

PANEL 2

CHAIRMAN KLEIN: I think that we will go ahead and begin our second session and as always we like to welcome our partners in crime so to speak, out other government colleagues that we work with and we will begin with Jonathan.

MR. EDWARDS: Good morning. I am Jonathan Edwards, the Acting Director of EPA's Radiation Protection Division in the Office of Radiation and Indoor Air. The EPA appreciates the opportunity to speak before the Commission.

EPA's Office of Radiation and Indoor Air, or ORIA, in accordance with its authorities under Uranium Mill Tailings Radiation Control Act, or UMTRCA, the Atomic Energy Act and other governing environmental protection statutes is pleased to provide advice to the NRC as it moves forward to examine uranium in-situ leaching license applications and to develop new NRC regulations for

environmental protection of groundwater resources at ISL extraction facilities.

ORIA is concerned about the potential environmental impacts of ISL operations and is dedicated to ensuring that they comply with our environmental and radiation protection standards.

We should note that ORIA contributed extensively to EPA's comments on the NRC draft Generic Environmental Impact Statement for uranium ISL milling facilities and ORIA through the EPA regional offices also regulates uranium mills and ISL facilities under the Clean Air Act National Emission Standards for Hazardous Air Pollutants section Subpart W of 40 CFR Part 61.

Our advice to the NRC through its working group as it develops draft ISL groundwater protection regulations should not be construed to imply or confer the Administrator's concurrence with the rule. The agency will independently comment on the draft rule when it is released for public comments and will separately review the final rule before a decision is made on whether or not to concur on these regulations before their publication.

Under UMTRCA, Congress directed EPA to establish radiological and non-radiological standards which were to be incorporated into NRC and DOE regulations for oversight of uranium milling activities and byproduct materials.

The statute directed EPA in developing the non-radiological standards to utilize to the maximum extent possible requirements developed by the agency under what is now the Resource Conservation and Recovery Act Subtitle C for Hazardous Waste Facilities.

ORIA's standards for uranium mill tailings 40 CFR Part 192 were originally issued in 1983 and last updated in 1995 for groundwater protection provisions. They have not been substantially changed to recognize the environmental challenges faced by significantly increased use of ISL technology by the uranium industry. Nor have they been revised to incorporate recent changes in EPA's drinking water maximum contaminant levels which serve as the basis for the listed maximum concentration levels for hazardous and radioactive contaminants in our UMTRCA implementing regulations.

A formal review of 40 CFR Part 192 has started to determine if it needs to be updated and how to do so. EPA through both ORIA and the Office of Ground Water and Drinking Water have discussed various aspects of NRC's proposal on groundwater protection at public meetings sponsored by the NRC and the National Mining Association since 2001.

In 2007 NRC asked our official position on whether it should utilize standards developed by the Office of Ground Water and Drinking Water for its underground injection control program in the development of NRC's new ISL groundwater protection regulations.

We responded that the UMTRCA implementing regulations in 40 CFR 192 provide the appropriate standards to be used especially since NRC's authority to regulate uranium mills and ISL facilities is derived from UMTRCA and NRC is required to utilize EPA's UMTRCA based standards for uranium extraction facilities.

In our view the 40 CFR 192 standards and NRC regulations are intended to provide the basis for a strict control of groundwater in the well-field and at the designated point of compliance both during operations and the post operational period.

EPA's UIC regulations provide a complementary set of controls for protection of underground sources of drinking water, which generally may lie outside these areas.

In forming a work group to advise NRC on its draft rule, EPA staff has joined with representatives from the NRC's Organization of Agreement States, the Conference of Radiation Control Program Directors and NRC staff.

Beginning in the fall of 2007 to the present EPA management and staff have had constructive and spirited discussions with the NRC on the content and the language of the draft rule.

While some issues remain unresolved between us it is our hope that this cooperative effort will improve the likelihood that the final rule will successfully incorporate EPA's radiation and environmental protection standards in order to obtain the EPA Administrator concurrence.

This concludes my statement. Thank you and I now turn to Steve Heare from our Office of Water.

