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Appendix C

Interagency and
Intergovernmental
Interactions

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APPENDIX C. INTERAGENCY AND INTERGOVERNMENTAL INTERACTIONS

In the course of producing this environmental impact statement (EIS), the U. S. Department of Energy (DOE) has interacted with a number of governmental agencies and other organizations. These interaction efforts have several purposes, as follows:

- Discuss issues of concern with organizations having an interest in or authority over land that the Proposed Action (to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain) would affect directly, or organizations having other interests that some aspect of the Proposed Action could affect.
- Obtain information pertinent to the environmental impact analysis of the Proposed Action.
- Initiate consultations or permit processes, including providing data to agencies with oversight, review, or approval authority over some aspect of the Proposed Action.

Section C.1 summarizes the interactions. DOE has completed several efforts and will complete all required consultations before publishing the Final EIS. Section C.2 describes interests held by agencies and organizations involved in consultations and other interactions.

C.1 Summary of Activity

Table C-1 lists organizations with which DOE has initiated interaction processes concerning the proposed Yucca Mountain Repository and the status of those interactions.

C.2 Interests of Selected Agencies and Organizations in the Yucca Mountain Repository Proposal

Regulations that establish a framework for interactions include 40 CFR 1502.25, which provides for consultations with agencies having authority to issue applicable licenses, permits, or approvals, or to protect significant resources, and 10 CFR 1021.341(b), which provides for interagency consultations as necessary or appropriate.

C.2.1 BUREAU OF LAND MANAGEMENT

The Bureau of Land Management has a range of interests potentially affected by the Proposed Action. The Bureau, as a part of the U.S. Department of the Interior:

- Controls a portion of the land that would need to be withdrawn by Congress to accommodate the proposed repository
- Controls portions of land in Nevada in the five corridors for a potential branch rail line and along the five potential routes for heavy-haul trucks
- Has responsibility for wild horse and wild burro management areas (Public Law 92-195, as amended, Section 3; 43 CFR Part 2800) and wildlife management areas (43 CFR 24.4) in Nevada that alternative rail corridors and routes for heavy-haul trucks cross
- Has power to grant rights-of-way and easements for transportation routes across lands it controls

Table C-1. Organizations with which DOE has initiated interactions (page 1 of 2).

Organization	Authority/interest	Interactions
Bureau of Land Management	Controls part of land required for repository. Controls portions of lands in Nevada that transportation corridors cross. Has responsibility for management and use of lands it controls, including management of habitat and species. Has data on topography, habitat, species, and other topics on land it controls.	DOE provided a briefing on the EIS during a meeting on September 15, 1998.
U.S. Air Force	Controls part of land being considered for withdrawal for repository (on the Nellis Air Force Range) and for one Nevada rail implementing alternative and one heavy-haul truck implementing alternative. Has identified security concerns over potential development of the Nevada rail and heavy-haul truck implementing alternatives that would pass through land it controls.	DOE has provided a briefing for USAF personnel on the process DOE is following for this EIS and on the range of issues being analyzed. DOE and Air Force personnel have held informal meetings to discuss specific issues and update EIS status. The Air Force has provided a statement of its concerns regarding certain transportation alternatives DOE is considering.
Naval Nuclear Propulsion Program	The Naval Nuclear Propulsion Program is a joint U.S. Navy and DOE organization responsible for management of naval spent nuclear fuel.	Ongoing dialogue and information exchange.
Fish and Wildlife Service	Oversees compliance with the Endangered Species Act for some species and compliance with the Fish and Wildlife Coordination Act.	Discussions have been held and species list information has been obtained. Interaction activities under the Endangered Species Act are ongoing.
National Marine Fisheries Service	Oversees compliance with Marine Protection Research and Sanctuaries Act and, for some species, with the Endangered Species Act.	Discussions have been held and information has been obtained. Interaction activities under the Endangered Species Act are ongoing.
U.S. Department of Transportation	Has regulatory authority over transportation of nuclear and hazardous waste materials, including packaging design, manufacture and use, pickup, carriage, and receipt, and highway route selection.	EIS status briefing has been provided. DOE and DOT have held informal discussions concerning modeling techniques and analytical methods DOE is using in its evaluation of transportation issues.
U.S. Environmental Protection Agency	Has regulatory authority over radiological standards and groundwater protection standards. Mandatory role in review of EIS adequacy.	DOE and EPA have held a meeting at which DOE provided a briefing on its approach to the EIS and on scope and content. At this meeting, EPA described its EIS rating process and personnel from the two agencies discussed methods for addressing any EIS comments that EPA may submit.
U.S. Nuclear Regulatory Commission	Required by NWSA to adopt Yucca Mountain Repository EIS to the extent practicable with the issuance by the Commission of any construction authorization and license for a repository. Has licensing authority over spent nuclear fuel and high-level radioactive waste geologic repositories. Has licensing authority over spent nuclear fuel and high-level radioactive waste geologic repositories. Has regulatory authority over commercial nuclear power plants, storage of spent nuclear fuel at commercial sites, and packaging for transportation of spent nuclear fuel and high-level radioactive waste. Has general authority over possession and transfer of radioactive material.	Discussions have been held on the purpose and need for the action and on the status of the EIS. Numerous interactions related to the potential repository program in general.

