

**MEMORANDUM OF UNDERSTANDING**  
**Between the**  
**U.S. BUREAU OF LAND MANAGEMENT,**  
**NEW MEXICO STATE OFFICE**  
**and the**  
**U.S. FOREST SERVICE,**  
**SOUTHWESTERN REGION**  
**and the**  
**NEW MEXICO**  
**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the U.S. Bureau of Land Management, New Mexico State Office (BLM), and USDA Forest Service, Southwestern Region (U.S. Forest Service) (also, Federal Agency or, together, Federal Agencies), and the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) pursuant to Section 307(b) of the Federal Land Policy and Management Act of 1976, 90 STAT 2766, 43 U.S.C. 1737 *et seq.*, and the Organic Administration Act of June 4, 1897 (30 STAT 36, 16 U.S.C. 478 and 551). This MOU supersedes all previous versions.

Authorities:

1. BLM's authority to enter into and implement this MOU is Title 43 of the Code of Federal Regulations, Subparts 3802 and 3809, "Surface Management Under the General Mining Laws,"
2. U.S. Forest Service's authority to enter into and implement this MOU is Title 36 of the Code of Federal Regulations, Part 228, Subpart A, "Locatable Minerals".
3. EMNRD's authority to enter into and implement this MOU is the New Mexico Mining Act (NMSA 1978, §§ 69-36-1 to 69-36-20) (NMMA) and the New Mexico Mining Act Rules (19. 10 NMAC) (MA Rules).

Title: Surface management, utilization, and reclamation of lands affected by exploration and mining of federally-owned locatable minerals within the State of New Mexico.

- I. **PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to establish cooperative procedures among BLM, the U.S. Forest Service and EMNRD for the surface management, use, and reclamation of lands affected by exploration and mining of federally-owned locatable minerals within the State of New Mexico. It provides for the most efficient use of each agency's resources and the reduction of duplicative requirements. The parties acknowledge that, while BLM and U.S. Forest Service have land management responsibilities, the NMMA, the MA Rules, and EMNRD's administration of them are not land-use provisions or activities, but are environmental in nature. This MOU is entered into in accordance with the following provisions.
- II. **SCOPE:** This MOU shall be conducted with consideration for: (1) multiple use and sustained yield of resources and environmental protection; (2) all other program activities of the agencies involved; and, (3) consistency with state, local, and federal land use plans and zoning ordinances.

### III. DEFINITIONS:

- A. Casual Use: Under federal regulations, activities that result in no or negligible disturbance to the land or resources and generally involve hand tools.
- B. Cessation Order (CO): Under MA Rules, an order requiring an Operator to cease Operations for violations or for failure to complete abatement requirements of a Notice of Violation.
- C. Closeout Plan: Under MA Rules, a detailed description of proposed reclamation and end-use submitted as part of some Permit applications.
- D. Financial Assurance (also Financial Guarantee or Bonding): The monetary obligation against the inability, refusal, or failure otherwise of an Operator or Permittee to comply with reclamation requirements. Operational thresholds requiring financial assurance differ among the three agencies.
- E. Locatable Minerals: Federally-owned minerals (generally, but not exclusively, metallic or "hard rock" minerals) that may be explored for and mined under the authority of the General Mining Law of 1872, as amended.
- F. Notice (BLM): Submitted by an Operator for proposed exploration operations that are greater than Casual Use and that will cause surface disturbance of five acres or less.
- G. Notice of Intent (U.S. Forest Service): Referred to as a "NOI" in this document. Submitted by an Operator for proposed exploration or mining operations determined not likely to cause significant disturbance of surface resources.
- H. Noncompliance Order (NO): An order issued by BLM for noncompliance with BLM regulations or any provision of a Notice or Plan of Operations. Failure to timely comply may result in a Suspension Order.
- I. Notice of Noncompliance (NON): A notice issued by the U.S. Forest Service for noncompliance with U.S. Forest Service regulations or the terms of a Plan of Operations.
- J. Notice of Violations (NOV): A notice issued by EMNRD for a violation under the MA Rules. The NOV may result in a monetary assessment. Failure to comply with a NOV may result in a Cessation Order.
- K. Operations: For federal Locatable Minerals, all functions, work, and activities in connection with prospecting, exploration, development, mining or processing, reclamation and all uses reasonably incident thereto.
- L. Operator: As defined in federal regulations, an entity conducting or proposing to conduct operations.
- M. Permit: Required to be applied for and approved for the conduct of Operations under the MA Rules. There are seven Permits: General, Exploration Operations, Existing Mining Operations, New Mining Operations, Minimal Impact Exploration Operations, Minimal Impact Existing Mining Operations, and Minimal Impact New Mining Operations.

