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In the Matter of:	CROW BUTTE RESOURCES, INC. (License Renewal for the In Situ Leach Facility, Crawford, Nebraska)
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TRIP REPORT:

Section 106 Information-Gathering Meeting and Site Visits for Crow Butte In Situ Leach License Renewal and North Trend Expansion Area and Dewey-Burdock License Applications June 7–9, 2011



Prepared for the
U.S. Nuclear Regulatory Commission

by
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EXECUTIVE SUMMARY

Section 106 Information-Gathering Meeting and Site Visits for Crow Butte In Situ Leach License Renewal and North Trend Expansion Area and Dewey-Burdock License Application June 7–9, 2011

The following is a summary of the main points raised during the Crow Butte and Dewey-Burdock site visits that took place on June 7 and 9, 2011, respectively, and during the information-gathering meeting at Pine Ridge, SD, on June 8, 2011. See Sections 1–3 of this report for field notes on each day.

U.S. Nuclear Regulatory Commission Statements

The U.S. Nuclear Regulatory Commission (NRC) staff emphasized the NRC's commitment to conduct a thorough review process under Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) and to reach independent conclusions based on multiple sources of information. The NRC staff repeatedly stated that the week's activities were only the start of consultation with the Tribes and encouraged Tribal representatives to contact the staff with additional information or questions.

Tribal Representative Statements and Questions

Cultural and Historic Resources: Tribal representatives stated their intent to submit additional information about cultural resources in writing at a later date.

Tribal representatives were concerned that the applicants' archaeological surveys and State Historic Preservation Office (SHPO) and State archeologist approvals were not conducted with Tribal participation and therefore most likely did not identify many sites and features that should be designated as Tribal Cultural Properties (TCPs). Tribal representatives argued that non-Tribal archeologists and historians would not have the cultural knowledge needed to identify TCPs. Specific examples include the following:

- Non-Tribal archeologists sometimes identify related sites as separate sites because they do not possess the cultural knowledge needed to understand that they are related. Example: Non-Tribal archeologists might not recognize the full extent of a camp, or that Lakota camps typically had a separate but linked camp for menstruating women.
- Crow Butte: Non-Tribal historians would not know the oral history of the location of camps (such as that of Little Wound) important in the 1870s related to events at Fort Robinson.
- Crow Butte: Non-Tribal experts may not be able to identify the presence of unique medicinal herbs.
- Dewey-Burdock: At one of the stops on the site visit, a Tribal Historic Preservation Officer (THPO) stated that he saw more features at the site than were described in the applicant's presentation.

THPOs and other Tribal representatives stated that TCP surveys are necessary at both Crow Butte and Dewey-Burdock to enable Tribal archeologists, historians, and holders of cultural knowledge to walk the site to identify TCPs. TCP surveys are also necessary because the Tribes have not had physical access to these sites for decades because the sites are on restricted private property.

Process Concerns: Tribal representatives asked many questions about the Section 106 and NEPA processes and expressed concerns about the process that the NRC is currently following:

- Extended time to respond: Tribal representatives requested additional time (beyond the NRC comment deadlines) to enable Tribal experts to obtain and evaluate unredacted copies of all application materials (which they had not yet received), consult with holders of traditional cultural knowledge, and conduct on-the-ground TCP surveys.
- Access to information: Tribal representatives expressed concern that they received redacted copies of site archeological surveys or did not receive maps and other application material and asked why this material was being withheld from them. They stated that they were not able to conduct a true consultation without full information. (The NRC staff stated that the NRC can provide unredacted copies upon request and the SHPO representatives present concurred.)
- Good faith versus “doing your job”: Some Tribal representatives and individual residents asked whether the NRC is simply going through the motions to fulfill the Section 106 and NEPA requirements before approving the applications. They indicated that, among other things, “good faith” consultation with the Tribes would include allowing more time for Tribal review, conducting a true government-to-government consultation, and providing financial support for TCP surveys.
- Funding for TCP surveys: Tribal representatives stated that TCP surveys were needed for the Crow Butte and Dewey-Burdock sites but that the Tribes would find it difficult to pay for them. They asked whether the NRC would fund TCP surveys. The NRC staff answered that the staff would evaluate all information and come to a decision.
- Scope of Section 106 versus NEPA: Some Tribal representatives and individuals expressed concern that the NHPA too narrowly defined cultural and historic resources in a way that would eliminate many TCPs. They also were concerned that the applicant surveys had only focused on sites eligible for the National Register of Historic Places (NRHP), most of which were related to Euro-American settlers and were of no interest to the Tribes. In response to questions, the NRC staff stated that the NRC would also use the broader definition of cultural properties from NEPA in its evaluation.
- Treaty issues: Some Tribal representatives and individuals mentioned ongoing treaty disputes between the Lakota Nation and the United States and stated that licensing should proceed as a government-to-government matter.
- Nichols Ranch application: Many Tribal representatives, particularly those from visiting Tribes, frequently referred to the licensing process for a new in situ recovery facility at Nichols Ranch, WY, suggesting that the Tribes do not perceive each NRC licensing

activity as separate but rather as part of a larger agency approach toward uranium licensing, government-to-government consultation, and TCPs.

Environmental Concerns and Beliefs: Some Tribal representatives and individuals were concerned about the effects that in situ uranium mining might have on ground water and the White River that supply water to Pine Ridge Reservation. They expressed skepticism that the NRC and the applicants can safely monitor and prevent ground water effects. Specific questions included how the relevant laws and regulations defined “adverse effects” and who is responsible for emergency response and cleanup should something go wrong.

Some Tribal representatives and individual residents also explained the Lakota belief that uranium mining is a violation of Mother Earth and endangers the air and water that all life forms need. The wellfields are viewed as an intrusion on the land. Some stated skepticism that nuclear power is necessary or safe. Some Tribal representatives and individuals reiterated questions about whether the nuclear industry needs more mines. In response to NRC staff statements that the NRC only licenses safety and does not determine need, the Tribal speakers stated that NEPA does require an evaluation of need.

