


Submitted: June 20, 2014



Kevin Hsueh, Chief
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United States Nuclear Regulatory Commission Official Hearing Exhibit	
POWERTECH USA, INC. In the Matter of: (Dewey-Burdock In Situ Uranium Recovery Facility)	
	ASLBP #: 10-898-02-MLA-BD01
	Docket #: 04009075
	Exhibit #: NRC-066-00-BD01
	Admitted: 8/19/2014
	Rejected:
Other:	Identified: 8/19/2014 Withdrawn: Stricken:

November 5, 2012

Dear Mr. Hsueh,

The Standing Rock Sioux Tribe THPO (SRST-THPO) is in receipt of the Nuclear Regulatory Commissions' (NRC) letter dated October 31, 2012 regarding the Dewey-Burdock in-situ recovery project and the acceptance of a proposal from tribes who have not been consulting on this project previously. We find this new letter to be just as disappointing as all of the letters that have been delivered since late August 2012 and believe it to be just another attempt to ignore the consulting tribes in the process. The Nuclear Regulatory Commission (NRC) is attempting to ignore tribal requests and the information that has been gathered by the lead federal agency pursuant to 36CFR800.4 (a).

On October 19, 2012 an alternative survey approach was submitted by the Turtle Mountain Band of Chippewa Indians in collaboration with the Three Affiliated Tribes and the consulting firm of Kadrmas, Lee & Jackson. A copy of the proposal is enclosed for your review. The NRC believes the level of effort represented by the Kadrmas, Lee and Jackson proposal is commensurate with the survey needs of the 2,637 acre-area identified for potential direct effects. The NRC has decided to move forward with this proposal

(quote from letter sent to tribes by
Haimanot Yilma on October. 31/12).

The SRST-THPO has reviewed the proposal and does not agree with your findings or beliefs. This proposal is contrary to all of the information that your agency has gathered pursuant to 36CFR800.4 (a). In particular, this proposal amounts to predictive modeling for our sites, which we have explained through consultation pursuant to 36CFR800.4 (a), does not work. Information gathered from the consulting tribes (all the tribes who have consulted since 2011 not including the recent additions associated with the proposal) specifically addressed the issue that archaeologists cannot identify our sites. This was brought up numerous times in consultation and proven in the field when the consulting tribes showed the federal agencies sites and features that were missed in the previous survey by the archaeologists. The NRC is now accepting a proposal for archaeologists to conduct the work. How does this show that the "level of effort represented by the Kadrmas, Lee and Jackson proposal is commensurate with the survey needs of the 2637 acre-area identified for potential direct effects"? It does not. In fact, it is contrary to it entirely based on the information the NRC has previously gathered.

There is no feasible way that the NRC can claim that a good faith effort was met for this project pursuant to 36CFR800.4 (b) (1) when they ignore all of the information gathered under 36CFR800.4 (a) (3) and 36CFR800.4 (a) (4). The identification efforts and good faith level of effort for 36CFR800.4 (b) is based upon the information gathered under both subsections of 36CFR800.4 (a) and the NRC continues to ignore this.

Kadrmass, Lee and Jackson (KLJ), (or any archaeological consulting company for that matter), are not qualified to identify sites of significance to the Standing Rock Sioux Tribe. They are not qualified to make determinations for sites of significance to the Standing Rock Sioux Tribe or set the boundaries and make recommendations for their eligibility. The consulting tribes have discussed this at length and showed the NRC in the field on this very project that the efforts of archaeologists are insufficient at identifying our sites of significance. The NRC is ignoring this information and accepting a proposal for an archaeological company to do the work. Neither the Turtle Mountain Band of Chippewa Indians nor the Three Affiliated Tribes can conduct any of this same work on behalf of the Standing Rock Sioux Tribe for sites of significance to the Standing Rock Sioux Tribe. I'm reasonably positive they wouldn't want our office to identify, make determinations and recommendations for eligibility on behalf of their tribes and their sites and the feeling is mutual. Yet, this is what this proposal is attempting to do. If the Turtle Mountain Band of Chippewa Indians and the Three Affiliated Tribes wish to assess sites of significance for their tribes in collaboration with KLJ, they are welcome to do so as that is their right and own decision. However, the NRC is trying to force the rest of the tribes to accept a proposal for work that in no way addresses our concerns and in fact is contrary to all of the information provided thus far. This proposal does not address the concerns that have been brought up for the last 1.5 years about the needs for identification and proper way to conduct it for the rest of the consulting tribes. It is completely contrary to it.

