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BETWEEN  
THE U.S. DEPARTMENT OF ENERGY  
AND  
THE U.S. DEPARTMENT OF INTERIOR

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE U.S. DEPARTMENT OF ENERGY  
AND  
THE U.S. DEPARTMENT OF THE INTERIOR**

**I. PARTIES**

The parties to this Memorandum of Understanding (MOU) are the U.S. Department of Energy (DOE), represented by its Waste Isolation Pilot Plant (WIPP) Carlsbad Area Office, and the U.S. Department of the Interior (DOI), represented by its Bureau of Land Management (BLM), Roswell District Office.

**II. BACKGROUND AND PURPOSE**

The WIPP is authorized under Section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980, Public Law (P.L.) 96-164. The WIPP is authorized for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission.

The WIPP Land Withdrawal Act of 1992, P.L. 102-579 ("the LWA"), withdrew 10,240 acres of land in Eddy County, New Mexico, from the operation of the public land laws and reserved those lands for the construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decommissioning, and other authorized activities associated with the purposes of the WIPP as set forth in Section 213 of P.L. 96-164.

Section 4 of the LWA makes the Secretary of Energy responsible for the management of the withdrawal, consistent with the Federal Land Policy and Management Act of 1976. The LWA directs the Secretary, in consultation with the Secretary of the Interior and the state of New Mexico, to develop a land management plan (DOE/WIPP 93-004) for the use of the withdrawal area until the end of the decommissioning phase. It further directs the Secretary and the Secretary of the Interior to enter into an MOU to implement the management plan.

**III. AUTHORITY**

This MOU is entered into pursuant to the authority of, and is consistent with, the LWA. Further, it is consistent with and subject to certain other appropriate statutory authorities, including the Department of Energy Organization Act, P.L. 95-91; the Energy Reorganization Act of 1974, P.L. 93-438; and the Economy Act of 1932, as amended by P.L. 98-216.

#### **IV. MANAGEMENT**

This MOU envisages direct communication between officials of the DOE and the BLM in consultation with other federal and state land management agencies which are involved in managing the resources within or activities impacting the surrounding areas of the WIPP withdrawal area. This MOU sets forth the cooperative arrangements and procedures for addressing land management within the withdrawal area. These cooperative arrangements and procedures implement the WIPP Land Management Plan for the withdrawal area and are consistent with the WIPP Land Management Plan's concept of multiple-use management.

The responsibilities and duties listed pursuant to this MOU relate to those shared by the DOE and the DOI. For additional land management issues not found in this MOU, consult the WIPP Land Management Plan (DOE/WIPP 93-004).

This MOU will be administered on behalf of the DOE by the Manager, Carlsbad Area Office, P.O. Box 3090, Carlsbad, New Mexico 88221.

This MOU will be administered on behalf of the DOI by the District Manager, Roswell District Office, BLM, P.O. Box 1397, Roswell, New Mexico 88201.

#### **V. FUNDING**

The details of the levels of funding to be furnished to one signatory organization by the other will be developed in specific interagency agreements, subject to the availability of funds. This MOU shall not be used to obligate or commit funds or as the basis for the transfer of funds. The DOE and the DOI will provide each other mutual support in budget justification to the Office of Management and Budget and in hearings before the Congress with respect to the programs described in the WIPP Land Management Plan and implemented through this MOU.

#### **VI. RESPONSIBILITIES OF PARTICIPATING PARTIES**

##### **A. Cultural Resources**

It is the intent of the DOE to manage cultural resources within the withdrawal area pursuant to Sections 106 and 110 of the National Historic Preservation Act, Archaeological Resource Protection Act, Native American Graves Protection and Repatriation Act, and applicable DOE Orders to ensure that scientific and sociocultural use by present and future generations shall not be diminished.

1. The DOE agrees to:
  - a. Retain responsibility for management of cultural resources within the withdrawal area.
  - b. Inventory and evaluate cultural resources prior to surface-disturbing activities.

- c. Use avoidance as the primary mitigation measure.
2. The DOI agrees to:
    - a. Provide recommendations to the DOE in developing mitigation measures when avoidance of historic property is not possible.

## B. Grazing Management

The withdrawal area includes portions of two grazing allotments administered by the BLM. The DOE's intent is to continue current management practices.

1. The DOE agrees to:
  - a. Retain responsibility for grazing management decisions affecting the two grazing allotments within the withdrawal area.
2. The DOI agrees to:
  - a. Provide proposed grazing management changes and/or plans to the DOE for review and comment.
  - b. Provide grazing management of the grazing allotments within the withdrawal area in accordance with applicable grazing laws including the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvement Act.
  - c. Continue BLM-funded vegetative monitoring program to determine if range management goals and objectives established for the grazing allotments are being achieved. As a minimum, the monitoring program will include collecting data on actual livestock use, wildlife habitat and population trends, degree of utilization of the key forage species, climatic conditions, and rangeland ecological conditions and trends.