1 FIELD NOTES:
Site Visits to Cameco Resources, Inc.
Crow Butte In Situ Leach Facility and North Trend Expansion Area,
Crawford, Nebraska
June 7, 2011

Introduction (Prairie Wind Hotel and Casino, Pine Ridge, SD)

Blessing by **Wilmer Mesteth**, Oglala Sioux Tribe (OST) THPO:

- The blessing itself was in Lakota, but included the English words “uranium” and “NRC.”

Mesteth’s introductory remarks in English included the following information:

- Crow Butte has two names (he gave them in Lakota):
 - Hill Where They Captured the Crow (Lakota people call it this)
 - Dancing Hill (Lakota and some Cheyenne call it this)
- Crazy Horse’s band was kept down by the White River by the United States.
- Lakota bands camped along a line from Red Cloud Bluffs—too big for the station at Fort Robinson to fit.

Cameco Presentations (Crow Butte facility, Crawford, NE)

PowerPoint presentations by various individuals covered Cameco’s work with indigenous people (focused on Canada), a description of the in situ uranium recovery process, and a summary of significant historic sites at the existing facility and proposed North Trend Expansion Area.

The applicant summarized the significant sites and planned bus tour (see Attachment 1 for photos):

In Situ Leach Facility (ISL)

- The applicant intended the ISL tour to visit all historic sites identified in the initial license survey approved by the NE SHPO, but the Tribal representatives were not interested in European sites.
- The applicant intended to show a fenced-in 1888 homestead with a buffer zone in Mine Unit 9. Tribal representatives not interested.

- Site 25DW194 (west side of creek in Mine Unit 6) comprised scattered stone chips/tools found in test pits, also an ancient burial site on the ridge over the creek found in the 1950s.

North Trend Expansion Area (NTEA)

- The NTEA included only one “significant” site, an active farm (the “Shoyster” farm—[sp?]). This contradicts the application, which indicated no properties eligible for the National Register of Historic Places.
- One isolated chert flake was found in a cultivated field.
- South of Shoyster’s farm, a chert tip was found that is difficult to identify—maybe 8,000 years old. (Note: Crawford Cemetery is on Route 2/71 between the farm and trade point sites mentioned by the applicant, on the same side of Rte. 2/71 as the NTEA.)
- Visible from the road is Site 299 in an alfalfa field, where a 3-inch-long metal trade point steel arrowhead similar to mid-late 1870s arrowheads associated with Red Cloud and Fort Robinson was found.

Notes on the Bus Tour

- Time to tour the sites was constrained because of the time it took to find the site, the length of the applicant’s presentations, and the bus driver’s unavailability after 4 p.m.
- The bus drove to various sites on the ISL facility and paused for through-the-window photos.
- The only stop to get off the bus was in the NTEA field where the trade point was found; the applicant guide left the group there.
- The applicant did not take the group to view the proposed Three Crow Expansion Area because of time constraints.
- The following day several THPOs stated that they had been expecting a more walking-the-site type of visit and did not find the bus tour and its proposed focus on European historical sites to be sufficient.

Information on Cameco Application Areas from Tribal Representatives

Informants: **Wilmer Mesteth** (OST THPO), **Joyce Whiting** (OST THPO Project Review Officer), **Jackie Big Crow** (OST 5th Member Office)

Crow Butte

The meaning of Crow Butte is preserved in oral history, not written down.

Origin of Name (Wilmer Mesteth, OST THPO): Some Crow people stole horses from the Lakota, who chased them west to Crow Butte. The Crows went to the top of the big butte and shot down at them. The Lakota could hear the Crow singing on top. One night, they heard no singing, so they climbed up and found no one. For decades, they didn't know how the Crows disappeared. This is the origin of the name. At the Wounded Knee reunion in 1921, the Lakota finally heard what had happened from some Crows who came to the reunion: The Crows used their pack horse to weight a line down the sheer cliff face and lowered themselves that way to get away.

Sacred Site: The long ridge behind Crow Butte was a place that young men went for vision quests. They have not been able to do that for a while—it is now private land and ranchers do not allow them on it. (This land is not on the facility.)

Medicinal Herbs: Herbs the Tribes traditionally used to treat headache, stomachache, and arthritis grow on the facility land and on Crow Butte, both inaccessible to the Tribes. The herbs do not grow elsewhere.

Site of Key Treaties: All of this area (facility, NTEA, Crow Butte) was included in the 1850s Fort Laramie treaties. Chief Little Wound camped around Crow Butte (and toward Red Cloud Bluffs), 1873–1877. These were the groups that negotiated an agreement about the Black Hills.

Access: Tribal people have had no access to the area for decades. For example, **Joyce Whiting** (OST THPO Project Review Officer) had never been to Crow Butte before.

North Trend Expansion Area

Landmarks with historic associations visible from this site include Saddle Butte and Lover's Leap nearby (southwest) and Crow Butte and Rawhide Butte in the distance (southeast and south, respectively).

There were burial grounds up against the buttes and along creek bottoms (**Wilmer Mesteth** (OST THPO) pointed from the White River, along the south boundary of the NTEA, and west over to Saddle Butte and Lover's Leap). These were scaffold burials on the limbs of ash trees (because these are sturdy trees), to protect against predators.

Lover's Leap: Lover's Leap, visible from Pine Ridge Reservation, SD, was in use from about 1830 until 1877. There are many versions of the Lover's Leap story, some very long. **Wilmer Mesteth** (OST THPO) gave a short version: There were two camps of Lakota on either side of the White River near Saddle Butte. A boy and girl from the two different camps met and fell in love. But the girl's father was a chief and rejected the boy because he wasn't a warrior and he

wanted his daughter to marry a warrior. In the night, the Shoshone came and stole the horses of both camps. Warriors from the two camps chased them many miles. When they were returning from the chase, one of the experienced warriors stayed behind to cover the retreat. He was attacked by the Shoshone, and the boy, who had gone with the party, went to help defend him. They were both killed. It took a while to bring the bodies back to the camps because the bodies had to be prepared. In the meantime, some messengers went ahead to tell the camps of the tragedy. When the girl heard of the boy's death, she mourned and cried for 2 days. Then she put on her wedding finery and climbed to the top of the butte and jumped off—this is why it is now called Lover's Leap. Both lovers were buried at the foot of Lover's Leap butte. Years later, people remembered the story and had a Sun Dance there.