MR. HEARE: Thank you, John. Good morning. Thank you very much for inviting us today to speak with you. My name is Steve Heare. I'm Director of the Drinking Water Protection Division in EPA's Office of Ground Water

and Drinking Water here in Washington.

Over the past several years we in EPA's Office of Water who implement the authority of the Safe Drinking Water Acts Underground Injection Control Program, which we know as the UIC program, have been working with John's office, the Office of Air and Radiation and the NRC to assist in the development of the ISL groundwater protection rule.

As John noted, EPA and NRC are working cooperatively and I believe collegially to achieve the same goal of improved protection of underground water resources at these ISL or ISR -- as you call them -- sites.

We at EPA hope and we expect that this cooperation will lead to an improved groundwater rule that successfully addresses EPA's concerns and regulatory requirements. And I certainly hope that we can continue this cooperative and mutually beneficial working relationship in the future.

This is not the first time that the Office of Water has worked with NRC. We've been involved in discussions on underground injection Class 1 disposal wells at ISL sites for over a decade. Our Class 1 wells are those that are used to dispose of the fluids from the mining operations as opposed to the actual mining process.

In addition to our work at headquarters here in Washington several of our regions have worked with NRC when EPA permitted UIC wells at the few ISL sites that have already been licensed.

What I'd like to do now is just give you a couple of minutes of background

and some specifics describing how the underground injection control program impacts ISL operations.

Safe Drinking Water Act of 1974 established the UIC program requiring that EPA determine the need for and promulgate minimum requirements for state and Tribal regulations sufficient to protect underground sources of drinking water. We published those rules back in the 1980's.

The Act requires that injection activities must not endanger an underground source of drinking water essentially to ensure that groundwater is not contaminated, in the words of the statute, if an aquifer is likely to be used for drinking water.

EPA can delegate UIC primary enforcement authority to states and Tribes and we've done so for the entire program in 33 states and two Tribes. We share primacy in another seven states and we directly implement the program in 10 states and for all other Tribes.

We regulate activities throughout the life of an injection well including the siting, the construction, the operation and ultimately the closure.

There are five current classes of UIC wells in the universe which is estimated to be about 800,000 wells. So, it's in fact the largest waste disposal program in the country.

The five classes are firstly Class 1, which are highly sophisticated wells that inject large volumes of hazardous and non-hazardous waste into deep isolated rock formations.

Class 2 wells which are used for injecting waste associated with oil and gas production; also for enhancing oil and gas production.

Class 3 wells, which are for in-situ leaching, which is of course the subject of this discussion.

Class 4 wells, which are actually pretty much banned, but are used primarily for remediation of groundwater where you're re-injecting water to try and flush contaminants out.

Class 5 wells, which are pretty much everything else and the largest volume of wells. They're generally shallow and can inject either into or above sources of drinking water.

And then lastly we recently proposed in July a Class 6 well which will ultimately be used for the geo sequestration of carbon dioxide captured from coal-fired power plant emissions.

The process as we look at these wells, we also approved -- and this is particularly true in the case of the ISL wells, we have a process to work with the states to approve applications to essentially exempt aquifers from the regulations requiring protection of underground sources of drinking water.

These exemptions are typically used in wells for the extraction of hydrocarbons and minerals and generally would be used for an ISL type operation.

Basically the application of the program, particularly these aquifer exemptions, provide for this exemption. There are criteria that are used by regions and primacy states to grant these exemptions.

Generally, it's a permitting-like process that in the past has generally taken place with public participation. And again, recognizes that the actual hydrocarbon or mining operation probably will impact the aquifer in which the operation is taking place, but it's really geared towards preventing excursions into other underground sources of drinking water.

The UIC program, as had been previously mentioned, certainly regulates the plugging and the abandonment of wells. EPA has the authority to require aquifer cleanup and monitoring within an exempted area as part of the permit if necessary to prevent excursion or endangerment of an underground source of drinking water that's outside that.

Basically, the program requires financial assurance, which is limited to plugging and abandonment of injection wells and it is not for the restoration of the aquifer.