Table C-1. Organizations with which DOE has initiated interactions (page 2 of 2).

Organization	Authority/interest	Interactions
U.S. Army Corps of Engineers	Has authority over activities that discharge dredge or fill material into waters of the United States.	Discussed strategies for minimizing impacts and obtaining permits for waters of the United States.
U.S. Department of Agriculture	Responsible for protection of prime farm lands for agriculture in areas potentially affected by the Proposed Action.	Letter exchange has resolved issues regarding repository's potential effect on farmlands. Need for additional interaction is uncertain.
Native American Tribes	Have concern for potential consequences of repository development and transportation activities on cultural resources, traditions, and spiritual integrity of the land. Have governmental status. All interactions required for the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act are being accomplished.	Ongoing discussions on a range of topics at least twice per year. Tribal representatives have prepared and submitted the <i>American Indian Perspectives on the Yucca Mountain Site Characterization Project and the Repository Environmental Impact Statement</i> (AIWS 1998, all).
Affected units of local government	Local governments with general jurisdiction over regions or communities that could be affected by implementation of the Proposed Action.	Meetings that include discussions, information exchange, and status briefings.
National Park Service	Potential for proposal to affect water supply in Death Valley region. Effect of any water appropriation required for repository, EIS status, and approach to EIS development.	Discussion completed. National Park Service concerns in regard to use of water for repository construction and operation were addressed.
Advisory Council on Historic Preservation and Nevada State Historic Preservation Officer	Protection and preservation of historic properties and cultural resources of importance to Native Americans and others. Administration of the National Historic Preservation Act and of regulatory requirements supporting that act.	Following discussions among DOE, the Advisory Council on Historic Preservation, and the Nevada State Historic Preservation Officer, DOE and the Advisory Council on Historic Preservation have entered into a programmatic agreement (DOE 1988, all) establishing procedures DOE is to follow during site characterization and during the Secretary of Energy's development of a repository site recommendation. The Advisory Council on Historic Preservation indicated that it would be available to assist DOE in complying with environmental review requirements for historic properties.
State of Nevada Department of Transportation	Has authority over transportation and highways in Nevada.	DOE and Nevada Department of Transportation personnel have had informal discussions on Nevada transportation issues. The State of Nevada has requested a formal briefing on this draft EIS after DOE publishes the document. DOE has agreed to provide a briefing to the state.

The Bureau of Land Management would have a continuing interest in the development of a repository at Yucca Mountain and associated transportation routes in the State of Nevada. Any comments from the Secretary of the Interior on the EIS must be included in the Secretary of Energy's recommendations to the President on the Yucca Mountain site.

Interaction

DOE held a meeting with the Bureau of Land Management on September 15, 1998.

C.2.2 U.S. AIR FORCE

The U.S. Air Force operates Nellis Air Force Base northeast of Las Vegas, and the Nellis Air Force Range, which occupies much of south-central Nevada. The Nellis Range is an important facility for training American and Allied combat pilots and crews (USAF 1999, pages 1-1 and 1-3).

A portion of the land being considered for withdrawal for the proposed repository is on the Nellis Range. If the land were withdrawn and development of the proposed repository proceeded, the Air Force would hold a continuing interest in the potential for construction, operation and monitoring, and closure activities at the repository to have consequences for Air Force operations on the adjoining land.

One Nevada rail implementing alternative and one Nevada heavy-haul truck implementing alternative that DOE is evaluating for the transportation of spent nuclear fuel and high-level radioactive waste would pass through a portion of the Nellis Range, for which the Air Force has national security concerns.

Interaction

DOE provided a briefing for USAF personnel on the process DOE is following for this EIS and on the range of issues being analyzed. DOE and Air Force personnel have held informal meetings to discuss specific issues. The Air Force has provided a statement of concerns about certain transportation alternatives DOE considered in the EIS.