Saddle Butte: Saddle Butte was a place that young men went for vision quests. They have not been able to do that for a while—it is now private land and ranchers do not allow them on it. (This land is not part of the proposed NTEA.) It is visible from Pine Ridge Reservation, SD. Fort Robinson is out of sight on the other side of Saddle Butte.

Rawhide Butte: Oglala camped there.

Some miles east outside the NTEA is the site of Crazy Horse's camp.

2 FIELD NOTES:
Informal Information-Gathering Meeting
Pertaining to the Proposed Dewey-Burdock, Crow Butte North Trend,
and Crow Butte License Renewal In Situ Uranium Recovery Projects
Prairie Winds Hotel and Casino, Oglala, SD
June 8, 2011

Note: These notes are not a complete record of everything said during this meeting. The consultant focused on issues related to cultural and historical resources, to supplement the official court reporter. Statements attributed to speakers use their key phrases and concepts whenever possible but are not exact quotes. Many speakers did not identify themselves before speaking; the consultant identified as many speakers as possible during or after the meeting but was not able to identify them all.

This meeting was court-recorded to obtain an official transcript (hereafter referred to as “the transcript”). These notes focus on cultural resources issues and statements made by Tribal representatives. For a full record and more details about statements by NRC staff, see the transcript.

Kevin Hsueh (Branch Chief, Environmental Review Branch B, NRC) introduced the first speakers and named **Michael Catches Enemy** (OST NRR/THPO Director) as Master of Ceremonies.

Wilmer Mesteth (OST THPO), **Opening Blessing** in Lakota

Joyce Whiting (OST THPO Project Review Officer), **Words of Encouragement:** Among other points, she referred to the “start of the consultation process” and noted concerns about Crow Butte and other uranium mining.

Michael Catches Enemy (OST NRR/THPO Director), **Master of Ceremonies:** This is the “start of the consultation process” and “meaningful dialogue.” It is to allow Tribal representatives to express concerns and for the NRC and Tribes go to another level where there is collaboration and cooperation on some of the issues important to Tribes. He noted that the group was doing the Section 106 process for the NHPA today, focusing on cultural resources, but that participants should not feel restricted from speaking about environmental concerns.

[The meeting plan was for all participants to introduce themselves, followed by opening statements by all who wished to give one, but the Tribal representatives did some brief opening statements while introducing themselves (see transcript), so the two activities were merged.]

Wilmer Mesteth (OST THPO):

- The presentations at the site visit to Crow Butte yesterday focused on the history important to the Nebraska SHPO, not the history of his people. Cameco representatives discussed their cooperation with the people who live in Crawford, but had never reached out to the Tribes. A consultation with his Tribe is still missing.
- The purpose of today's meeting is to focus on the history and concerns of the Tribes that was missing from yesterday's presentations by Cameco. The land in question is the site of much Lakota history and many burials.
- He connected the multistate historic range of the Lakota people to ongoing treaty disputes and stated that this consultation process should be a nation-to-nation interaction in which treaties take precedent.
- He expressed concern about water contamination.

Presentation and Questions and Answers (Q&A) by Kevin Hsueh (Branch Chief, Environmental Review Branch B, NRC) (see transcript):

- **Tribal representative** [man, not identified] asked for the definition of "adverse effect."
- **Kevin Hsueh** (NRC) gave an example of a visual effect and stated that, if an adverse effect is identified, a memorandum of agreement (MOA) is signed by the Tribes, the NRC, and the applicant defining what will be done. (The respective SHPOs would also be signatories.)

Presentation and Q&A by Bill Von Till (Branch Chief, Uranium Recovery Licensing Branch) (see transcript):

Several questions and comments by representatives of the OST and visiting Tribes* centered around doubts about the safety of in situ uranium mining and, by extension, the uranium's use in generating nuclear power:

- Nuclear plants cannot safely avoid leaks and radiation: "It is the cleanest energy but the deadliest energy."
- The NRC is providing insufficient oversight and too infrequent inspection to prevent contamination of water and air.
- The NRC needs to play a larger role not only in licensing but also in cleanup and spent fuel disposal. Who is responsible for cleanup of these sites and of accidents is not clear.

* "Visiting Tribe" refers to representatives of Tribes other than the Oglala, who were the host Tribe at Pine Ridge.

- Smog, mercury in fish, and contaminated drinking water are some results of 50 years of mining in the area.
- Past licensing of uranium mining constituted violations of treaties by the United States and no consideration of the Tribes' concerns about preserving air, water, and land for the next seven generations.
- Corrupt government officials and miners and ranchers, not the impoverished Tribes, have benefitted from uranium mining. There is no "equal justice."

Tribal representative [man, not identified] asked how the NRC defines environmental effects.

Kevin Hsueh (NRC) answered by describing laws such as NEPA and NHPA and stressed consultation between the NRC and the Tribes.

Tribal representatives asked some questions about what kind of report the NRC has done/will do in response to the applications. NRC staff replied that a supplemental environmental impact statement (SEIS) is completed for new sites. Because Crow Butte is an existing site, an environmental assessment (EA) is planned. But if the EA finds significant impacts, the NRC will complete a full SEIS. The staff has not yet made any findings.

Hannan LaGarry (OST geologist, Oglala Lakota College) stated that the Cameco mining operations have had significant cultural impacts on Crow Butte but did not specify what they were.