We also allow monitoring on a case by case basis of groundwater on the perimeter of the well field. Again, this is geared towards preventing excursions into an exempted aquifer.

Finally, as the new regulation is implemented when finalized, and I think Gary mentioned this earlier, we feel that there is a need to recognize that implementation in the various states will require continuing cooperation between NRC and Agreement States with UIC primacy or UIC direct implementation programs. This is to prevent owner/operators from confusion or uncertainty about which regulations apply.

We've also had some preliminary discussions already with NRC staff about the need for MOUs or other agreements given the sort of -- particularly in our program -- the patchwork of agencies that implement the UIC program, which may in fact be different agencies in the state's than would regulate ISL activities.

In conclusion I would just say as noted above we certainly hope to continue the cooperative and the mutually beneficial working relationship we've established with NRC staff.

Again, as we pursue our joint goals to protect groundwater and regulate these ISL uranium mining sites for the communities and the families that live near them.

Thank you very much. That concludes my remarks.

CHAIRMAN KLEIN: Thanks, Steve. Mitchell?

MR. LEVERETTE: Thank you. My name is Mitchell Leverette. I'm the Division Chief for the Solid Minerals Division for the Bureau of Land Management.

I don't have a prepared statement. I'd like to just go through a series of slides that we have that will kind of discuss the role of BLM, talk about our mining law program. That's the program that authorizes the development of uranium on Federal lands. Talk about our existing current uranium activity and what we think is coming in the future. And close with the need for coordination and the continued work that we need to do with working on the MOU with NRC. So, if we could start the slides.

Simply the yellow on this map shows the Bureau of Land Management lands; about 262 million acres of surface land and about 700 million acres of subsurface mineral estate is what we manage. Next.

That map just shows the uranium reserves across the country. A lot of those reserves overlap BLM lands and minerals. Next.

Next.

The BLM was created in 1946. As I said, we manage about 263 million acres of surface and about 700 million acres of subsurface minerals. That's one eighth of the U.S. land mass. We have approximately a $2 billion budget when you include the fire monies that we get. Next.

We earn about $1.1 billion in revenues from our energy and mineral royalties that come in. BLM has about 10,000 employees nationwide. Next.

This is very hard to see, but this shows how the organization is set up. We have a director. We have several assistant directors. One is Assistant Director for Lands and Minerals who is my supervisor. And then we have state directors in 12 western states. The state directors work directly for the BLM directors. Each state -- state directors there or field offices within that state's jurisdiction.

At that level is where the projects are permitted. We work with NRC at that level. We do the NEPA work. We do the environmental work. We coordinate with the agencies at that level. Next.

Under the Solid Minerals Programs we have five different programs. I won't get into the programs, but the Mining Law Program is the program that authorizes

the development of uranium. Next.

That program has a budget of about $35 million and that money comes from the collection of fees from maintenance and location fees for people that stake mining claims on Federal lands. Next.

Next.

This is the law that authorizes -- the 1872 Mining Law authorizes the development of uranium and other metallic minerals. Next.

In the Mining Law Program we have three different areas: the mining claim recordation, that's where you stake mining claims; the surface management where we do inspections and we issue the notices and plans to approve operations on federal lands; and the Mineral Patent Program is where we can ultimately patent minerals to the public. That program we have a moratorium on right now. Next.

This just shows the mining claims and the revenues. If you look at the last 2006 and 2007 we are seeing a lot of new mining claims on Federal lands. A lot of them are for uranium. As we get more claims we get more revenues into the agency. Next.

This also shows a trend that as uranium prices increased over the past few years we were seeing more mining claims staked for uranium on Federal lands. I don't know whether this trend will continue as prices have come down some, but I think the cost of this increase we're seeing more people coming into our agency to apply for notices. That gives them authority to do a certain level of work; five acres or less.

And then we have also increased numbers of plans of operations which are five acres or more. Many of these are for exploration. Most of them are for exploration drilling, but they could lead into larger projects. I think most of them will not be in-situ type projects, but they will potentially have a milling component that NRC would be working on. Next.

This just shows the new uranium claims in certain key states over the past several years. We've seen major increases in the number of claims in some of our western states. Next.