C.2.3 NAVAL NUCLEAR PROPULSION PROGRAM

The Naval Nuclear Propulsion Program is a joint U.S. Navy and DOE program responsible for all matters pertaining to naval nuclear propulsion (USN 1996, page 2-2). This program is responsible for the nuclear propulsion plants aboard more than 93 nuclear-powered warships with more than 108 reactors and for nuclear propulsion work performed at four naval shipyards and two private shipyards. It is also responsible for two government-owned, contractor-operated laboratories, two moored training ships, two land-based prototype reactors, and the Expanded Core Facility at the Naval Reactors Facility at the Idaho National Engineering and Environmental Laboratory.

The Naval Nuclear Propulsion Program manages naval spent fuel after its withdrawal from nuclear-powered warships and prototype reactors at the Expanded Core Facility. The program has conducted studies and performed environmental impact analyses on the management and containerization of naval spent nuclear fuel to prepare it for shipment to the proposed repository or other spent fuel management system (USN 1996, all). Information from these studies is relevant to the containerization of other spent nuclear fuel that could be shipped to the proposed repository.

Interaction

Since the beginning of preparations for this EIS, the Naval Nuclear Propulsion Program has participated in quarterly meetings with DOE to discuss information relevant to the emplacement of naval spent nuclear fuel in a monitored geologic repository. Detailed information about naval spent nuclear fuel is classified; therefore, the Naval Nuclear Propulsion Program performed a parallel set of thermal, nuclear, and dose calculations and provided unclassified results to DOE for inclusion in this EIS. In some cases DOE used those results as input parameters for additional analyses. Representatives of the program participated throughout the review process to ensure the accurate presentation of information on naval spent nuclear fuel.

C.2.4 FISH AND WILDLIFE SERVICE

The Fish and Wildlife Service, a bureau of the U.S. Department of the Interior, has a role in the overall evaluation of the impacts from the Proposed Action under consideration in the repository EIS. Under the Endangered Species Act of 1973, as amended, the Fish and Wildlife Service has responsibility to determine if projects such as the proposed Yucca Mountain Repository would have an adverse impact on endangered or threatened species or on species proposed for listing. Any comments from the Secretary of the Interior on the EIS must accompany the Secretary of Energy's recommendation to the President on the Yucca Mountain site.

No endangered or proposed species occur on lands that would be needed for the repository. The desert tortoise is the only threatened species known to exist on this land, which lies at the northern edge of the range for desert tortoises (Buchanan 1997, pages 1 to 4). The repository would not need or impact any critical habitat.

To evaluate the potential for the proposed repository to affect the desert tortoise, DOE and the Fish and Wildlife Service are following a process that, in summary, includes three steps:

1. DOE submits a study (biological assessment) containing information on desert tortoise activities and habitat in the vicinity of the proposed project, a description of project activities that could affect the desert tortoise, and the potential for adverse impacts to desert tortoises or habitat. Based on this information, DOE will determine if the project would result in adverse impacts to the species.
2. DOE and the Fish and Wildlife Service will meet as necessary to discuss details of the potential for interaction between desert tortoises and project activities, and to consider appropriate protective measures DOE could take to reduce the potential for project impact to desert tortoises.
3. The Fish and Wildlife Service will issue a biological opinion that states its opinion on whether the proposed project may proceed without causing adverse impacts to the desert tortoise, jeopardizing the continued existence of the species, or resulting in harassment, harm, or death of individual animals. The biological opinion may contain protective measures and conditions that DOE would have to implement during construction, operation and monitoring, and closure of the proposed repository to minimize adverse impacts and the potential for tortoise deaths.

DOE, which has conducted site characterizations at Yucca Mountain since 1986, and the Fish and Wildlife Service have conducted previous consultation processes that addressed the potential for site characterization activities to affect the desert tortoise. These processes resulted in biological opinions, published in 1990 and 1997, that determined that site characterization activities could proceed without unacceptable harm to the desert tortoise and that the protective measures and conditions stated in the biological opinions should apply to DOE activities. None of the proposed repository land is critical habitat for tortoises. The current consultation process on the desert tortoise will build on the information gathered and the practices developed in the previous consultations, and on the positive results obtained.

Interaction

DOE is currently preparing a Biological Assessment to be submitted to the Fish and Wildlife Service.

C.2.5 NATIONAL MARINE FISHERIES SERVICE

The National Marine Fisheries Service exercises protective jurisdiction over aspects of the marine environment, including research activities, marine sanctuaries, and certain species protected by the Endangered Species Act. Potential DOE actions associated with transportation to the repository (for

example, barging and construction or modification of bridges and docking facilities) could require interaction with the National Marine Fisheries Service.