Don Ragona (OST attorney):

The 14-day comment period for the license renewal does not provide enough time for the Tribes' geologists, hydrologists, THPOs, and other experts to review the application. They need 30–60 days to review the information, find documents referenced in the application, and receive unredacted copies of all surveys and applications. The Tribes have two requests:

- (1) The NRC should extend the comment period.
- (2) Where can the Tribes get all of the information to review? Tribes did not receive all parts of the application or unredacted archeological surveys.

Bill Von Till (NRC) stated that **Nathan Goodman** (NRC) will record this as an action item.

Chief Oliver Red Cloud (OST head of 8th reservation on treaty rights, Black Hills Sioux Nation):

- The 1851 treaty (and its successors) between the United States and the Tribes is still international law even though the United States has violated its provisions many times. The NRC does not have the right to give permission for these mines without Chief Red Cloud's consent; any other NRC action would violate the treaty.

- Chief Red Cloud invoked various articles of the United Nations charter and U.S. Constitution that gave him the right to take the NRC to court if the NRC violates the treaty and grants the license without his consent.
- He does not agree with this discussion today. It has no meaning under the treaty and international law.
- The NRC should stop this proceeding and leave, because it is not legitimate and he does not approve it.

(Chief Red Cloud is a traditional Tribal leader, not part of the formal OST government. The other Tribal representatives treated him with great respect. **Wilmer Mesteth** (OST THPO) referred to him as “my uncle.” Chief Red Cloud stated that he is 92.)

Debra White Plume [affiliation illegible on sign-in sheet; identified self as a member of the Oglala Band of the Lakota Nation, lead plaintiff against Cameco corporation in the Nebraska Crow Butte ISL proceeding, a plaintiff against the NTEA application, an intended plaintiff against the Three Crows and Marsland expansions, a mother, and a grandmother]:

- This is not a true consultation because the NRC will grant the licenses no matter what the Tribes say.
- The NRC staff members here today are just doing their jobs, fulfilling the letter of Section 106 and NEPA without actually performing a true consultation.
- The NRC and the Lakota people have two different ways of “looking at things.” The NRC compartmentalizes the land, picking out little spots to designate as historic properties and allowing the rest of the land to be used in any way. The Lakota see all of the land as the Tribes’ cultural and historical properties; there is no separation between the little historic sites and the entire “monitoring area.” Setting up mines is a desecration of cultural property.
- The groups also interpret past treaties differently: the NRC believes that the land is U.S. territory, the Tribes believe it is Tribal land. By allowing mining, the NRC is violating the Tribes’ treaty rights.
- The Tribes have a spiritual relationship to the land (“Mother Earth”) and a spiritual obligation to protect the land, air, and water, both above and below ground. None of this should be disturbed by mining.
- The land, water, and historic properties must be preserved for future generations.

- There is no separation between the environment, human beings, and other living creatures, and between one part of the land and another. The land and water at Crow Butte connects to Pine Ridge.
- Crow Butte used to be a holy site; Crazy Horse prayed there before he was killed at Fort Robinson. The Oglala cannot use this land as a holy site anymore because they are not allowed on it.
- Medicinal herbs for the stomach and heart grow at Crow Butte, but to pick these herbs, the Oglala have to sneak past fences and signs that say “radioactive.”
- “We don’t want you to mine there. We don’t want you, the Government, to approve a mine there.”
- Approval of past mining has caused cancer, diabetes, and renal failure among the Oglala.
- This is not an authentic consultation or fair information-gathering session because it does not include many spiritual and cultural leaders, storytellers, healers, and scientists. The Oglala Tribe did not offer to pay for them to be here. The Tribal government members who are present do not represent the whole people. The process and system is to the NRC’s advantage, not the Tribes’.
- You cannot achieve the “free, prior, and informed consent” required by international law just by dealing with Tribal government; therefore the U.S. Government and mining corporations do not have the free, prior, and informed consent of the Oglala Band and Lakota Nation.
- Mining in the Black Hills is just as wrong as mining at Crow Butte. The Black Hills are a very special place. The Black Hills area is already contaminated by past uranium miners and past government officials “who sat in your places years ago” and left their waste behind.
- The Crawford mines are leaving “toxic soup” underground. The same will happen at the Black Hills.
- At Crow Butte, the Oglala used to gather eagle feathers and fish but cannot do that anymore. “Our rights have been erased by that uranium mine.”
- It is unfair that the Tribe’s lawyers were not allowed to be here today.

Marvin Young [sp?] [name not on sign-in sheet]:

- He opposed mining and other nuclear activities.

- Past open pit uranium mining in the West has caused leukemia.
- He described various examples of the U.S. Government attempting to force the Tribes onto desolate land or force Tribes to accept nuclear waste dumps and other dangerous facilities (as in the 1998 attempt to create a waste site in the Mohave Desert).
- Events in Chernobyl and Japan have contaminated the surroundings.

Lunch Break

Presentation and Q&A by Nathan Goodman (Project Manager, Crow Butte applications, Environmental Review Branch B, NRC) (see transcript):

Goodman gave an overview of the Crow Butte application process to date. According to the applicant:

- ISL: 72 sites identified and 0 eligible/significant for the National Register
- NTEA: 6 sites identified and 0 eligible/significant for the National Register

Goodman mentioned the discrepancy between the application, which stated that there were no significant sites in the NTEA, and the applicant's statement yesterday that there is one significant historic farm site at NTEA. The NRC will evaluate all information and come up with an independent analysis.

The goal of the discussion today is to determine if there are traditional cultural properties or additional archaeological sites eligible for a listing on the National Register of Historic Places

[Most of the afternoon's questions and comments from Tribal representatives and individuals occurred during Goodman's Q&A.]

Lance Rom (OST THPO archaeologist):

- Wilmer Mesteth (OST THPO) would like to write a formal letter later about the survey submitted by the applicant.
- The Tribes received redacted copies of the cultural resources/archeological surveys (**Goodman** (NRC) explained this was according to State Historic Preservation Office regulations). **Rom** said that the Tribes have the right to see the nonredacted versions and cannot comment until they have complete documents. (A number of other speakers brought up this point during the day.)