UNIDENTIFIED SPEAKER: [Inaudible question - microphone inaccessible]

MR. LEVERETTE: Can you go back? Yes. We're looking at three year periods and that's the number of claims that we've gotten in three years. The increase is the percentage increase over the three-year period before that -- before the three-year period. Next.

This is just one example of one of our states. This is Utah. This shows a number of plans and notices that we have pending or authorized in 2008. These are the different field offices across the state. We have 33 in one field office, 26. These numbers are increasing over the past two or three years. Next.

Colorado. This is another example of the number or the increase in mining claims in 2003 versus 2007. These are for uranium specific claims. Over 10,000 claims, new claims for uranium in 2007. Next.

NRC's authority. To summarize, NRC is looking at the milling processing of

uranium. BLM, Let's go to the next slide. BLM's authority is basically the mining of this material. Next.

Why is an MOU needed? I think the MOU is needed because of the in-situ projects that are coming up and your decision that in-situ projects are processing and not mining, which is considered milling and the large number of claims that we have out there on Federal lands and the large number of these in-situ applications.

I know that we have three in Wyoming alone on BLM land. We think with these applications out there and this trend we need to develop better communications with the NRC because the Federal lands are affected. Next.

These are just uranium activities that I think there's some overlap in some of these activities. Some of them are clearly BLM rolls or authorities, but others are NRC's authorities. I think in the MOU we would discuss some of these things and what the roles and responsibilities would be for each agency as we complete these activities, especially the NEPA process on the ISR type projects. Next.

COMMISSIONER JACZKO: Could I just interrupt you for a second? When you get the claim does it specify the type?

MR. LEVERETTE: No.

COMMISSIONER JACZKO: It doesn't specify would it be a conventional or ISR?

MR. LEVERETTE: No, it doesn't even tell what commodity, but based on the locations of the claims we know that pretty much they're uranium type claims.

COMMISSIONER JACZKO: Would you generally know if it's conventional or ISR?

MR. LEVERETTE: Yes. Most of the claims are being filed in areas that were old uranium operations that we want to bring back into development.

COMMISSIONER JACZKO: Under conventional mining?

MR. LEVERETTE: Yes. I won't go into this, but this outlines the NEPA process. The next slide.

EIS process. You can see there are many different levels and we think there needs to be -- there should be coordination with NRC and the BLM on Federal lands when we get to these stages of processing applications and licenses. Next.

In conclusion, we look forward to building a stronger, better relationship with NRC and the state lead agencies because we think in some cases we're really tied at the hip and we have to protect Federal resources as well as what NRC has the authority to do.

Thank you for the time. I'll take any questions.

CHAIRMAN KLEIN: Thanks, Mitchell. I noticed on your first picture you showed with the yellow areas of the BLM that you have a lot of the state of Nevada. It looked like it was --

MR. LEVERETTE: Yes, about 80%.

CHAIRMAN KLEIN: We'll begin our questions with Commissioner Jaczko.

COMMISSIONER JACZKO: I had a question for you, Mr. Leverette. You talked about the importance of the MOU and I think it's certainly important that we do that. I'm wondering if that is an issue that where we're looking at one MOU with headquarters or whether it would make sense to do separate MOUs with different field offices if their differences in different areas. I wonder if you have any thoughts on that about what the right approach might be.

MR. LEVERETTE: We've been working with the NRC staff and we've had discussions in that regard. We think the first step is to do kind of a national MOU and then maybe after we have that developed we can tier down and have more individual MOUs with the state BLM offices and maybe even the state governments.

But we would like to start at this level to make sure that the upper management have bought into this concept and understand what we're doing and then we would develop other MOUs.

COMMISSIONER JACZKO: I don't know if the staff had any thoughts on that?

MR. CAMPER: We are actively working. We are focusing first upon headquarters oriented MOU. We recognize the operational status of BLM and we're amenable to exploring that further, but let's get one in place very quickly.

I also think, frankly, it's very important because we were having a lot of discussion earlier about construction activities prior to licensing. There's a role that BLM plays in terms of the plan of operation that's filed by these companies.