This is not good faith consultation. Good faith consultation does not involve bringing in other consulting parties at the final minute to attempt to circumvent your responsibilities and ignore the information gathered pursuant to 36CFR800.4 (a). Your agency specifically did not invite the Three Affiliated Tribe or the Turtle Mountain Band of Chippewa Indians to the June 2011 meeting due to their granting of a no historic properties determination in 2010. This is another example of your agencies failure to properly conduct Section 106 consultation and to complete the process for identification in a good faith manner. In your first sentence you refer to the proposal as being submitted by the Turtle Mountain Band of Chippewa Indians yet in your second sentence it is referred to as the Kadrmass, Lee and Jackson proposal. This just strengthens our opinion that third party consultants are running the 106 process for the Federal Agency and that they are not conducting their consultation efforts in good faith. I will refer to this proposal as the KLJ proposal as it is my belief that this is where this proposal originated from as the methodology is the same as projects conducted by Kade Ferris in the past. In 2010, the NRC received an email from the applicant explaining that a phased approach would be acceptable for this project given that it is a large land base of over 10000 acres yet here we are only discussing a little over one quarter of that. Has the project boundary changed? It has not. The only apparent change is the information that the third party consultants have provided to the NRC erroneously that only the direct effects of the project need consideration. It is our opinion that this is just further proof that the NRC is not actually running the 106 process and that it is the applicants and third party consultants who are. The letter from August of 2011 from the NRC asking the applicant how they will provide information addressing sites of significance to tribes is further proof to support this belief. The NRC already had information provided to them during the June 2011 meeting that it is only the tribes who can adequately provide that level of information. Once again, the tribes were being ignored by the NRC and have continued to be ignored since the first meeting.

The SRST-THPO disagrees entirely with this proposal as we have for all proposals that don't properly address our concerns. In particular, with the indirect effects of this project, 100% survey of the entire area of potential effect as properly defined by 36CFR800.16 (d), confidentiality of resources, archaeological companies and archaeologists and their inability to conduct identification efforts on behalf of the tribes, predictive modeling and all of the other information that we have discussed with the NRC since June of 2011. This proposal is absolutely no different than the previous proposals submitted by the applicant and their third party consultant. It does not address our concerns and in fact is contrary to all of them. The only difference this time is that the archaeological consultant managed to convince some tribes to go along with their proposal. Tribes which were not consulting on this project previous to the letter outlining that one hundred thousand dollars was available for survey work and had already determined that the project would have no effect to their cultural resources or sites of significance in 2010.

The level of effort for identification (36CFR800.4 (b) (1) is to be made based on the information gathered pursuant to 36CFR800.4 (a) (36CFR800.4 (b)). The NRC is ignoring this information and accepting a proposal that is tailored to the applicant's fiscal constraints. This is not consultation in good faith. Once again, our sites should not be held hostage in this manner especially by a federal agency that has a requirement to conduct consultation and identification in good faith. Especially considering the policy requirements of Section 2 of the National Historic Preservation Act:

Section 2

[16 U.S.C. 470-1 — Declaration of policy of the Federal Government]

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to —

Cooperation and partnership is not and shall not be defined as ignoring the information provided by these entities as is apparently the case with this project.

The SRST-THPO encourages the NRC to reconsider its current position based on the letter of October 31, 2012.

Sincerely,
STANDING ROCK SIOUX TRIBE



Terry Clouthier
Tribal Archaeologist

CC:
SRST Tribal Chairman Charles W. Murphy
OST Tribal Chairman John Steele
SRST Tribal Council