Brett Klukan (Office of the General Counsel, NRC; attorney for Crow Butte application) said that there is no intent to withhold information; the Tribes just received what was publicly available on the NRC Web site. The NRC will work with the Tribes to get them unredacted versions so that they can complete the Section 106 review. Klukan stated that Tribal representatives could speak to him before the close of the meeting and he would see to getting complete versions to them.

SHPO representative [SD or NE?] encouraged the NRC to provide complete copies of the surveys to the Tribes.

Visiting Tribal representative [man, not identified]:

- Who makes a decision about what sites are eligible for the NRHP?

Nathan Goodman (NRC) stated that the NRC's decision is based on a number of factors: survey, the NRC's investigation, Tribal consultation, etc. **Brett Klukan** (NRC) explained the NRC's Section 106 obligations and clarified that the information presented today is just what the applicant prepared, not what the NRC thinks is all that is necessary. At the end, the NRC will show the Tribes what it has collected and ask what they think.

SHPO representative [SD or NE?] and **Lance Rom** (OST THPO archaeologist) asked how the NRC expects to identify traditional cultural properties for Dewey-Burdock and Crow Butte.

Nathan Goodman (NRC) stated that the NRC will use information from the Tribes.

Mike Catches Enemy (OST NRR/THPO Director) asked if the NRC can fund a traditional cultural properties (TCP) survey if the Tribes want one. **Nathan Goodman** (NRC) and **Brett Klukan** (NRC) stated that there is no standard funding policy. In the past, the NRC did not fund a TCP survey at Crow Butte, but the staff can decide what is reasonable under the circumstances. The NRC cannot approve a project until it finishes its obligation under Section 106 and will do whatever is necessary to fulfill Section 106 in good faith. Part of the process is to figure out what it is the agency needs to do and then do it.

Mike Catches Enemy (OST NRR/THPO Director): To be respectful to Tribes is to allow the Tribes to feel that they have a stake in history. Tribes can provide more information on history and personal ties.

Steve Vance (Cheyenne River Sioux Tribe (CRST)) asked when the archaeological surveys were done.

Nathan Goodman (NRC): The NTEA survey was done in 2007, the ISL survey was in the 1980s.

Steve Vance (CRST):

- There is a problem all the time with archeologists identifying sites and doing surveys without participation from the Tribes. The Tribes were not involved in these surveys.
- Another survey with the Tribes on the ground is necessary.
- This is the wrong time of the year to do a survey because the soil is not visible because of grasses, etc. That is why the Tribes wanted to do it earlier in the year.
- The applicant/NRC should offer to do another survey with Tribal participation to identify things that the Tribes value.
- If a new TCP survey will be a financial burden to the Tribes, the NRC and applicants should offer to fund one. Reimbursement helps the Tribes be able to participate.
- The Tribes are not interested in the kinds of homestead sites emphasized during the Crow Butte tour yesterday.

Visiting Tribal representative [man, not identified]:

- The NRC doesn't really have a policy for government-to-government consultation.
- He spoke at length about the licensing process at "the 1851 treaty territory involving Nichols Ranch." He was concerned that the NRC and the Bureau of Land Management (BLM) do not have a formal consultation policy and that the Tribes were getting different messages from the property owner and the applicant about doing a TCP survey that the Tribes request.
- He noted that the NRC attorneys are at this meeting but not the Tribal attorneys.
- The NRC needs to treat this consultation as a government-to-government and nation-to-nation discussion.
- The NRC needs a clear government-to-government policy.
- Before President Obama's executive order, the door was closed on Tribal nations with concerns over licensing. Now the Tribes are "at the table" but there still is not a clear policy for the discussions.

Nathan Goodman (NRC) noted that the Nichols Ranch licensing process is much further along. Because it is early in the Crow Butte process, he encourages the Tribes to keep communicating with him and make sure they are satisfied.

Steve Vance (CRST):

- He also used Nichols Ranch as an example of problems with the NRC and BLM obtaining Tribal input. For example, last week they had a teleconference but only one Tribe could participate because the other representatives were on travel. So it was not a fair conference and was not government-to-government because only one Tribe could participate.
- The NRC must not rush and force the Tribes into making decisions. The NRC needs to take the whole interests of Tribes into consultation. All seven bands (Tribes) of the Lakota constitute one Lakota Nation; the NRC should not move ahead without all parties.

Tribal representative [man, not identified]:

- It is difficult for the Tribes to let the NRC know what is important at Crow Butte because they have not had access to these areas for 150 years. The Tribes have heard about them but do not know what is still there because they have not been to the sites.
- It is important for Tribal people to be allowed to do TCP surveys at Crow Butte and Dewey-Burdock because they know what is important.
- The Tribes need to send out TCP surveys with people capable of identifying culturally sensitive sites for Tribal people. For example, this worked well in North Dakota, where six Tribes were involved. The archeological survey in that case had found four stone features. In the TCP survey, Tribal people found over 2,000.

Terry Clouthies (Standing Rock Sioux Tribe (SRST) THPO):

- If the Tribes request a TCP survey and the NRC or applicant doesn't fund one, will that be considered a "good faith" Section 106 process?

Brett Klukan (NRC) stated that the NRC's decision will be based on what is reasonable under the circumstances and in the context of what information it receives today. The NRC will not approve a project until the staff has completed a Section 106 review and will do whatever is necessary under the regulations. The staff will decide if it has gathered all of the information it needs to determine if a TCP survey is necessary. **Nathan Goodman** (NRC) stated that the staff does not yet have enough information to determine whether a TCP survey is needed.