That's the triggering event for their environmental assessment. So, the idea is can we gain efficiencies in the NEPA process. That's the first big item that we're focused on.

COMMISSIONER JACZKO: A national MOU would accomplish that.

MR. CAMPER: That's right.

COMMISSIONER JACZKO: I appreciate that. I guess for our colleagues from the Environment Protection Agency I don't know if you have any comments on the discussion you heard this morning or if you're interested in going into further detail on any of the issues that we discussed. I'll leave that as an open question. I'm happy to hear any comments you have.

MR. EDWARDS: I'd like to make just a brief statement that I agree that open and transparent context of government is a good rule, but I would strongly urge the Commission to further consider posting the draft rule as it currently stands right now.

I think it would behoove the whole process if the work group could continue to wrap up its discussions. At our last work group meeting on November 24th we did lay the groundwork for continuing back-and-forth on the remaining issues. And so, we're very hopeful.

I certainly wouldn't characterize the discussions at an impasse at all. We're very hopeful that we'll be able to resolve that fairly quickly.

From my perspective, if we could quickly come to a resolution with that draft that would be better than posting something that still remains to be discussed.

COMMISSIONER JACZKO: I appreciate your comments. I would just say I think Commissioner Svinicki made a good point which is in the end this will be a public rule. At some point the easiest path forward may be for us to put us something out there formally for public comment. And then, if there's an area in which we ultimately can't come to a simple resolution on that that our best path toward may be just to ask that as a question and in the end get the public's input because they're going to probably have to tell us what to do anyway. But I appreciate you being here and sharing those thoughts.

Last question. This was a question I intended to ask previously, but since I have staff and EPA here I thought I would ask it now as well. In the presentation one of the issues that was discussed was the fact that we have one expressed interest in a heap leach facility. I guess I'm wondering if my knowledge of heap leaching is not all that deep, whether we are going to have a similar situation with heap leach or do we have a good set of regulations or will the ISR regulations -- I suppose they won't really be applicable to heap leach but whether the existing UMTRCA regulations are useful for heap leach mining or we will need to go through this exercise again to address heap leach mining? That's kind of an open-ended one.

MR. CAMPER: That's a great question. [LAUGHTER] Heap leaches -- it's in New Mexico if it happens. It's rarely used. There's a lot of heap leaching activities out there other than uranium, of course. The usability or the practicality of heap leaches is not very widespread. I think we'd have to take the regulations

and the guidance process that we have in place and try to make sure that it works. If it didn't we have to create it as we go. I think we're prepared to do that.

MR. EDWARDS: Commissioner, I might add that as I mentioned in my remarks it's been 13 years since 1995 since the UMTRCA based regulations, 40 CFR 192, have been revised. We're currently starting the process of evaluating those and seeing where they may need to be updated and all that. I'm sure that would play into the overall evaluation.

MR. CAMPER: Let me add to that. Obviously, if that application becomes reality we'll continue to talk to the applicant and make sure that it's coming. We'll take a look at the process that we have and determine what needs to be done to fine tune it.

Obviously, in the final analysis whether we get one of them or 100 of them we've got to have the right kind of process in place. We'll do what it takes.

COMMISSIONER JACZKO: Thanks.

CHAIRMAN KLEIN: Commissioner Lyons?

COMMISSIONER LYONS: Well, thanks to the three of you for joining us today. Your comments were most appreciated.

Mitchell, I very much agree with you that we need to continue to work towards that MOU. It clearly can simplify and expedite our relations between the agencies.

Jonathan, I appreciated your comments on questioning whether release of the current draft is wise. If we're reasonably close to having an improved more

final draft I'm quite happy to hold off for that, too.

My concern following up on what Commissioner Jaczko had raised was just that we have discussed it a lot today. That's somewhat unusual for something that is in this interagency process, but there was also no way of having this meeting without doing it. It's a very timely meeting. So, I'm quite willing to wait a little, but I don't think we should wait very long.