Interaction

DOE participated in an informal discussion that identified National Marine Fisheries Service jurisdiction relevant to the Yucca Mountain Project and potential project activities of jurisdictional interest to the National Marine Fisheries Service in fulfilling its responsibilities.

C.2.6 U.S. DEPARTMENT OF TRANSPORTATION

The U.S. Department of Transportation has the authority to regulate several aspects of the transportation of spent nuclear fuel and high-level radioactive waste to the proposed Yucca Mountain Repository. The general authority of the Department of Transportation to regulate carriers and shippers of hazardous materials includes packaging procedures and practices, shipping of hazardous materials, routing, carrier operations, equipment, shipping container construction, and receipt of hazardous materials (49 USC 1801; 49 CFR Parts 171 through 180).

Interaction

DOE and the Department of Transportation have exchanged letters and informal communications on topics pertaining to the proposed Yucca Mountain Project that are within the Department of Transportation's regulatory interest. DOE and the Department of Transportation have held informal discussions on the modeling techniques and analytical methods DOE used in its evaluation of transportation issues.

C.2.7 U.S. ENVIRONMENTAL PROTECTION AGENCY

The U.S. Environmental Protection Agency has two primary responsibilities in relation to the proposed Yucca Mountain Repository. It is responsible for promulgating regulations that set radiological protection standards for media that would be affected if radionuclides were to escape the confinement of the repository. In addition, the Agency oversees the National Environmental Policy Act process for Federal EISs. Council on Environmental Quality regulations implementing the National Environmental Policy Act specify procedures that agencies must follow and actions that agencies must take in preparing EISs. Depending on the level of concern that the Agency might have with environmental aspects of the Yucca Mountain Project Draft EIS, it can initiate a consultation between DOE and the Council on Environmental Quality. The Secretary of Energy's recommendation to the President must include both the Final EIS and the Environmental Protection Agency's comments on the EIS.

Interaction

DOE and the Environmental Protection Agency held a meeting at which DOE provided a briefing on its approach to the EIS and its scope and content. At that meeting, the Environmental Protection Agency described its EIS rating process, and personnel from the two agencies discussed methods for addressing EIS comments that the Agency might submit.

C.2.8 U.S. NUCLEAR REGULATORY COMMISSION

The Nuclear Waste Policy Act (42 USC 10101 *et seq.*) establishes a multistep procedure for reviews and decisions on the proposal to construct, operate and monitor, and close a geologic repository at Yucca Mountain. The final steps in this procedure require DOE to make an application to the U.S. Nuclear Regulatory Commission for authorization to construct a repository at Yucca Mountain and the Commission to consider this information and make a final decision within 3 years on whether to approve the application. The Nuclear Waste Policy Act directs the Commission to adopt this EIS to the

extent practicable in support of its decisionmaking process. Any Nuclear Regulatory Commission comment on this EIS must accompany the Secretary of Energy's recommendation to the President.

The Nuclear Regulatory Commission also has authority under the Atomic Energy Act of 1954, as amended, to regulate persons authorized to own, possess, or transfer radiological materials. In addition, the Commission regulates transportation packaging, transportation operations, and the design, manufacture, and use of shipping containers for radiological materials with levels of radioactivity greater than Department of Transportation Type A materials. Determination as to whether radiological materials are Type A or greater are made in accordance with a procedure set forth in 49 CFR 173.431.

Interaction

Discussions have been held on the purpose and need for the Proposed Action and on the status of the EIS. Interactions with the Nuclear Regulatory Commission will include those necessary to process any application to construct a repository at Yucca Mountain.

C.2.9 U.S. ARMY CORPS OF ENGINEERS

The Clean Water Act of 1977 (42 USC 1251 *et seq.*) gives the U.S. Army Corps of Engineers permitting authority over activities that discharge dredge or fill material into waters of the United States. If DOE activities associated with a repository at Yucca Mountain discharged dredge or fill into any such waters, DOE could need to obtain a permit from the Corps. The construction or modification of rail lines or highways to the repository would also require Section 404 permits if those actions included dredge and fill activities or other activities that would discharge dredge or fill into waters of the United States. DOE has obtained a Section 404 permit for site characterization-related construction activities it might conduct in Coyote Wash or its tributaries or in Fortymile Wash.

Interaction

Strategies for minimizing any impacts and obtaining permits have been discussed.

