

MEMORANDUM OF UNDERSTANDING  
FOR MINING ENVIRONMENTAL IMPACT STATEMENTS  
WITHIN THE STATE OF NEVADA  
**AMONG**  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
**AND**  
U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
NEVADA

**DATE:**  
**April 30, 2008**

This MEMORANDUM OF UNDERSTANDING, hereinafter referred to as the MOU, is entered into among the agencies identified as the U.S. Environmental Protection Agency, hereinafter called the EPA, and the U.S. Department of the Interior - Bureau of Land Management, Nevada, hereinafter called the BLM.

## I. PURPOSE

The purpose of this MOU is to:

1. Establish and maintain coordination and cooperation between the EPA and the BLM for their respective individual participation in the administration of the National Environmental Policy Act (NEPA) for Environmental Impact Statement (EIS) level mining operations for locatable minerals on Federal lands administered by the BLM within the State of Nevada. This coordination allows for BLM to evaluate and address EPA comments and resolve issues early in the EIS process.
2. Develop and maintain common guidelines and procedures for expediting the NEPA process for Plan of Operations approval for mining operations in Nevada,
3. Facilitate the administration, review and approval of Environmental Impact Statements for mining operations in Nevada, and

## II. AUTHORITIES

The parties' involvement in this MOU is based on the following authorities:

### A. EPA

1. The National Environmental Policy Act, 42 U.S.C. 4371 et seq.
2. Clean Air Act Section 309, 42 U.S.C. 7609
3. The Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act at 40 CFR 1500-1508

### B. BLM

1. The U.S. Mining Law of May 10, 1872, as amended (30 U.S.C. 22, et seq.).
2. Sections 302, 303, 601 and 603 of The Federal Land Policy and Management Act of 1976, as amended (90 STAT 2762, 43 U.S.C. 1732 et seq.).
3. Title 43 U.S.C. 1201. Sections 1201 and 1457.
4. Title 43 of the Code of Federal Regulations, Subparts 3802, 3809 and 3715.

### III. DEFINITIONS

1. Compliance Enforcement - Administrative and legal remedies for violations of an agency's applicable laws and regulations.
2. Land Managing Agency - The agency responsible for the administration and management of the land. For the purposes of this agreement, the BLM is the "land managing agency."
3. Locatable Minerals - All mineral deposits which are under the General Mining Law of May 10, 1872, as amended and except those specifically excluded by the Mineral Leasing Act of 1920, as amended, and Materials Act of 1947, as amended.
4. Public Lands - Lands administered by the BLM under Title 43 of the Code of Federal Regulations, Subparts 3802 and 3809.
5. Plan of Operations (Plan) - Formal notification that requires review and acceptance or approval to conduct operations, including reclamation on Federal lands.
6. Environmental Impact Statement - a detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act.

### IV. COMPLIANCE ENFORCEMENT

Each agency shall have the responsibility for enforcement of its applicable regulations, rules, and laws. The BLM and EPA will coordinate on enforcement actions.

### V. EIS and NEPA PROCESS

The parties acknowledge that issues related to Plan of Operations approval will be considered on a case by case basis for the purpose of including sufficient information in the EIS for the BLM decision maker.

#### Procedures to Facilitate Interagency Coordination:

1. BLM will:
  - A. Determine when the Plan is complete in accordance with 43 CFR 3809 in order to start the NEPA process and notify EPA.
  - B. Supply the Plan to EPA.
  - C. Coordinate NEPA with the state permitting process to the extent possible.

## 2. EPA will:

- A. Provide comment to BLM on issues of particular concern, if any, during the NEPA scoping process.
- B. When requested by BLM, provide assistance to the extent possible in the development of the EIS.
- C. Review each EIS and provide comments on the adequacy of the environmental assessment and potential environmental impacts.
- D. EPA's participation in this MOU does not imply endorsement of the projects or preferred alternatives for projects coordinated under this MOU, and does not abridge the independent review of the EIS which EPA conducts pursuant to NEPA and section 309 of the Clean Air Act, 42 U.S.C. 7609.
- E. EPA's participation will be coordinated through the Region 9 Environmental Review Office.

Cooperating Agency

## 1. BLM will:

- A. Treat EPA as if it were a cooperating agency for the review of any proposed project.
- B. Submit a scoping document to EPA whether or not EPA becomes a cooperating agency.
- C. Agree to project specific MOU with all cooperating agencies.
- D. Submit a Preliminary Draft EIS (PDEIS) to EPA whether or not EPA becomes a cooperating agency.

