

## STAFF ANALYSIS OF PUBLIC COMMENTS ON THE PROPOSED WYOMING AGREEMENT

Letter No.	Commenter	Affiliation	ADAMS Accession No.
1	Anonymous	Unknown	ML18179A149
2	Janet Schlueter	Nuclear Energy Institute	ML18184A348
3	Anonymous	Unknown	ML18206A756
4	Anonymous	Unknown	ML18206A757
5	Anonymous	Unknown	ML18206A758
6	John Cash	UR Energy	ML18208A433
7, 9	Talia Martin	Shoshone-Bannock Tribe	ML18200A063 ML18214A772
8	Shannon Anderson	Powder River Basin Resource Council	ML18214A771
10	Micah Looper	Cheyenne and Arapaho Tribes	ML18214A770
11	Jeffrey Shuren	Center for Device and Radiological Health Food & Drug Administration	ML18221A303

### **Summary of Comments on the Proposed Agreement**

Ten commenters submitted comment letters in response to the four *Federal Register* Notices requesting public comment on the draft staff assessment and the proposed Agreement with the State of Wyoming. The NRC received comments from two commenters supporting the proposed Agreement, three commenters opposing the proposed Agreement, three commenters that did not state an opinion, and two commenters that did not provide statements related to the proposed Agreement. The most significant comments that oppose the Agreement were provided by two Tribes. These Tribes expressed concern that the transfer of regulatory authority to Wyoming would result in the end of tribal consultation with the federal government on licensing actions involving uranium mills. The Tribes further expressed concern that the NRC's review of the proposed Agreement did not consider tribal consultation. Finally, the Tribes noted that Wyoming is not required to consult with tribes under the Agreement nor does the State have separate tribal consultation requirements. The NRC staff has analyzed and responded to

each of the 32 individual comments in the table below.

Based on the NRC staff's review of the comments, the staff concluded that, as drafted, the proposed Agreement is adequate to protect public health and safety and compatible with NRC requirements, hence, no changes were made to the staff assessment or the proposed Agreement.

**Comment Resolution Table for Section 274b Agreement with State of Wyoming:  
NRC Staff Assessment of a Proposed Agreement  
Between the NRC and the State of Wyoming (NRC Docket ID: NRC-2018-0104)**

Comment No.	Commenter	Comment Letter	Comment	Comment's Position on Agreement	Comment Response
1	Anonymous	1	Commenter asked if the Wyoming Agreement would have any impact on Uranium One Mining company's exports of materials or the disposal of tailings as a result of its operation within the USA.	neutral	Under Article II.A.9 of the proposed Agreement, jurisdiction over the export of licensed material will remain with the NRC. The Wyoming Agreement would change the regulatory authority for Uranium One's licensed activities in the State of Wyoming. Uranium One's licensed operations in Wyoming including disposal of mill tailings would be under the jurisdiction of the State of Wyoming and subject to the State's regulations. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
2	NEI	2	Commenter is confident that uranium recovery operations in Wyoming will continue to be regulated in a manner that adequately protects public health and safety and the	support	The commenter supports the proposed Agreement. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.

			environment. Commenter commends State officials on establishing a comprehensive regulatory program with well-trained staff in a relatively short period of time.		
3	NEI	2	Commenter commends NRC staff on its expeditious review and processing of the State's formal request and Agreement application. Both parties have worked together in an effective and efficient manner to reach this important milestone in the Agreement application process.	support	The commenter supports the proposed Agreement. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
4	NEI	2	Commenter notes that uranium recovery licensees transferring to Wyoming will pay reduced regulatory fees—which is a significant benefit during these	support	The commenter supports the proposed Agreement. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.

			economically stressed times.		
5	NEI	2	<p>Commenter notes that transferring almost all licensees in one fee category (i.e., uranium recovery) from NRC to an Agreement State is unprecedented and raises significant budgetary concerns for those licensees remaining under NRC jurisdiction. NRC should be transparent as it right sizes the budget to address this significant change in workload and minimize the financial burden to the remaining licensees as NRC promulgates the fiscal year 2019 fee rule.</p>	neutral	<p>The NRC recognizes the impact of the Wyoming Agreement on the uranium recovery fee categories, has adjusted its Fiscal year 2019 budget proposal accordingly, and is evaluating options to reduce the fee burden on the licensees that will remain under NRC jurisdiction. The NRC's proposed fees are published for public comment every year. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.</p>
6	Anonymous	3	<p>Commenter provided a quote from the President.</p>	out-of-scope	<p>The NRC is not providing a response to this comment because it is out of scope. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.</p>