I appreciated your comment that there needs to be more meetings in the very near future and your optimism that perhaps we can come to a -- you were cautious that we can't call this a final EPA product. I understand that you have your own concurrence processes to go through, but at least I'm thinking there's a better chance of getting the EPA concurrence.

The only other question I was going to ask was to Jonathan and you really just answered with one of your last comments. I had noted that you referred to rules that have been of considerable long standing and that the technology and the applications of the rules have changed.

I was going to ask if there is a serious plan within EPA to review some of those older rules to see if they still apply in the current situations. I think you just said that process is starting.

MR. EDWARDS: Right. We've had a number of discussions among ourselves of various rules and certainly 40 CFR 192, the UMTRCA based regulations rise to the top of those that need a good look.

Obviously, the industry has been very dynamic in here and so we need to

take a look at those older government regulations to make sure that we're doing the best for the environment and what makes practical common sense for the nation.

COMMISSIONER LYONS: Certainly, our two organizations have, I think, the same goal of protecting people and the environment. I can well imagine that relooking at the UMTRCA regulations in light of the rather substantial differences of trying to apply them to ISLs or ISRs, whatever you want to call them. I think that will be time very well spent for all of us. Again, thank you for joining us.

CHAIRMAN KLEIN: Commissioner Svinicki?

COMMISSIONER SVINICKI: I'd like to add my thanks to all three gentlemen for your presentations. I think any minor questions I had have already been covered by Commissioner Jaczko, but I'll just say thank you not only for being here today, but for your pledge that you and the staff will continue to work these issues in the future. Thank you.

CHAIRMAN KLEIN: I think the important thing for industry is it's difficult enough to work with the Federal government with one regulator and having dual regulators and having dual conflicting regulations would even make it more challenging. So, I'm optimistic we will come to closure.

I did notice, Jonathan, it sounds like EPA has the same issue that we have with some of our old Reg Guides and sometimes we need to update them. So, I think we share some common areas.

One thing that I was curious -- not being a radio chemist, I was surprised

when I went out to Wyoming and actually saw an ISR operation. Prior to going out there I had this envision of these acid solutions being pumped down and these toxic materials. I was surprised at the benign materials that are used like water and CO2.

And so, based on that activity and the fact that ISR has been going on for a while have either of you seen any problems with ISRs?

MR. EDWARDS: We've actually requested of the National Mining Association and also brought it up with the NRC in our formal comments on the draft GEIS that we'd like to see the additional data on some of the previous operations out there.

We believe there is some environmental data out there that would be useful to take a close look at and see previous excursions and treatments and how effective they were and that type of thing. So, I would say we'd like to just see more data on that ourselves.

CHAIRMAN KLEIN: But to date you haven't seen anything that gives you cardiac arrest?

MR. EDWARDS: I can't say that I have.

MR. HEARE: If I might, I would just add that this process is used to mine a number of things: salt, baking soda. So, there is a fair amount of history and experience with the process; the idea of dissolving in a formation and then bringing the material back up and separating it. Again, I'm not aware that we're aware anyway in our program of major problems that have been caused by these

facilities.

CHAIRMAN KLEIN: Thanks. Well, Mitchell, I appreciate the work towards an MOU and I understand that there may be some challenges with how BLM works between headquarters and regions. And so, hopefully we will be able to get an MOU that is consistent and we don't have to do it with every region. So, I'm optimistic that it will be broad reaching.

In terms of -- do you have a plan of when you think we might reach closure on an MOU?

MR. LEVERETTE: We are thinking -- we have a draft, as someone stated this morning, and our legal people are looking at it. With the holidays coming up and the transition and all that happening right now we were thinking maybe some time February we would maybe be able to come back with a type of final draft.

CHAIRMAN KLEIN: Thanks. I'd also like to thank both EPA and BLM for working with us. We all are after the same thing. We want to make sure it's safe, secure and done in a proper way. So, thanks for your cooperation and for your attendance today.

This part of the meeting is adjourned. Thanks again to the staff as well as our government colleagues. We will convene at 1:30 p.m. for the next phase with the Native Tribes, the state governments and the public interest groups. This part is adjourned.

(Whereupon, the morning session was adjourned.)