C.2.10 U.S. DEPARTMENT OF AGRICULTURE

The U.S. Department of Agriculture has the responsibility to ensure that the potential for Federal programs to contribute to unnecessary and irreversible conversion of farmlands to nonagricultural uses is kept to a minimum. Proposed Federal projects must obtain concurrence from the Natural Resource Conservation Service of the Department of Agriculture that potential activities would not have unacceptable effects on farmlands (7 USC 4201 *et seq.*).

Interaction

DOE has had written communication with the Department of Agriculture. The process has resulted in a concurrence that a repository at Yucca Mountain would not affect farmlands.

C.2.11 NATIVE AMERICAN TRIBES

Many tribes have historically used the area being considered for the proposed Yucca Mountain Repository, as well as nearby lands (AIWS 1998, page 2-1). The region around the site holds a range of cultural resources and animal and plant resources. Native American tribes have concerns about the protection of cultural resources and traditions and the spiritual integrity of the land. Tribal concerns extend to the propriety of the Proposed Action, the scope of the EIS, and opportunities to participate in the EIS process, as well as issues of environmental justice and the potential for transportation impacts (AIWS 1998, pages 2-2 to 2-26, and 4-1 to 4-12). Potential rail and legal-weight truck routes would follow existing rail lines and highways, respectively. The legal-weight truck route would pass through

the Moapa Indian Reservation and the potential rail line would pass near the Reservation. Potential routes for legal-weight and heavy-haul trucks would follow existing highways, and would pass through the Las Vegas Paiute Indian Reservation.

DOE Order 1230.2 recognizes that Native American tribal governments have a special and unique legal and political relationship with the Government of the United States, as defined by history, treaties, statutes, court decisions, and the U.S. Constitution. DOE recognizes and commits to a government-to-government relationship with Native American tribal governments. DOE recognizes tribal governments as sovereign entities with, in most cases, primary authority and responsibility for Native American territory. DOE recognizes that a trust relationship derives from the historic relationship between the Federal Government and Native American tribes as expressed in certain treaties and Federal law. DOE has and will consult with tribal governments to ensure that tribal rights and concerns are considered before taking actions, making decisions, or implementing programs that could affect tribes. These interactions ensure compliance with provisions of the American Indian Religious Freedom Act (42 USC 1996 *et seq.*), the Native American Graves Protection and Repatriation Act (25 USC 3001 *et seq.*), DOE Order 1230.2 (*American Indian Tribal Government Policy*), Executive Order 13007 (*Sacred Sites*), Executive Order 13084 (*Consultation and Coordination with Indian Tribal Governments*), and the National Historic Preservation Act (16 USC 470f).

Interaction

The Native American Interaction Program was formally begun in 1987. Representatives from the Consolidated Group of Tribes and Organizations have met in large group meetings twice yearly with DOE on a range of cultural and other technical concerns. Additionally, specialized Native American subgroups have been periodically convened to interact with DOE on specific tasks including ethnobotany, review of artifact collections, field archaeological site monitoring, and the EIS process.

The Consolidated Group of Tribes and Organizations consists of the following:

- *Southern Paiute*
 - Kaibab Paiute Tribe, Arizona
 - Paiute Indian Tribes of Utah
 - Moapa Band of Paiutes, Nevada
 - Las Vegas Paiute Tribe, Nevada
 - Pahrump Paiute Tribe, Nevada
 - Chemehuevi Paiute Tribe, California
 - Colorado River Indian Tribes, Arizona
- *Western Shoshone*
 - Duckwater Shoshone Tribe, Nevada
 - Ely Shoshone Tribe, Nevada
 - Yomba Shoshone Tribe, Nevada
 - Timbisha Shoshone Tribe, California
- *Owens Valley Paiute and Shoshone*
 - Benton Paiute Tribe, California
 - Bishop Paiute Tribe, California
 - Big Pine Paiute Tribe, California
 - Lone Pine Paiute Tribe, California
 - Fort Independence Paiute Tribe, California
- *Other Official Native American Organizations*
 - Las Vegas Indian Center, Nevada

Tribal representatives have prepared and submitted the *American Indian Perspectives on the Yucca Mountain Site Characterization Project and the Repository Environmental Impact Statement* (AIWS 1998, all). This document discusses site characterization at Yucca Mountain and the Proposed Action in the context of Native American culture, concerns, and views and beliefs concerning the surrounding region. It has been used as a resource in the preparation of the EIS; excerpts are presented in Chapter 4, Section 4.1.13.4, to reflect a Native American point of view. The issues discussed ranged from traditional resources to concerns related to the potential repository.