Jackie Big Crow (OST 5th Member Office):

- This kind of information and cultural knowledge is why it is so important for the Tribes to have the opportunity to do a TCP survey: Tribes seasonally traveled through this area, like a big racetrack around the Black Hills. At certain points of the year, they would have

to be at certain points to gather medicines and get lodge poles (late May). There were times where they had to pick up paints, be in the Black Hills for ceremonies, move to fall hunting grounds, and process the hides.

Dennis Yellow Thunder (OST NRRA Technician) [this consolidates various comments he made throughout the day]:

- Is the current output of the Crow Butte mine sufficient for the power companies' needs? What is justifying the expansion? Is there not enough uranium or is it of poor quality?
- Shouldn't the NRC as the regulatory agency have the final say in what is needed?
- Who decides that a mine needs to be expanded?
- The NRC should be more careful and consider the benefit of the people and other living things involved and not expand where not needed, especially Dewey-Burdock, especially into the Black Hills, which is very sacred to the Lakota people.

Bill Von Till (NRC) stated that the NRC is a regulatory agency. Its job is not to decide whether there is a need for more energy. Its job is to review the application and make sure that the facility is safe and protects workers, the public, and the environment. The NRC's responsibility is limited to safety. The industry decides on the need to expand.

Steve Vance (CRST): (speaking about yesterday's Crow Butte site visit)

- He had been prepared "to walk the ground" and was not content with just driving around the perimeter.
- It was very dusty, but no one has mentioned environmental control of dust blowing around the area.
- He observed digging to lay pipeline at the ISL yesterday. If this is a renewal application, why they are allowed to continue digging and expanding now?

Brett Klukan (NRC) explained NRC regulations that allow continued operation under the previous license while the NRC is reviewing a renewal license.

Tribal representative [man, not identified]:

- Is the mining going to do the Tribes any good in future? What are the Tribes going to get out of it?

Individual Tribal resident [woman, not identified]:

- The Black Hills still belong to the Lakota people. “You” have no purpose and no right to go in there.
- As a grandmother, she will fight to stop the mines.

Individual Tribal resident [woman, not identified]:

- If consultation just means helping the Tribes determine what cultural sites can be put on the National Register, what about other sites of cultural or spiritual significance that are not eligible for the National Register?
- What is the NRC going to do with the Tribes’ comments?

Nathan Goodman (NRC) stated that the NRC is going to use the information to generate an independent analysis and conclusion about all sites, not just National Register sites. If the agency concludes that it needs more information from the Tribes, it will continue.

SHPO representative [SD or NE?] asked **Brett Klukan** (NRC) to clarify that the NRC has to follow both the specific definitions of historic and cultural resources in the NHPA and the broader interpretation of cultural resources in NEPA. Klukan stated that the NRC is collecting information for both NHPA and NEPA definitions of cultural resources.

Individual Tribal resident [man, not identified]:

- The NRC’s belief that nature and uranium mining can be controlled and safe is “pretty oppositional from anything that’s native.”
- Because of this belief, it is hard for the NRC to be neutral. In the end the NRC will have to take a side.
- He expressed concern about the safety of both the water system and the air.

Various Tribal representatives discussed Tribal mineral rights with **Bill Von Till** (NRC) and **Brett Klukan** (NRC):

- Tribal representatives stated that the Tribes never gave up their mineral rights under treaty.
- The NRC staff stated that the NRC does not look at the leasing or other rights issues unless the facility is on BLM or Forest Service land.

Debra White Plume:

- The whole process is unfair because the NRC attorneys are doing all of the answering today but the Tribe's attorneys are not here. We need to move on to other issues.

Bryce In The Woods (CRST):

- How does the NRC deal with the cleanup of accidents and spills? He cited various examples, such as the Kalamazoo crude oil spill and the possibility of spills from underwater pipelines into the Missouri, Cheyenne, and Wind Rivers.
- Tribes are concerned about the great potential effects of accidents and that there is no clear line of responsibility for cleanup.

Bill Von Till (NRC) explained financial surety regulations.

Mike Catches Enemy (OST NRRA/THPO Director):

- The fact that the Tribes' counsel is not here today to rely on and clarify the discussion is a disadvantage to the Tribes.

Steve Vance (CRST):

- Who is responsible in an emergency?
- These are the same concerns the Tribes had for the original application: air, water, life. These questions have not changed, people have not changed.
- We have a saying: "Take a look behind you, there are grandchildren coming." What are we leaving them?

Individual Tribal resident [man, not identified]:

- He expressed concern that the United States was ignoring treaties in approving mining.
- He expressed concern about the effect on the environment.
- He expressed concern about the destruction of historic and cultural resources without consulting the Tribes or without Tribal consent.

[Kat?] Converse [sign-in sheet includes Kathryn Converse, OST NRRA hydrologist]:

- Will the review consider the carbon footprint of Crow Butte?

Nathan Goodman (NRC) replied that it would through the cumulative impacts assessment.

Wilmer Mesteth (OST THPO, spiritual and traditional leader on Pine Ridge reservation):

- He said that he represents many people on Pine Ridge, the largest Tribe of the Sioux Nation; 68,000 people with the largest land base. That is why he is happy that elders and people from families are here to speak today.
- The NRC needs to hear these statements from the Tribes, although it is hard.
- He described historical Lakota treaty rights and the U.S. Government's history of violating them and taking Lakota lands. He likened those events to the NRC approving mines today—both the failure to recognize Tribal rights and the bad effects on the environment and people.
- Yesterday at Crow Butte, the company talked about good relations with landowners, ranchers, and county commissioners, but the Tribes are the true landowners, an issue still in the courts. The mineral rights to those lands belong to the Lakota.
- At Crow Butte, the applicant and SHPO never asked the Tribes what was important and historic. The Tribes have this information. For example, the buttes there are where the ancestors are buried and are places of worship. That area held the campsites of Chiefs Little Wound, Red Cloud, Crazy Horse, and Little Killer. We have a lot of information about that whole entire area, which is rich in our cultural history. Other Tribes also have history and burial grounds in that area: Pawnee, Arapaho, Northern Cheyenne, Kiowa, Comanche, and Crow. The mines are affecting this historic property.
- The water and aquifer and White River at the Crowe Butte mine affects the Pine Ridge reservation, contaminating the drinking water and causing increases in diabetes and pancreatic cancer. What is taking place in that mine will affect us.
- These problems are why the Tribes do not trust commissions like this when they come onto this reservation.
- The Tribes do not benefit from mining operations and do not want them because they want to protect the land and history for the generations to come. "We feel threatened by this mining."

