

**Memorandum of Understanding Between
The Nuclear Regulatory Commission
And
The State of Wyoming
As a Cooperating Agency**

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the U.S. Nuclear Regulatory Commission (“NRC”) and the State of Wyoming (“Cooperator”) for the purpose of preparing the Uranium Recovery Generic Environmental Impact Statement (UR GEIS).

NRC shall be the lead federal agency, and shall supervise the preparation of the UR GEIS. NRC acknowledges that the Cooperator has jurisdiction by law and special expertise applicable to the UR GEIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the State of Wyoming as a Cooperating Agency and the NRC.

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policy, including the Council on Environmental Quality’s NEPA regulations (in particular 40 CFR 1501.6 and 1508.5) and the NRC’s regulations (in particular 10 CFR Part 51).

II. Purpose

The purposes of this MOU are:

- A. To designate the State of Wyoming as a Cooperating Agency in the UR GEIS process.
- B. To provide a framework for cooperation and coordination between the NRC and the Cooperator that will aid in the successful completion of the UR GEIS in a timely, efficient, and thorough manner.
- C. To recognize that the NRC is the lead agency with responsibility for the completion of the UR GEIS.
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

- A. The authorities of the NRC to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

2. The Atomic Energy Act (42 U.S.C. 2011 *et seq.*).
 3. NRC regulations (10 CFR 1 *et seq.*)
- B. The authorities of the State of Wyoming to enter into this MOU include, but are not limited to:
1. Wyo. Stat. § 9-1-207
 2. Wyo. Stat. § 9-1-209
 3. Wyo. Stat. § 35-11-109(a)(iii)

IV. Roles and Responsibilities

A. NRC Responsibilities:

1. As lead agency, NRC retains final responsibility for the content of all documents, which include the Draft UR GEIS and the Final UR GEIS. NRC's responsibilities include determining the purpose of and need for the UR GEIS; selecting alternatives for analysis; identifying effects of the proposed alternatives; making recommendations on the proposed action; and evaluating appropriate mitigation measures. In meeting these responsibilities, NRC will follow all applicable statutory and regulatory requirements.
2. To the fullest extent consistent with its responsibility as lead agency, NRC will utilize the comments, recommendations, data, and/or analyses provided by the Cooperator in the UR GEIS process, giving particular weight to those topics on which Cooperator is acknowledged to possess special expertise.
3. NRC will provide the Cooperator with copies of documents underlying the UR GEIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final UR GEIS, subject to NRC's information handling requirements.

B. Cooperating Agency Responsibilities:

1. The State of Wyoming is a Cooperating Agency for developing the UR GEIS and is recognized to have jurisdiction by law and special expertise in the following areas:
 - a. Expertise for State groundwater and hydrogeology data
 - b. Expertise for State requirements for construction, maintenance, and abandonment of underground injection wells
 - c. Expertise for State transportation, cultural resources, socioeconomic data.
 - d. Expertise for State regulatory framework and permitting process effecting in-situ leach uranium recovery.

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2. The Cooperator will work with NRC to mutually coordinate, prioritize, identify and manage tasks to provide information, comments, and technical expertise to NRC regarding those topics, and the data and analyses supporting them, in which it has special expertise or for which the Cooperator requests its participation. The NRC and WY will identify staff to implement and coordinate these activities. The staff will reach consensus on the deliverables (if any) and delivery dates; anticipated products and periods of performance. In particular, the Cooperator can provide information on the following topics:
 - a. State groundwater and hydrology, transportation, cultural resources and socio-economic data.
 - b. State requirements for construction, maintenance, and abandonment of underground injection wells
 - c. Information on the State regulatory framework and permitting process effecting in-situ leach uranium recovery.
 - d. Other such information that is relevant to developing the UR GEIS.
3. Within the areas of their special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: identifying data needs, identifying effects of alternatives, identifying effects of cumulative impacts, suggesting mitigation measures, and providing written comments on working drafts of the Draft UR GEIS and Final UR GEIS and supporting documents.
4. When the Cooperator prepares technical analyses or provide data sets; it will provide the data and other information to be used in developing the UR GEIS, within the schedule identified in Attachment B:

C. Responsibilities of the Parties:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.
2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for UR GEIS milestones and timeframes for Cooperator's reviews and submissions.
3. Each Party agrees to fund its own expenses associated with the UR GEIS process.