C.2.12 AFFECTED UNITS OF LOCAL GOVERNMENT

As defined by the NWPA, the affected units of local government are local governments (counties) with jurisdiction over the site of a repository. Concerns of the affected units of local government range from socioeconomic impacts to potential consequences of transportation activities. Nye County, Nevada, in which DOE would build the repository, is one of the affected units of local government. Others include Clark, Lincoln, Esmeralda, Mineral, Churchill, Lander, Eureka, White Pine, and Elko Counties in Nevada and Inyo County in California.

DOE has offered local governments the opportunity to submit documents providing perspectives of issues associated with the EIS. At Draft EIS publication, Nye County had prepared such a document. In addition, other documents related to the Yucca Mountain region have been prepared in the past by several local government units including Clark, Lincoln, and White Pine Counties.

Interaction

DOE has held formal meetings twice a year with the affected units of local government. These meetings have included discussions and status briefings on a range of issues of interest to local governments. DOE has also held numerous informal meetings with representatives. Documents have been received from units of local government.

C.2.13 NATIONAL PARK SERVICE

The National Park Service, which is a bureau of the U.S. Department of the Interior, is responsible for the management and maintenance of the Nation's national parks and monuments. The implementation of the Proposed Action could potentially affect the water supply in Death Valley National Park, which is downgradient from Yucca Mountain. The National Park Service, therefore, would have an interest in any water appropriation granted to DOE for the repository. In addition, the Park Service has expressed its interest in this EIS, its status, and the approach DOE has followed in developing the EIS.

Interaction

DOE and National Park Service representatives held a discussion during which they addressed Park Service concerns about water use for repository construction and operation.

C.2.14 STATE OF NEVADA

If DOE receives authorization to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain, DOE would need to obtain a range of permits and approvals from the State of Nevada. DOE would need to coordinate application processing activities with the State to complete the permitting processes. DOE could require permits or approvals such as the following:

- An operating permit for control of gaseous, liquid, and particulate emissions associated with construction and operation
- A public water system permit and a water system operating permit for provision of potable water

- A general permit for storm-water discharge
- A National Pollutant Discharge Elimination System permit for point source discharges to waters of the State
- A hazardous materials storage permit to store, dispense, use, or handle hazardous materials
- A permit for a sanitary and sewage collection system
- A solid waste disposal permit
- Other miscellaneous permits and approvals

DOE required similar permits and approvals from the State of Nevada to conduct site characterization activities at Yucca Mountain. DOE and the State coordinated on a range of activities, including an operating permit for surface disturbances and point source emissions, an Underground Injection Control Permit and a Public Water System Permit, a general discharge permit for effluent discharges to the ground surface, a permit for the use of groundwater, a permit from the State Fire Marshal for the storage of flammable materials, and a permit for operation of a septic system. DOE could apply for additional or expanded authority under the existing permits, where needed, if provisions for expansion became applicable. DOE or its contractors could also need to coordinate transportation activities, highway uses, and transportation facility construction and maintenance activities with the Nevada Department of Transportation.

Interaction

The State of Nevada has requested a formal briefing on this Draft EIS after its publication, and DOE has agreed to provide the briefing. DOE and the Nevada Department of Transportation personnel have had information discussions on Nevada transportation issues.

C.2.15 ADVISORY COUNCIL ON HISTORIC PRESERVATION AND NEVADA STATE HISTORIC PRESERVATION OFFICER

In the mid- to late-1980s, DOE, the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation discussed the development of a Programmatic Agreement to address DOE responsibilities under Sections 106 and 110 of the National Historic Preservation Act and the Council's implementing regulations. These discussions led to a Programmatic Agreement between DOE and the Advisory Council on Historic Preservation (DOE 1988, all) that records stipulations and terms to resolve potential adverse effects of DOE activities on historic properties at Yucca Mountain. The activities covered by the Agreement include site characterization of the Yucca Mountain site under the NWPA and the DOE recommendation to the President on whether or not to develop a repository, informed by a final EIS prepared pursuant to the National Environmental Policy Act and the NWPA.

Although not a formal signatory, the Nevada State Historic Preservation Officer has the right at any time, on request, to participate in monitoring DOE compliance with the Programmatic Agreement. In addition, DOE must provide opportunities for consultations with the Advisory Council on Historic Preservation, the Nevada State Historic Preservation Officer, and Native American tribes as appropriate throughout the process of implementing the Agreement. DOE submits an annual report to the Advisory Council and the Nevada State Historic Preservation Officer describing the activities it conducts each year to implement the stipulations of the Programmatic Agreement. This report includes a description of DOE coordinations and consultations with Federal and State agencies and Native American Tribes on historic and culturally significant properties at Yucca Mountain.