7	Anonymous	4	Neither the NRC's analysis nor the Wyoming application address the NRC's regulations at 10 CFR Part 37. The NRC should require the State of Wyoming to have regulations for the security of byproduct material.	oppose	Part 37 does not apply to the radioactive material covered under this Agreement. The radioactive materials covered under Part 37 are the 16 specific radionuclides listed in Appendix A, Table 1 "Category 1 and Category 2 Threshold." The radionuclides on this table are not the uranium or thorium isotopes covered by the proposed Agreement. Security requirements for radioactive material covered under the proposed Agreement are included in 10 CFR Part 20 and in the compatible Wyoming regulations. NRC will continue to regulate all other non-11e.(2) byproduct materials in the State of Wyoming, such as those used for medical, academic, and industrial purposes after the Agreement with Wyoming goes into effect. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
8	Anonymous	4	The NRC should make information on the compatibility categories for its regulations available in the docket and allow more time for commenting on the application.	oppose	Information on compatibility and compatibility categories is available on NRC's website and in ADAMS. The NRC staff did not grant the extension request. General information on NRC compatibility categories is publicly available and can be found in Management Directive 5.9 "Adequacy and Compatibility of Program Elements for Agreement State Programs" ( <a href="https://scp.nrc.gov/procedures/md0509.pdf">https://scp.nrc.gov/procedures/md0509.pdf</a> ). Specific information on the compatibility categories of individual NRC regulations are also publicly available at <a href="https://scp.nrc.gov/regtoolbox.html">https://scp.nrc.gov/regtoolbox.html</a> . A specific compatibility table for the Wyoming regulations can be found in Appendix B of subsection 4.2 of the State's application (ADAMS Accession

					No. ML17319A924). The NRC does not create a docket for the Agreement process that is similar to a licensing docket. Instead, information on the Wyoming Agreement and the NRC's review of the application and regulations has been posted on the NRC website since the fall of 2017 ( <a href="https://www.nrc.gov/about-nrc/state-tribal/agreement-states/wyoming.html">https://www.nrc.gov/about-nrc/state-tribal/agreement-states/wyoming.html</a> ). In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
9	Anonymous	5	Comment referenced a website unrelated to the Wyoming Agreement.	out-of-scope	This comment raised an issue outside the scope of the Wyoming Agreement. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
10	UR-Energy	6	Commenter agrees with NRC staff's assessment that the Wyoming Uranium Recovery Program staff are qualified by way of education and experience to manage the program in a manner that is protective of the environment, public and workers and in compliance with federal regulations	support	The commenter supports the proposed Agreement. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.

11	UR-Energy	6	Commenter agrees with NRC staff's assessment that the Wyoming Uranium Recovery Program staff have developed regulations that are thorough, protective of public health and safety, and compatible with NRC programs for the regulation of Agreement materials.	support	The commenter supports the proposed Agreement. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
12	Shoshone-Bannock Tribes	7	Commenter does not support any delegation of any federal agency or Commission of their permitting or any other federal decision-making authority to a State. Permitting and regulation of uranium or related mining or processing activities must remain with the federal agency or Commission.	oppose	Under Section 274d. of the AEA when the Commission determines an Agreement is adequate to protect public health and safety from radiological hazards and compatible with the NRC's regulatory program, the NRC is then required to discontinue its regulatory authority over agreement material. That authority is then assumed by the Agreement State. The State is thereafter solely responsible for implementation of its program. Under Section 274j. of the AEA, the NRC cannot assert regulatory authority over the material covered under the Agreement or a State's licensing actions unless the NRC goes through a specific process to re-assert authority over the agreement material. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.