V. Other Provisions

- A. **Authorities not altered.** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

- B. **Financial obligations.** Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
- C. **Immunity and Defenses Retained.** Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU. The State of Wyoming does not waive sovereign immunity by entering into this MOU and specifically retains immunity and all defenses available to it as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.
- D. **Conflict of interest.** The Parties agree not to utilize any individual for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the UR GEIS.
- E. **Documenting disagreement or inconsistency.** Where NRC and the Cooperator disagree on significant elements of the UR GEIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the Cooperator may document its views and submit them as comments to the Draft UR GEIS and the Proposed/Final UR GEIS.
- F. **Management of information.** The Cooperator acknowledges that all data and information provided will become part of the NRC's official record and will be available for public review, except as restricted by the Freedom of Information Act and/or the Privacy Act. The Cooperator agrees that internal working draft documents for the development of the UR GEIS will not be made available for review by individuals or entities other than the Parties to this MOU. All draft documents are part of the official NRC record and may only be released by NRC to the extent allowed by the Freedom of Information Act and/or the Privacy Act. Cooperators agree that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public.
- G. **Responsibility for decision making** While the Parties agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that the NRC retains final responsibility for the decisions identified in the UR GEIS.
- H. **Coordination with NRC contractors.** The Center for Nuclear Waste Regulatory Analyses (CNWRA) serves as NRC's contractor for all aspects of data collection, environmental analysis, and UR GEIS preparation. Cooperator may communicate with the contractor only through the NRC representative.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the Cooperator and NRC during the planning

process. Each Party may change its representative at will by providing written notice to the other Party.

VII. Administration of the MOU

- A. **Approval.** This MOU becomes effective upon signature by the authorized officials of all the Parties.
- B. **Amendment.** This MOU may be amended through written agreement of all signatories.
- C. **Termination.** If not terminated earlier, this MOU will end when the Final UR GEIS is issued by the NRC. Any Party may end its participation in this MOU by providing written notice to the other Party.
- D. **Entirety of Agreement.** This MOU, including Attachments A, B, and C, consisting of nine (9) pages represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

State of Wyoming
Office of the Governor
200 West 24th Street
124 State Capitol
Cheyenne, Wyoming 82002

/RA/

04/10/2008

Ryan Lance, Deputy Chief of Staff, Wyoming Governor's Office

Date

Nuclear Regulatory Commission
Office of Federal and State Materials and Environmental Management Programs
11545 Rockville Pike
Rockville, Maryland 20852

/RA/

04/24/2008

Charles L. Miller, Director

Date

WY ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

/RA/

04/10/2008

Don Gerstein, Sr. Asst. Attorney General

Date

Attachment A

Opportunities for Cooperating Agency Participation in the UR GEIS

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

Attachment B

Schedule

	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise	Input Needed By
1	Provide data and information identified under Section IV(B)(2) of the MOU to NRC	Within 25 calendar days of MOU signing by NRC and State of Wyoming representatives
2	Provide review comments on preliminary draft GEIS and attend draft GEIS review meeting	Within 15 business days of receiving preliminary draft GEIS for review
3	Provide comments on draft GEIS, as appropriate	Within the time period identified in the <i>Federal Register</i> Notice for publication of draft GEIS for public comment
4	Provide review comments on draft compilation of public comment on draft GEIS and draft responses to comment	Within 10 business days of receiving draft compilation of comments and responses
5	Provide review comments on preliminary final GEIS and attend final GEIS review meeting	Within 15 business days of receiving preliminary final GEIS for review

Attachment C
Agency Representatives

Nuclear Regulatory Commission

Primary Representative: James R. Park, Project Manager
(301) 415-6935

Backup Representative: Gregory F. Suber, Branch Chief
(301) 415-8087

State of Wyoming

Primary Representative: **Donald R. McKenzie, Administrator, Land Quality Division,
(307)777-7046**

Backup Representative: **Carol Bilborough, Program Manager, Land Quality Division,
(307)777-6772**