DOE will continue to seek input from the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation, and will interact appropriately to meet the reporting and other stipulations of the Programmatic Agreement.

Interaction

DOE has submitted annual reports to the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation and has provided opportunities for consultations with agencies and Native American Tribes as appropriate in accordance with the terms of the Programmatic Agreement.

C.3 Requests for Cooperating Agency Status

This EIS addresses a range of potential activities that are of potential concern to other agencies and to Native Americans. Governmental agencies and Native American tribes participated in the EIS process by submitting scoping comments and may submit comments on this Draft EIS. Representatives of Native American tribes have submitted a document that provides their perspective on the Proposed Action. Moreover, DOE has invited local governments in Nevada to submit reference documents providing information on issues of concern.

DOE is the lead agency for this EIS. Regulations of the Council on Environmental Quality allow the lead agency to request any other Federal agency that has jurisdiction by law or special expertise regarding any environmental impact involved in a proposal (or a reasonable alternative) to be a cooperating agency for an EIS (40 CFR 1501.6 and 1508.5). The regulations also allow another Federal agency to request that the lead agency designate it as a cooperating agency. Finally, the regulations allow state or local agencies of similar qualifications or, when the effects are on a reservation, a Native American Tribe, by agreement with the lead agency to become a cooperating agency (40 CFR 1508.5). Table C-2 lists requests for cooperating agency status and other proposals.

If the lead agency designates a cooperating agency, the lead agency's duties toward the cooperating agency include the following:

- Requesting early participation in the National Environmental Policy Act (that is, EIS) process
- Using any environmental analysis or proposal provided by a cooperating agency with legal jurisdiction or special expertise to the greatest extent possible consistent with its responsibilities as a lead agency
- Meeting with a cooperating agency when the cooperating agency requests

A cooperating agency's duties include the following:

- Participating early in the National Environmental Policy Act process
- Participating in the scoping process
- If requested by the lead agency, assuming responsibility for developing information and preparing environmental analyses including portions of the EIS for which the cooperating agency has special expertise
- If the lead agency requests, making staff support available
- Using its own funds, except the lead agency is to fund major activities or analyses it requests to the extent available

Table C-2. History of requests for cooperating status and similar proposals (page 1 of 4).

Agency	Request/statement/offer	Date	DOE response	Date
U.S. Department of the Navy	Request for cooperating agency status (Guida 1995, all)	May 23, 1995	DOE can draw on existing information from Navy participation in other EISs. DOE will conduct close consultations to ensure accuracy of information used. DOE declines cooperating agency status (Dixon 1995a, all).	July 10, 1995
U.S. Department of the Interior, National Park Service	Request for cooperating agency status (Martin 1995, all)	September 21, 1995	DOE prefers to address NPS comments or issues related to the Death Valley National Park through close consultations between the two agencies. DOE declines cooperating agency status (Dixon 1995b, all).	November 11, 1995
Nye County	Request for cooperating agency status (McRae 1995, all) (Bradshaw 1995, all) (DOE 1997, all) (Bradshaw 1998, all)	August 15, 1995 October 4, 1995 December 5, 1995 July 30, 1998	DOE expresses appreciation for the County's interest and desire to participate, commits to active consultations with Nye County and other entities on selected issues during EIS development, outlines general elements of consultation and coordination contemplated by DOE. DOE declines cooperating agency status (Barnes 1995a, all) (Barnes 1995b, all) (Barrett 1998, all).	November 21, 1995 December 1, 1995 September 24, 1998
Churchill County	Request for cooperating agency status (Regan 1995, all)	May 30, 1995	DOE does not foresee the need to establish formal MOUs to govern Churchill County's or other parties' participation in the NEPA process for the Repository EIS. CEQ and DOE regulations provide sufficient guidance for participation of all affected units of local government and members of the public. DOE describes steps being taken to ensure all interested and potentially affected organizations and individuals have early and equal opportunity to participate in EIS development. DOE declines cooperating agency status (Barnes 1995c, all).	July 21, 1995

Table C-2. History of requests for cooperating status and similar proposals (page 2 of 4).