13	Shoshone-Bannock Tribes	7	The Tribes prefer to establish a direct government-to-government relationship with the NRC.	neutral	Notwithstanding the Wyoming Agreement, the NRC will continue developing a direct government-to-government relationship with the Shoshone-Bannock Tribe. The NRC will continue to have regulatory authority over all other radioactive materials not transferred to the State of Wyoming, which include radioactive materials used for medical, academic, and industrial purposes. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
14	Shoshone-Bannock Tribes	7	The Trust Responsibility to Tribes requires federal agencies to consult with tribal governments regarding matters affecting important tribal interests. The Tribes are concerned that the Agreement effectively withdraws the federal agency's tribal consultation process.	oppose	The NRC exercises its Trust Responsibility in the context of its authorizing statutes including the AEA, the Energy Reorganization Act of 1974, the Nuclear Waste Policy Act of 1982, the Low-Level Radioactive Waste Policy Act of 1985, and the Uranium Mill Tailings Radiation Control Act of 1978. As an independent regulatory agency that does not hold in trust tribal lands or assets or provide services to federally recognized Tribes, the NRC fulfills its Trust Responsibility through implementation of the principles of the Tribal Policy Statement (TPS), by providing protections under its implementing regulations, and through recognition of additional obligations consistent with other applicable treaties and statutory authorities. The TPS formally recognizes the unique relationship between the federal government and Indian Tribes and describes NRC's continuing commitment to a government-to-government relationship with tribal governments that is distinct from the interactions that the agency has with members of the public. Nevertheless, the NRC will follow

					the TPS for any NRC-regulated activities that occur in Wyoming. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
15	Shoshone-Bannock Tribes	7	State governments do not have the same Trust Responsibility to Tribes in considering how their actions and decisions affect tribal interests. There is no requirement for WY to consult with Tribes. Commenter reiterates that consultation must be carried out between decision-makers of the federal agency and affected Tribes.	oppose	The NRC staff agrees that State governments do not have the same Trust Responsibilities as the federal government. As described in the response to comments 12 and 14, the role of the NRC is limited by the Agreement, but the NRC's TPS remains in effect for NRC-regulated activities in the State of Wyoming. The NRC will continue its regulatory authority over radioactive materials not covered under the Agreement and the NRC's actions continue to be subject to the relevant federal statutes. The Wyoming Department of Environmental Quality provided a statement that was included during the April 26, 2018 webinar that it will work "with interested parties, including affected Tribes, through its public participation process. When Wyoming becomes an Agreement State, interactions with Tribes and interested parties will remain unaffected as the Department will continue to follow processes outlined by Wyoming Statute, rules, and regulation" (ADAMS Accession No. ML18220B129) In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
16	Shoshone-Bannock Tribes	7	The language in NRC Tribal Policy Statement and the National Historic Preservation Act, coupled with the fact that the NRC will	oppose	The NRC staff disagrees with the comment. As explained in comment response 12, the NRC has a limited role over transferred licenses after the effective date of the Agreement. With respect to Integrated Materials Performance Evaluation Program (IMPEP), the limited scope of that review does not include expanding the

			oversee the implementation of the WY Agreement through IMPEP, suggests that tribal consultation must be made a part of the licensing and regulatory process under the NRC/Wyoming Agreement.		requirement for tribal consultation to State actions under the Agreement. Under Section 274j.(1) of the AEA, the NRC has oversight responsibility to ensure that Agreement States maintain programs that are adequate to protect public health and safety and compatible with NRC requirements. The IMPEP process is designed to ensure the continued adequacy and compatibility of a State's regulatory program under the Agreement, not to provide a second review for individual State regulatory decisions. The elements of the Wyoming Agreement program that are required for compatibility with NRC's program are limited to the health and safety of radioactive material covered under the Agreement and would not include other federal statutory requirements such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). Although the State of Wyoming's regulatory actions under the Agreement are not subject to federal statutory requirements in NEPA and NHPA, the State's regulatory actions are subject to the State's regulatory and procedural provisions that consider the impact on environmental, historical, and cultural resources. Consequently, the NRC does not review the State's implementation of historical and cultural preservation requirements including tribal consultation. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
17	Shoshone-Bannock Tribes	7	The NRC is relinquishing the tribal consultation requirements	oppose	The NRC staff disagrees with the comment. See the response to comment 16 for a more detailed discussion of the NRC's and Wyoming's obligations with respect to tribal