- N. Permittee: The person or entity issued a Permit under the MA Rules or required to have a Permit under MA Rules.
- O. Plan of Operations (BLM): Submitted by an Operator for proposed mining operations that exceed Casual Use; for exploration operations that disturb over five acres; for bulk sampling of 1,000 tons more; and for all operations that exceed Casual Use within certain special status areas.
- P. Plan of Operations (U.S. Forest Service): Submitted by an Operator for operations that will likely cause significant disturbance of surface resources.
- Q. Suspension Order (SO): An order issued to an Operator under the BLM regulations for failure to timely comply with a Noncompliance Order. An immediate suspension may be issued without a Noncompliance Order under certain circumstances.

#### **IV. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

The BLM and U.S. Forest Service, as federal agencies, and EMNRD, as a state agency, each have the responsibility, among other things, to ensure that mining and exploration activities conducted on federally managed lands within the exterior borders of the State of New Mexico are undertaken so as to minimize and manage the environmental impact of those activities. To that end, each party is charged with the authority to implement regulations promulgated pursuant to each party's governing statute(s). This MOU sets forth a framework for cooperative efforts between the federal agencies and EMNRD, with the goal of efficient administration and full implementation of all applicable regulations. In consideration of the above premises, the parties agree as follows:

#### **V. WHEN EITHER BLM OR U.S. FOREST SERVICE, OR BOTH, AND EMNRD HAVE JURISDICTION OVER AN EXISTING OR PROPOSED MINING OR EXPLORATION ACTIVITY, IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

##### **A. PROCESSING PROCEDURES**

1. The agency first contacted (EMNRD or Federal Agency) with an inquiry regarding the procedure for obtaining permission to conduct Operations on federal land will:
  - a. Advise the Permittee/Operator that there are separate federal and EMNRD requirements, as follows: a Permit under EMNRD rules; and Casual Use, a Notice, NOI, or a Plan under BLM or U.S. Forest Service regulations; that federal and EMNRD requirements are not identical and that all applicable requirements must be satisfied; and that the Permittee/Operator must discuss its proposed operation with all involved agencies;
  - b. Inform the Permittee/Operator where federal rules and MA Rules may be obtained;
  - c. Advise the Permittee/Operator that the information required by EMNRD may be separately provided to EMNRD and the information required by the Federal Agency may be separately provided to the Federal Agency or the information may be consolidated and submitted to both.
2. Each agency will coordinate its processing with the other affected agency or agencies through the transmittal of copies of correspondence sent to the Permittee/Operator, electronic mail, telephone calls, or meetings. At a minimum, each agency will notify the other:

- a. upon receipt of a state Permit application, or a federal Notice, NOI, or Plan of Operations; or
  - b. when a Permit, Notice, NOI, or Plan is approved or acknowledged.
3. An approved EMNRD General Permit for suction dredging operations may be submitted to BLM in lieu of a Notice or Plan of Operations for such operations under BLM regulations (3809.31(b)).

**B. FINANCIAL ASSURANCE (ALSO FINANCIAL GUARANTEE OR BONDING)**

1. The agency first contacted (EMNRD or Federal Agency) will advise the Permittee/Operator:
  - a. That EMNRD and the Federal Agencies have different operational thresholds for Financial Assurance;
  - b. That if one agency requires Financial Assurance and the other(s) does not, Financial Assurance will be obtained that meets the requiring agency's requirements;
  - c. That if both (all) affected agencies require financial assurance, Financial Assurance that covers both (all) requirements will be necessary.
2. If Financial Assurance is required under both EMNRD rules and the Federal Agency regulations, a single financial instrument is preferred.
3. Financial Assurance, held as one instrument, intended to fulfill both EMNRD and the Federal Agency requirements (joint Financial Assurance) must meet the following:
  - a. Financial Assurance must meet both federal and state requirements as to amount, type, term and conditions, and be redeemable by both the Federal Agency or Agencies and the state;
  - b. The amount, type, terms and conditions shall be jointly concurred with by EMNRD and the affected Federal Agency or Agencies;
  - c. The amount, type, terms and conditions may not be adjusted without concurrence of the Federal Agency or Agencies and EMNRD;
  - d. Joint Financial Assurance or portions thereof shall not be released without concurrence of the Federal Agency or Agencies and EMNRD;
  - e. If any party to this MOU finds it necessary or desirable to proceed with forfeiture of all or a portion of the joint Financial Assurance according to that agency's rules or regulations, the agency, prior to taking any formal action, shall seek concurrence of the other affected agency or agencies.
4. If a Permittee/Operator has Financial Assurance with only one agency or holds separate Financial Assurance instruments with more than one agency, and an agency finds it necessary to proceed with forfeiture of all or a portion of that agency's Financial Assurance, the agency, prior to taking any formal action, shall notify the other agency or agencies.