Agency	Request/statement/offer	Date	DOE response	Date
Lincoln County	Proposal for a cooperative agreement with DOE in assessing the continued development of rail and highway route options to the Yucca Mountain site (Wright 1996, all).	April 22, 1996	DOE expresses appreciation for the County's desire to participate in DOE transportation planning activities, but indicates that, because much of the planning will be done to support the EIS, a cooperative agreement would be unnecessary. DOE identifies active consultation and coordination as an objective of the EIS process (Benson 1996, all).	August 2, 1996
Nuclear Regulatory Commission	NRC does not intend to participate as a cooperating agency (Holonich 1995, all)	March 1, 1995	DOE sent no response to this letter.	NA
Nuclear Regulatory Commission	NRC sent a letter (July 7, 1997) to the Navy. The NRC letter responded to a Navy transmission to the NRC of information on naval spent nuclear fuel. The information had been prepared for EIS use. In its letter, the NRC indicated that it would evaluate the information as part of prelicensing consultations with DOE on waste form issues but that, because NRC is required to review and adopt any EIS submitted as part of a DOE License Application, including information on naval SNF, NRC staff does not intend to formally review and comment on the Navy data. NRC sent DOE a copy of its response to the Navy (Stablein 1997, all).	August 22, 1996	NA	NA

Table C-2. History of requests for cooperating status and similar proposals (page 3 of 4).

Agency	Request/statement/offer	Date	DOE response	Date
U.S. Department of Air Force	Letter from USAF to the State of Nevada, stating that DOE has no obligation to consult with USAF regarding the transportation options DOE elects to evaluate as a result of NEPA public scoping comments, including the Caliente-Chalk Mountain heavy-haul route through Nellis Air Force Range. USAF acknowledged its close interaction with YMP and its intent to “continue this close relationship” (Esmond 1997, all).	September 4, 1997	NA	NA
Council of Energy Resources Tribes	Concept paper for Native American participation in the production of the YMP EIS (Burnell 1996, all).	June 19, 1996	DOE expressed thanks for the concept paper, described the status of the EIS (deferred during Fiscal Year 1996), committed to consideration of comments expressed in the concept paper along with all other comments received during the public scoping process. DOE stated that it would prepare a scoping comment summary and make the summary publicly available, indicated its active consideration of various approaches to consultations with other agencies and Native American tribes, including possible preparation of an EIS-referenceable document (Dixon 1996, all).	July 26, 1995
Advisory Council on Historic Preservation	Expressed thanks for DOE invitation to participate in the EIS process. Indicated desire to assist with development of the EIS and availability to assist DOE in complying with environmental review requirements; expressed intent to provide comments on the draft EIS (Nissley 1995, all).	October 12, 1995	DOE did not prepare a response to this formal scoping comment.	NA

Table C-2. History of requests for cooperating status and similar proposals (page 4 of 4).

Agency	Request/statement/offer	Date	DOE response	Date
Timbisha Shoshone Tribe of Death Valley, California	Letter to President Clinton expressing opposition to YMP; enclosed a Tribal Resolution condemning the siting of YMP; requested active involvement/consultation at a government-to-government level (Boland 1996, all).	August 14, 1996	DOE acknowledged expressed concerns and Tribal Resolution; identified ongoing Native American Interaction Program as vehicle to promote consultations and protection of cultural resources in YMP area; stated that comments from tribal governments were actively solicited during scoping period and Timbisha Shoshone will be afforded opportunity to comment on Draft EIS following its publication (Barnes 1996, all).	11/12/96
National Congress of American Indians	Letter expressed thanks to DOE (Secretary O'Leary) for invitation to meeting of public and private officials to exchange views on DOE management of SNF and radioactive waste, described NCAI as an organization, described Federal Government's fiduciary duty to tribes as sovereign nations, discussed lack of "affected status" for tribes under the NWPA, state Secretary O'Leary's three commitments to Federally recognized tribes in the Yucca Mountain area during the last year, including inclusion in future Yucca Mountain consultations, requested that DOE and Congress mandate a participatory role for tribal governments as part of any proposals to change the NWPA (Gaiashkibos 1995, all).	March 1, 1995	NA	NA

- a. Abbreviations: CEQ = Council on Environmental Quality; MOU = Memorandum of Understanding; NA = not applicable; NCAI = National Congress of American Indians; NEPA = National Environmental Policy Act; NPS = National Park Service; NRC = U.S. Nuclear Regulatory Commission; NWPA = Nuclear Waste Policy Act; SNF = spent nuclear fuel; USAF = U.S. Air Force; YMP = Yucca Mountain Project.

Several agencies, tribes, or tribal organizations have either requested cooperating agency status for this EIS, made comparable proposals for participation, or stated positions in regard to the extent of their participation. Table C-2 summarizes agency requests, proposals, and position statements together with the DOE responses, if appropriate.

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