			prematurely and without due consideration of the terms of the NRC-WY Agreement by which it may ensure that consultation and NHPA are carried out to the fullest extent. By the provisions under Article II.B.2 of the proposed Agreement, NRC can exercise its authority to require tribal consultation. The Tribes recommend that NRC requires this process.		consultation after Wyoming becomes an Agreement State. Even after the State assumes regulatory authority under the Agreement, the NRC will continue to comply with the TPS for NRC-regulated actions in Wyoming. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
18	Shoshone-Bannock Tribes	7	The commenter is uncertain on the State's intention on tribal consultation. The commenter has found no reference in the proposed Agreement that WY intends to implement or follow through with any tribal consultation activities. Commenter recommends that WY include Tribes under this requirement on	neutral	While the proposed Agreement does not refer to Tribal consultation, the Wyoming Department of Environmental Quality provided a statement that was included in the April 26, 2018 webinar that the State will work "with interested parties, including affected Tribes, through its public participation process. When Wyoming becomes an Agreement State, interactions with Tribes and interested parties will remain unaffected as the Department will continue to follow processes outlined by Wyoming Statute, rules, and regulation" (ADAMS Accession No. ML18220B129). The NRC staff will forward this comment to the State of Wyoming for its consideration. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.

			consultation and cooperation.		
19	Shoshone-Bannock Tribes	7	The commenter states that there is no specific process for tribal consultation as it relates to licensing and procedures that are part of the proposed Agreement and relevant WY rules and regulations. The Tribes suggest that Wyoming examine future opportunities to promulgate policy and regulations to ensure a new process is developed to address tribal consultation.	oppose	See the response to comment 18. The NRC staff will forward this comment to the State of Wyoming for its consideration. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
20	Shoshone-Bannock Tribes	7	The Tribes suggest that an opportunity for tribal government review of license applications should be incorporated into the State of Wyoming's Uranium Recovery Program	oppose	See the response to Comment No. 18. The NRC staff will forward this comment to the State of Wyoming for its consideration. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.

			Rules of Chapter 4, Section 9, subpart (i).		
21	Shoshone-Bannock Tribes	7	The Tribes encourage NRC to oversee and ensure the State of Wyoming develops a robust procedural process of consultation with Tribes.	neutral	See the response to Comment No. 16. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
22	Shoshone-Bannock Tribes	7	The Tribes have subject matter experts in Cultural Resources and Historic Preservation, Air and Water Quality, Fish and Wildlife, Environmental Waste Management, Emergency Response and Preparedness, Environmental Impact Statement, and other subject matters. The commenter recommends that WY include the Tribes in this Section 9 (i) review and comment process, and that NRC not approve the proposed Agreement until then.	oppose	The NRC does recognize that the Tribes have subject matter experts in Cultural Resources and Historic Preservation, Air and Water Quality, Fish and Wildlife, Environmental Waste Management, Emergency Response and Preparedness, EIS and other subject matters. With regard to tribal involvement in the State of Wyoming's Section 9(i) review and comment process, see the response to Comment No. 18. With regard to not approving the proposed Agreement until the State of Wyoming include the Tribes in the Section 9(i) review and comment process, please see the response to Comment No. 12. A State's tribal consultation requirements are not among the criteria considered by the Commission when determining whether to enter into a 274b. Agreement. The NRC staff will forward this comment to the State of Wyoming for its consideration. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.

23	Shoshone-Bannock Tribes	7	Operational Requirements of subpart (c) of WY's Uranium Recovery Rules include radiation surveys (including water, wildlife, and plants) at varying distances from the uranium mining-milling sites to identify at-risk areas and resources and to ensure the protection of tribal health and safety. The commenter recommends that these radiation surveys on the native plant locations are not made public on the WY DEQ website, and that those reports are provided directly to the affected Tribes.	neutral	See the response to Comment No. 18. The NRC staff will forward this comment to the State of Wyoming for its consideration. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
24	Shoshone-Bannock Tribes	7	Providing a tribal review process is of great importance to the Tribes. The commenter emphasizes that any future reviews by its Tribe or consultation with the Fort Hall	neutral	The NRC will continue to conduct an environmental and safety evaluation, and reviews of licensing actions of facilities that remain under its jurisdiction from the hazards of radioactive material in accordance with its AEA and other statutory authority. However, Wyoming, as the new regulator, has a responsibility to conduct these types of analyses for the facilities it regulates. The NRC