## C. Wildlife

The DOE intends to manage wildlife habitat within the withdrawal area for ungulates, raptors, upland game, and any special-status plant or animal species occupying the withdrawal area.

1. The DOE agrees to:
  - a. Retain responsibility for management decisions affecting wildlife habitat and the habitat of any special-status plant or animal species found occupying the withdrawal area.

- b. Continue with the BLM and the DOE Interagency Agreement No. 1422G910-A2-0016 - Raptor Research and Management Program.
- c. Upon receipt of the draft copy of the recovery plan (see Part 2a. below), the DOE shall review, comment, and transmit the draft copy of the recovery plan back to the BLM within 30 days.

2. The DOI agrees to:

- a. Develop a recovery plan in cooperation with the U.S. Fish and Wildlife Service and appropriate state agencies for any threatened or endangered plant and animal species found occupying the WIPP withdrawal area to ensure its success and survival.
- b. Continue with the BLM and the DOE Interagency Agreement No. 1422G910-A2-0016 - Raptor Research and Management Program.
- c. Consult with the DOE to ensure that any range improvement developments (e.g., installation of livestock watering units) will be designed to accommodate wildlife needs.

D. Fire Management

It is the intent of the DOE to provide a fire management program that will ensure a timely, well-coordinated, and cost-effective response to suppress wildfire within the withdrawal area.

1. The DOE agrees to:

- a. Employ full suppression strategy of a wildfire within the withdrawal area by utilizing the WIPP incident commander to coordinate fire management activities.

2. The DOI agrees to:

- a. Provide full fire-fighting support within the withdrawal area should the WIPP incident commander request such support.
- b. Commit necessary additional fire suppression resources should local BLM fire suppression resources be insufficient. The additional resources to be committed will be negotiated based upon the severity and behavior of the fire.

E. Mining and Gas and Oil Production

It is the intent of the DOE to ensure that mining and gas and oil activities do not encroach upon the withdrawal area. Adherence to this MOU is crucial to protecting the repository from inadvertent human intrusion. The WIPP is an offset owner to all gas

and oil leases adjacent to the withdrawal boundary and will exercise the right to provide input on proposed activities of adjacent offset operators requesting an exception to applicable New Mexico Oil Conservation Division (NMOCD) rules and regulations.

In accordance with Section 4(b)(5)(A) of the LWA, no surface or subsurface mining or oil or gas production, including slant drilling from outside the boundaries of the withdrawal, shall be permitted at any time (including after decommissioning) on lands on or under the withdrawal.

In accordance with Section 4(b)(5)(B) of the LWA, existing rights under Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C shall not be affected unless the Administrator of the Environmental Protection Agency determines, after consultation with the Secretary of Energy and the Secretary of the Interior, that the acquisition of such leases by the Secretary of Energy is required to comply with the disposal regulations or with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

1. The DOE agrees to:

- a. Coordinate with the BLM to provide input and recommendations in determining a BLM permit issuance for oil and gas extraction and mining activity on federal lands within one mile of the WIPP withdrawal boundary.
- b. Provide the technical expertise to interpret, review, and verify oil and gas activity calculations performed by the BLM.

2. The DOI agrees to:

- a. Forward applications for Permit to Drill and mining and reclamation plans to the DOE for review and comment in determining issuance of any oil and gas extraction or mining permit within one mile of the WIPP withdrawal boundary. The BLM shall resolve any DOE comments prior to approval of such applications and plans.
- b. Include the following as a Special Condition of Approval for oil and gas activity on federal lands at 330 feet or closer to the WIPP withdrawal boundary:
  - (1) Ensure that the operator provides the BLM with drill site downhole vertical deviation surveys for each 500-foot drilling interval.
  - (2) Provide the technical expertise to calculate well bore deviation at each 500-foot interval of drilling to determine the degree of deviation and forward these results to the DOE for review and verification of calculations.
  - (3) Require the operator, in accordance with the NMOCD Rule 111, to perform and provide the BLM a directional survey to establish bottom

hole location on well bores that experience deviation angles of more than five degrees from vertical in any 500-foot interval.