Ravel Youngblood Bateson, of South Dakota [man, name not on sign-in sheet, recently moved back to Pine Ridge after many years working in Colorado]:

- Mining is going to wreck all of the wildlife and environment.

Haimanot Yilma (Project Manager, Dewey-Burdock application, Environmental Review Branch B, NRC) presentation:

Yilma summarized the project, noted that it borders the Black Hills National Forest. She stated that the NRC recognizes its sacred nature and wants to know more about TCPs that may be impacted by the project.

Several Tribal representatives and **Paige Olson** (Project Review Officer, South Dakota SHPO) asked a series of questions about the map in Yilma's presentation related to where in the properties the company plans to put its facilities.

Lance Rom (OST THPO archaeologist) suggested that the applicant/NRC rethink the boundary of the area of potential effects

There was a discussion, similar to the earlier discussion about Crow Butte, about why the Tribes did not receive unredacted maps of the Dewey-Burdock archeological sites. **Patty Jehle** (Office of the General Counsel, NRC, attorney for the Dewey-Burdock application) provided the NRC responses.

Steve Vance (CRST):

- The Tribes should be able to do a TCP survey.
- The only way the Tribes can comment on the application is if they can see the sites and identify the TCPs that the archeology survey may have missed. The Tribes have experts who can identify sites better than an archeologist who is not native.
- The visit to Crow Butte only involved driving around the perimeter. They did not have an opportunity to get out and really look. Such a visit does not offer an opportunity to comment.

Bryce In the Woods (CRST):

- The THPO and elected officials should do "boots on the ground" at the sites to confirm the previous survey and see what is missing from it. This is a sensitive issue to the Tribes.
- The TCP survey request is not only for these two sites but also for Nichols Ranch.
- Tribal participation in on-the-ground surveys is what government-to-government consultation means.

Terry Clouthies (SRST THPO):

- He asked a series of questions about the unevaluated sites in the Dewey-Burdock survey and the perceived inadequacy of NHPA criteria.
- The Tribes will want the unevaluated sites evaluated because some of those unevaluated sites are traditional cultural sites; archeologists are not aware of these sites. The NRC needs to take that into account.
- The non-Tribal archeologists might find some things at a site but miss all aspects of a site or improperly define the site boundaries. This is another reason a TCP study is necessary.

Upon request of a visiting Tribal representative, **Paige Olson** (SHPO, South Dakota) stated that her office would recommend a TCP survey for Dewey-Burdock, given the number of sites and the proximity to the Black Hills.

There were questions and a discussion about BLM's involvement in the project.

Steve Vance (CRST):

- As the Tribes have now requested to go back in and identify TCPs for multiple projects, maybe the NRC can see that this is a concern of the Tribes and will be for every project. For the next project, before letting college students and archaeologists in, bring the Tribes in to do the TCP survey, rather than inviting them to drive by and look out a bus window later. While the applicants are doing the survey, have the Tribes go in, because every project will involve the same concerns.

Haimanot Yilma (NRC) stated that surveys are often done before an application is submitted to the NRC, but that the NRC can communicate this request to applicants for future applications.

Brett Klukan (NRC): (Speaking not as an attorney but as an NRC stakeholder)

- It would be useful to get from the Tribes information on what a TCP survey looks like, what is done in one, etc., to help the NRC staff understand what the Tribes are requesting.

There were no further questions.

Michael Catches Enemy (OST NRR/THPO Director) then asked the NRC group to take away all of its materials and equipment and depart so that the Tribal representatives could use the meeting space to consult about next steps in private. The NRC group did so.

3 FIELD NOTES:
Site Visit to Powertech Proposed
Dewey-Burdock In Situ Mining Facility
June 9, 2011

Introduction

Wilmer Mesteth (OST THPO) gave the blessing in Lakota. (According to **Jackie Big Crow** (OST 5^h Member Office), he was thanking the Four Directions for the opportunity to meet and learn today, asking for insights and success.)

Applicant Presentations at Sunrise Ranch

Mark Hollenbeck (project manager for Dewey-Burdock and owner of Sunrise Ranch) presentation:

His family ranches around the site, he and his brother have land downstream. Investigating plans was how he initially became involved; Powertech eventually hired him as project manager.

The project's cultural resource and historic preservation policy is embodied in a 2008 memorandum of agreement (MOA) with the South Dakota State Archaeologist:

- (1) Investigate cultural resources threatened or potentially threatened before and during operation.
- (2) If cultural resources have been identified, the focus is avoidance.
- (3) Unanticipated sites or resources discovered in the field will result in work stopping until they are investigated and until clearance from the State Archaeologist.

Q: Were no Tribes consulted for the MOA?

Michael Fosha (South Dakota State Archaeologist) said that the MOA was only for a State permit, not a government-to-government consultation. Tribes are involved in the Federal process with the NRC.

Applicant: The point is that Powertech established the agreement because it wants to preserve cultural resources.

Project archeologist (Augustana College) (performed the survey) presentation:

The archeological survey covered about 11,500 [acres?], a 100-percent survey under Department of the Interior survey requirements. The survey used 30-meter pedestrian intervals over the landscape and closed in if anything was found.

The survey found approximately 209 sites: about 114 were not eligible for the National Register, 80 needed further evaluation, 14 were eligible for nomination to the National Register.