C. COORDINATION WITH OTHER AGENCIES

Other regulatory agencies may need to review federal Notices, NOIs, or Plans of Operation or EMNRD permit applications for compliance with their rules and may require their own authorizations. The U.S. Forest Service, BLM and EMNRD, respectively, will coordinate with these other federal or state agencies.

D. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The Federal Agencies are responsible for compliance with the requirements of NEPA. EMNRD will cooperate with the Federal Agencies in the preparation of NEPA documents to the extent possible within state law.

E. INSPECTIONS

1. Before an inspection of operations is conducted by either the Federal Agency or EMNRD, the inspecting agency will notify the other(s), if practical, that an inspection is to be conducted. Inspections should be jointly conducted whenever possible.
2. Copies of reports or Permittee/Operator correspondence involving inspections of federal locatable mineral operations will be sent by the inspecting agency to the other affected agency or agencies, if requested.

F. ENFORCEMENT

1. Whether discovered separately or jointly, the Federal Agency and EMNRD will promptly discuss the nature of all suspected violations to determine if the Operator/Permittee is or may be in noncompliance with federal or state agencies' rules, regulations, or standards.
2. Enforcement action for a violation determined to be unique to federal regulations/standards or unique to EMNRD rules/standards shall be pursued solely by the affected agency under its own rules or regulations (*e.g.*, the Federal Agency issues a NO or NON; EMNRD issues a NOV). The issuing agency will advise the other affected agency or agencies.
3. If it is determined that a violation is common to both EMNRD and a Federal Agency's rules, regulations, or standards, the violation may be pursued by either EMNRD, the Federal Agency, or both. In any case, any NOV, SO, NON, NO, or CO issued by a party to this MOU shall be forwarded by the issuing party to the non-issuing party.

Follow-up inspections to determine compliance will be coordinated between EMNRD and the Federal Agency. The issuing party will notify the non-issuing party when compliance is obtained

#### G. PUBLIC NOTIFICATION AND PARTICIPATION

Each agency will initiate notification and public participation requirements under its own rules or regulations and, to the extent possible, issue joint notifications and conduct joint meetings or hearings that satisfy both federal and state requirements.

#### H. COORDINATION

1. BLM, the U.S. Forest Service and EMNRD representatives will meet, at a minimum, once a year to discuss operations administered under this MOU. Sponsorship of each meeting will rotate among the three agencies. Each meeting will have a set agenda addressing, at a minimum, the status of all active and pending operations, inspections, and enforcement actions, to the extent the foregoing are subject to this MOU.
2. Each agency will promptly inform the other agencies of any changes in rules, regulations, or policy that would affect the provisions of this MOU.

#### I. DISAGREEMENT

When there is a disagreement between agencies as to any procedure under this MOU, negotiations will be undertaken to resolve the disagreement, including involvement of the signatories of this MOU, if necessary. These negotiations will not restrict an agency from taking action in accordance with its authority.

#### J. EXCEPTIONS

An exception may be allowed to any part of this MOU if approved in writing by the signatories of the agencies involved.

#### K. LIMITATIONS AND APPROPRIATIONS

1. Nothing in this MOU shall be construed as increasing, limiting, or modifying, in any way, the statutory or regulatory authorities and responsibilities of BLM, the U.S. Forest Service, or EMNRD, or bind them to perform beyond their respective authorities, or limit their ability to perform their respective duties or require any agency to assume or expend any sum of money in excess of available appropriations.
2. The terms of this MOU are contingent upon sufficient appropriations and authorization by the U.S. Congress, the U.S. Departments of Interior and Agriculture, and the New Mexico State Legislature for the performance hereof. If sufficient appropriations and authorization are not made, this MOU shall terminate upon written notice from the affected agency to the other agencies in accordance with Section N.