## 2. EPA will:

- A. Participate in public scoping meetings, as time and budget allow.
- B. Formally notify BLM if the Agency determines it will be a cooperating agency prior to BLM distributing the scoping document.
- C. If EPA is formally a cooperating agency, EPA will:
  - 1. Agree to a project specific MOU with BLM; and

2. Be involved in all remaining steps on the Gantt chart as time and budget allow.

D. If EPA is not a cooperating agency, the Agency:

1. May be involved in the PDEIS review meeting.
2. May be involved in the revision of the PDEIS.
3. May provide comments to BLM.
4. Will be formally involved in the review process when it receives the DEIS from BLM pursuant to Section 309 of the Clean Air Act.

## VI. LIMITATIONS

This agreement is not intended to waive or otherwise limit any Federal or State laws, rules or regulations, or any other requirements or duties under such laws, rules, or regulations. This agreement is not intended to give an agency additional authority beyond their current laws, rules or regulations.

Each agency understands that by signing this MOU they are responsible for their own costs when participating under this MOU.

## VII. COORDINATION

1. Each agency will promptly inform the other parties to the MOU of any changes in rule making and policy relevant to activities that are the subject of this MOU.
2. Select representatives from the agencies will meet on an annual basis to coordinate activities, resolve issues or mutual concerns, exchange information on policies and procedures, and any other matters of mutual concern that affects the implementation of this agreement.
3. The agencies will coordinate and exchange relevant information and correspondence relating to the NEPA process of projects which fall under this MOU with the goal of enhancing cooperation and coordination.

## VIII. DISPUTE RESOLUTION

In the event that the agencies may reach an impasse in resolving an issue, it is in the best interest of each agency to resolve the issue at the lowest possible level. Two levels of resolution will be established under this MOU. The first level will involve the District Office Manager for BLM and the Environmental Review Office Manager for EPA Region 9.

If resolution cannot be reached at this level, the next level will involve the State Director for BLM and the Communities and Ecosystems Division Director for EPA Region 9.

#### IX. EFFECTIVE DATE

This MOU shall become effective upon signature by the Communities and Ecosystems Division Director for Region 9 EPA and the Nevada State Director for the BLM, and will remain in full force and effect for a period of five (5) years at which time it will expire unless extended. The parties agree to implement the terms and conditions of this MOU as of the date of the final signatures below.

#### X. AMENDMENTS

Amendments to this agreement may be proposed at any time by any party to the agreement and shall become effective upon written approval by all parties to the agreement.

#### XI. TERMINATION

Any of the parties, after 60 days written notice to the other agencies, may terminate this agreement, in whole or in part, at any time before the date of expiration.

#### XII. NON-FUND OBLIGATING DOCUMENT

This agreement is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contact or agreement for training or other services must fully comply with all applicable requirements for competition.

#### XIII. FREEDOM OF INFORMATION ACT (FOIA)

Any information furnished to the EPA and the BLM under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

XIV. PARTICIPATION IN SIMILAR ACTIVITIES

This agreement in no way restricts the EPA or the BLM from participating in similar activities with other public or private agencies, organizations, and individuals.

XV. AVOIDING CONFLICT OF INTEREST

The parties agree not to employ the services of any representative or party having a financial interest in the outcome of any project which is the subject of this MOU. The parties will take all due precautions to ensure that their consultants, counsel, and representatives participating in the NEPA process for mining EISs do not have a conflict of interest pursuant to 40 CFR 1506.5(c).

XVI. ADMINISTRATION

1. Nothing in this MOU will be construed as affecting the authorities of the participants to act as provided by statute or regulation or as binding beyond their respective authorities or to require either participant to obligate or expend funds in excess of available appropriations.
2. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

XVII. PRINCIPAL CONTACTS

Environmental Protection Agency Region 9	Phone (415) 972-3846
Environmental Review Office	
Bureau of Land Management	Phone
Mining Law Program Lead	(775) 861-6575

XVIII. SIGNATURES



\_\_\_\_\_  
Director, Communities and Ecosystems Division  
Region 9  
U.S. Environmental Protection Agency

MAY 13, 2008  
Date



\_\_\_\_\_  
State Director  
Nevada State Office  
U.S.D.I. Bureau of Land Management

April 30, 2008  
Date