This area around the Black Hills was a refuge area when the climate on the plains was harsher. It has had long-term occupation and has the whole prehistoric chronology from early Paleoindian to historic Tribal times—an unbroken archaeological record. This is important. The sites in the project area are mostly small campsite areas (e.g., clustered fire hearths) with human occupation to mid-archaic times, about 5,000 years. There are also some Euro-American historic sites.

The archeologists have worked with Powertech from the outset and tell the company as they find areas so that it can reconsider siting. The design of the archeological investigation is phased and multiyear according to Powertech plans for developing the mine. The phased approach means that unidentified areas from the surveys were not resolved if no mining is planned there. The survey focused on the initial work area.

The applicant had a map up on the wall. Because it was small and hard to see, some Tribal representatives asked if any copies were available. None were, but the applicant/NRC promised to get them.

Kevin Hsueh (NRC) thanked the applicant for arranging the site visit. He noted that representatives from five Tribes were there and listed them, as well as NRC staff and contractors, BLM, and the SD SHPO.

Adrain [?] (archeologist, Augustana College): The archeological surveyors had a Tribal monitor with them during whole survey (and was surprised that the Tribes did not know this already). The monitor was from Lower Brule Sioux Tribe (he did not name the individual).

Q&A and Comments during the Presentations and Van Tour (all answers made by applicant staff or consultants)

Terry Clouthies (SRST THPO): Are you still avoiding sites deemed noneligible?

A: We will avoid them if we can, but not always.

Q: What about TCP features that might be in conflict with the proposed facility that the State Archaeologist did not see, such as stone features?

A: Stone features are very small on this site. A site previously identified as eligible down in the creek now has no surface manifestation. In 2007, the survey found small scattered artifacts on an intact terrace. In 2008, the survey found hearths exposed in the cut, but now they are buried by soil washed over them by rain.

Bill Von Till (NRC): Will there be monitors during construction?

A: Yes, there will be a monitor during construction.

Paige Olsen, SD SHPO: How many construction sites will there be at a time? Will there be a monitor for each site?

A: There will be both plant site and wellfield construction at same time. The applicant had not thought about having a monitor for each site but should do so.

Lance Rom (OST THPO archaeologist): The NRC should have a Tribal person (such as **Wilmer Mesteth** (OST THPO)) teach the NRC staff about TCPs.

Information on the Dewey-Burdock Application Areas from Tribal Representatives

The name of the Black Hills in Lakota is “Everything That Is.”

People from the Tribe moved up here to work in the old uranium mine when it was active.

As an example of cultural knowledge required to fully recognize a site’s features, one Tribal representative noted that every campsite had to have a separate place for menstruating women.

Cedars can mark a burial. They planted them to help find the spot on the plains again in relation to other landmarks.

Some places in this area were good for getting salt. People would wait for rain, then scrape the salt off the earth when it dried.

Lunch Break

Van Tour Itinerary

The goal of the van tour was to see sites in both the Dewey and Burdock sections of the project. The applicant intended to stop at the old open mining pits and representative hearth sites. In response to interest from Tribal representatives, the van also stopped at a stone ring site accessible to the vans.

Stop 1

Several hearths eroded almost to bedrock, near railroad tracks.

Applicant archeologist: Originally, the hearths would be tall but are now deflated to the ground. There may be some more eroding out of the knoll. Typical lowland erosion has exposed a lot of artifacts of all ages. Since the 2007 survey, there has been lot of rain and erosion and more grass [things are less visible in grass]—in 2007 there was only cactus and sage. The survey found a continuous scatter of flakes between the knoll and the road. Instead of making it one big site, because of the erosion the survey defined a smaller site. The landscape changes fast around here because of weather and erosion.

Lance Rom (OST THPO archaeologist): These would probably be temporary camps on the way to Bear Butte. Some think that people sheltered in the Black Hills for the winter.

Stop 2

Intact terrace remnant and small gully/ravine, near a water hole, and Beaver Creek a bit further away.

Applicant archeologist: This is a significant eligible site. The survey recommended it as eligible for listing on the National Register. The 2007 survey found artifacts in the slump. The 2008 survey dug test pits on either side of the gully/ravine. On the far side the researchers found a fireplace/hearth—a basin-shaped ash deposit. The 2008 survey exposed at least two

more hearths. No further investigation will occur because the project will not conduct mining work here. Some wellheads for the mine will be to the north. Beyond the gully to the north is deflated shale and topsoil—mostly gravel.

Terry Clouthies (SRST THPO): The campsite probably extended to Beaver Creek.

On the drive in and out of this site, the group saw two eagles in a nest. **Dennis Yellow Thunder** (OST NRRA Technician) was interested in them and took pictures. He considered asking the vans to stop to get a closer look and look for feathers, but decided against it. **Michael Fosha** (SD State Archaeologist) said that the “parks department” said that the project cannot conduct construction during nesting season.

Stop 3

One rock line and two or more rock circles on a ridge.

This was a long stop, as the applicant gave the Tribal representatives the choice to explore. All of the Tribal representatives and most of the NRC staff climbed up the ridge, along with some of the applicant archeologists.

Applicant archeologist: This site was originally in the proposed permit boundary and so was surveyed, but now it is outside the proposed permit boundary. The closest disturbance from the mining will be across the road from the ridge and on other side of the trees that are a few feet from the other side of the road.

Most of the climbers found the stone line, one circle, and another scattered circle.

Terry Clouthies (SRST THPO) walked further along the ridge and then down back along the road; he said he saw things all along the ridge. **Jackie Big Crow** (OST 5^h Member Office) believed that this site was related by sitelines to camp sites such as the previous stop.

Stop 4

Middle of old uranium mine pits.

At the site, there was some discussion of the layout and environmental implications of the old mine. The applicant stated that the proposed new in situ mine will not create tailings piles. There may be a wellfield beyond the old mine [North?] but the applicant is not yet sure it will be done—if it is built, it will be during a later phase of the project. The applicant stated that Powertech does not plan to clean up the old mine’s tailings.