- (4) Require the operator to perform and provide the BLM a directional survey to establish bottom hole location on well bores when the total cumulative degrees of displacement, independent of direction, indicate that the well bore could deviate to within 100 feet of the withdrawal boundary. Should the directional survey indicate that deviation is toward the withdrawal boundary, the BLM would require a directional survey at 100-foot intervals until such time as data would indicate that the bottom hole location at total depth would not exceed 10 degrees from vertical or could result in a bottom hole location less than 100 feet from the withdrawal boundary. Should deviation direction continue towards the withdrawal boundary during the BLM monitoring of the 100-foot directional survey intervals, the BLM will require the operator to take corrective measures (e.g., side tracking) or cease drilling activity.
  - (5) Provide the DOE the directional survey results that establish bottom hole location on well bores that experience deviation angles of more than five degrees from vertical in any 500-foot interval and on well bores when the total cumulative degrees of displacement, independent of direction, indicate that the well bore could deviate to within 100 feet of the withdrawal boundary.
- c. Provide the DOE with completion, alternate use, and/or plugging and abandonment reports relevant to drilling, production, injection, and mining activity on federal lands within one mile of the withdrawal boundary.

#### **F. Realty/Lands/Rights-of-Way**

Land use management within the WIPP withdrawal boundary is the sole responsibility of the DOE. It is the intent of the DOE to monitor any land use proposal affecting the withdrawal area.

1. The DOE agrees to:
  - a. Consult with the BLM regarding future DOE right-of-way actions needed outside the withdrawal area.
  - b. Review and comment on applications and proposals received by the BLM for any land uses affecting, but not solely contained within, the WIPP withdrawal boundary.
  - c. Submit comments relative to any land uses affecting, but not solely contained within, the WIPP withdrawal boundary to the BLM's Roswell District Manager, or their representative, within 30 days of receipt from the BLM.

2. The DOI agrees to:

- a. Forward applications and proposals for land uses affecting, but not solely contained within, the WIPP withdrawal boundary to the DOE.
- b. Assume responsibility, when designated as the lead agency, for the preparation of the National Environmental Policy Act documentation for land uses affecting, but not solely contained within, the WIPP withdrawal boundary. The BLM shall obtain the review and approval of the DOE (the contributing agency) in regard to the BLM issuance of a Record of Decision.
- c. Incorporate any DOE- and/or WIPP-specific compliance requirements when preparing documentation for land uses affecting, but not solely contained within, the WIPP withdrawal boundary.

G. Reclamation

The DOE intends to return land disturbed by the WIPP activities to a stable ecological state that will assimilate with the surrounding undisturbed ecosystem.

1. The DOE agrees to:

- a. Reclaim land disturbed by the WIPP activities in accordance with the Environmental Protection Implementation Plan (DOE/WIPP 90-050); the Federal Land Policy and Management Act, 1976 (P.L. 94-579); the WIPP Final Supplement Environmental Impact Statement (DOE/EIS-0026-FS, Jan. 90); the WIPP Final Environmental Impact Statement (DOE/EIS-0026, Oct. 80); EPA requirements regarding disposal regulations; future Environmental Impact Statements; and land withdrawal requirements.
- b. Consult with the BLM in advance of reclamation activities to ensure compliance with applicable DOE reclamation commitments.

2. The DOI agrees to:

- a. Review DOE-proposed reclamation actions to ensure compliance with applicable DOE reclamation commitments.

VII. PUBLIC INFORMATION COORDINATION

Subject to the Freedom of Information Act, Title 5 U.S.C 552, decisions by either party on disclosure of information to the public regarding projects and programs developed pursuant to this MOU shall be made only after consultation between the parties.

VIII. PATENTS AND TECHNICAL DATA

Appropriate patent and other intellectual property provisions shall be included in interagency agreements and any other agreements entered into by the parties in order to implement this MOU. DOE patent and intellectual property policies shall apply to any such work performed by a contractor (including any subcontractor) which is funded in whole or in part by the DOE. Rights to inventions made by U.S. government employees shall be determined by the employing agency. .

IX. REVIEW, AMENDMENT, AND TERMINATION

The DOE and the DOI, in consultation with other federal and state agencies involved in managing the resources within the withdrawal, shall review the MOU on an annual basis to determine whether it remains current and whether it effectively and appropriately implements the WIPP Land Management Plan for the WIPP withdrawal.

In the event that the DOE and the DOI determine that this MOU should be revised or amended, such revision or amendment shall be accomplished only upon written agreement between the parties. Any revisions or amendments to this MOU shall be developed in consultation with the state of New Mexico.

This MOU may be terminated by mutual agreement of the DOE and the BLM, or by either party upon a 30-day written notice to the other party.

This MOU shall remain in effect until the end of the decommissioning phase of the WIPP, as that phase is defined in the LWA.

X. EFFECTIVE DATE

This MOU shall become effective upon the latter date of signature of the parties.

U.S. DEPARTMENT OF ENERGY

BY: George E. Dials

DATE: July 19, 1994

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

BY: Leslie M. Cline

DATE: July 19, 1994