- L. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

<b>New Mexico EMNRD Program Contact</b>	<b>New Mexico EMNRD Administrative Contact</b>
Name: Holland Shepherd Address: 1220 S. St. Francis Dr. City, State, Zip: Santa Fe, NM 87505 Telephone: (505) 476-3437 FAX: (505) 476-3402 Email: <a href="mailto:holland.shepherd@state.nm.us">holland.shepherd@state.nm.us</a>	Name: Xavier Rodriguez Address: 1220 S. St. Francis Dr. City, State, Zip: Santa Fe, NM 87505 Telephone: (505) 476-3253 FAX: (505) 476-3409 Email: <a href="mailto:xavier.rodriguez@state.nm.us">xavier.rodriguez@state.nm.us</a>

<b>U.S. Bureau of Land Management Program Contact</b>	<b>U.S. Bureau of Land Management Administrative Contact</b>
Name: Bill Auby Address: 301 Dinosaur Trail City, State, Zip: Santa Fe, NM 87508 Telephone: 505-954-2159 FAX: 505-954-2079 Email: <a href="mailto:Bill_Auby@blm.gov">Bill_Auby@blm.gov</a>	Name: Eileen Griego Vigil State Records Administrator Address: 301 Dinosaur Trail City, State, Zip: Santa Fe, NM 87508 Telephone: 505-954-2129 FAX: 505-954-2079 Email: <a href="mailto:evigil@blm.gov">evigil@blm.gov</a>

<b>U.S. Forest Service Program Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Name: Michael A. Linden Regional Geologist Address: 333 Broadway Blvd., SE City, State, Zip: Albuquerque, NM 87102 Telephone: (505) 842-3158 FAX: (505) 842-3152 Email: <a href="mailto:mlinden@fs.fed.us">mlinden@fs.fed.us</a>	Name: Carmen Melendez Grants & Agreements Specialist Address: 333 Broadway Blvd., SE City, State, Zip: Albuquerque, NM 87102 Telephone: (505) 842-3161 FAX: (505) 842-3111 Email: <a href="mailto:cmelendez@fs.fed.us">cmelendez@fs.fed.us</a>

- M. **NON-LIABILITY.** No party to this MOU assumes liability for any third party claims for damages or otherwise arising out of this MOU.
- N. **NOTICES.** Any communication between parties hereto affecting the operations covered by this MOU is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Contact, at the address specified in this MOU.

To the BLM Program Contact, at the address specified in this MOU.

To the EMNRD Program Contact, at the address specified in this MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date recited in the notice, whichever is later. The name of the Program Contact, Administrative Contact or authorized representative may be changed unilaterally by the relevant party upon serving written notice of same to the other parties to this MOU as required herein.

- O. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
- P. ENDORSEMENT. Any contribution made by any party under this MOU does not by direct reference or implication convey any other party's endorsement of the contributing party's products or activities.
- Q. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purposes of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services or property among the parties require execution of separate agreements and are contingent upon the availability of appropriated funds. These activities must be independently authorized; this MOU does not provide that authority. Each party operates under its own laws, regulations, and policies, subject to the availability of appropriated funds. Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.
- R. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this MOU, or benefits that may arise therefrom, either directly or indirectly.
- S. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to either Freedom of Information regulations (5 U.S.C. 552) or the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-8, respectively, for the federal agencies or EMNRD.
- T. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- U. DEBARMENT AND SUSPENSION. EMNRD shall immediately inform the Federal Agencies if it or any of its principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 C.F.R. Part 180. Additionally, should EMNRD or any of its principals receive a transmittal letter or other official federal notice of debarment or suspension, then it shall notify the Federal Agencies without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- V. MODIFICATIONS. Modifications of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- W. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through November 1, 2020, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials. This MOU will be reviewed jointly, by the parties, once every five years.

X. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in Section L of this MOU and identified below are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of last date written below.



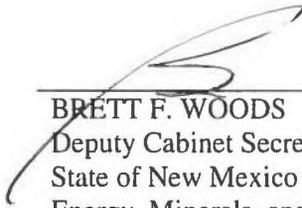
ADEN SEIDLITZ  
Acting Director  
U.S. Bureau of Land Management  
New Mexico State Office

12/2/15  
Date



SANDY L. WATTS  
Deputy Regional Forester  
U.S. Forest Service  
Southwestern Regional Office

11/19/15  
Date



BRETT F. WOODS  
Deputy Cabinet Secretary  
State of New Mexico  
Energy, Minerals, and Natural Resources Department

11-2-15  
Date

The authority and format of this instrument have been reviewed and approved for signature.



MONICA L. MARTINEZ  
U.S. Forest Service Grants & Agreements Specialist

11/13/2015  
Date