			Business Council would depend on the location of the licensed activity. The commenter also notes that a Hazard Assessment is needed for its Tribes to fully determine potential risks to its tribal members regarding life and health concerns.		also conducts a periodic review of the Agreement States using the IMPEP process to evaluate the State's radiation protection program. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
25	Shoshone-Bannock Tribes	7	The Fort Hall Business Council requests that NRC staff attend a government-to-government meeting in Fort Hall, Idaho.	neutral	The NRC sent a letter to the Shoshone-Bannock Tribe on August 15, 2018, requesting a meeting with the Tribe (ADAMS Accession No. ML18219A701. Additionally, see the response to Comment No. 15. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
26	Shoshone-Bannock Tribes	7	The commenter requests that the NRC provide a webinar to the Tribes on this Agreement matter.	neutral	The NRC sent a letter to the Shoshone-Bannock Tribe on August 15, 2018, offering to schedule a webinar (ADAMS Accession No. ML18219A701). In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
27	Shoshone-Bannock Tribes	7	Recognizing the long-term environmental impacts on the natural resources in Wyoming, the Tribes have significant concerns on groundwater	oppose	The NRC will periodically review the State of Wyoming's radiation protection program for its compliance with relevant regulatory and procedural requirements through the IMPEP process. The IMPEP review will include the review of groundwater management as it relates to the regulation of uranium and thorium milling activities and the management and disposal of mill tailings. In response to this



			management by the State of Wyoming.		comment, the staff did not change the staff assessment or the proposed Agreement.
28	Powder River Basin Resource Council	8	The commenter expressed concern about the viability and sustainability of the State program with regard to revenue and hopes that all companies will pay their annual fees on time. If not, what will be the State's backup plan? The commenter states that the program should remain fee-funded.	neutral	The NRC staff agrees with the importance of an adequately funded Agreement State program. The State is required to obtain adequate funding for the Agreement program from licensing fees or other funding mechanisms. The NRC will periodically review Wyoming's radiation protection program for its compliance with relevant regulatory and procedural requirements through IMPEP. The IMPEP review will include the review of the State's staffing and resources. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
29	Powder River Basin Resource Council	8	Since a public interface for Wyoming permits and licenses will take many years (or may not happen at all), the commenter requested that the NRC ensure the State's transparency by continuing to collect information from the Wyoming licensees and posting those records in ADAMS.	neutral	The NRC staff declines to take the requested action. All Wyoming licensing records in ADAMS will be transferred to the State of Wyoming after the effective date of the Agreement. After the effective date of the Agreement, Wyoming will maintain the records associated with the State's Agreement program. Access to those records would be in accordance with Wyoming statutory and regulatory requirements. The State of Wyoming is required to report certain incidents to the NRC and maintain other records in accordance with the State's requirements. Wyoming's reports to the NRC are placed in ADAMS. The NRC staff will forward this comment to the State of Wyoming for its consideration. In response to this comment,

					the staff did not change the staff assessment or the proposed Agreement.
30	Shoshone-Bannock Tribes	9	The commenter requested that the NRC provide up to 30 additional days for public comment.	neutral	The NRC staff declined this request. The NRC denied the commenter's extension request in a letter dated July 19, 2018 (ADAMS Accession No. ML18197A215). NRC staff made extensive outreach efforts with Tribes such as the Shoshone-Bannock prior to publishing the Federal Register Notice that requested comments. Nevertheless, the NRC staff did consider many comments submitted by this Tribe. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
31	Cheyenne and Arapaho Tribes	10	The Commenter disagrees with the NRC's Agreement with Wyoming due to the State's inability to comply with Section 106 of NHPA and NEPA regulations. Without these regulations in place, the Tribes would not be notified of adverse effects to Traditional Cultural Properties or to consult before an adverse effect.	oppose	The NRC staff disagrees with this comment. Although the State of Wyoming is not subject to the requirements of NEPA or NHPA, the State of Wyoming's regulatory actions are subject to the State's regulatory and procedural provisions that consider the impacts on environmental, historical, and cultural resources. The NRC staff has forwarded this comment to the State of Wyoming for its consideration. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
32	Cheyenne and Arapaho Tribes	10	The commenter strongly recommends continued consultation with Tribes under Section 106 of NHPA and	oppose	The NRC staff declines to take the action requested in the comment. As discussed in the responses to comments 12 and 14, the role of the NRC is limited by the Agreement. However, the NRC's TPS will remain in effect for NRC-regulated activities in the State of Wyoming.

			NEPA if the State assumes regulatory authority over the disposal of byproduct material,		The NRC will continue its regulatory authority over radioactive materials not covered under the Agreement and the NRC's actions would continue to be subject to the relevant federal statutes and the TPS. In response to this comment, the staff did not change the staff assessment or the proposed Agreement.
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