



## **POWERTECH (USA) INC.**

January 19, 2018

John Mays  
Powertech (USA) Inc.  
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Cinthya I. Román - Cuevas, Chief  
Environmental Review Branch  
Division of Fuel Cycle Safety, Safeguards, and Environmental Review  
Office of Nuclear Material Safety and Safeguards

**RE: U.S. NUCLEAR REGULATORY COMMISSION'S PROPOSAL TO IDENTIFY  
HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK  
IN SITU URANIUM RECOVERY PROJECT (DOCKET NUMBER: 40-9075)**

Dear Ms. Roman-Cuevas

Thank you for your letter dated December 6, 2017 regarding your proposal to identify historic, cultural, and religious sites at the Dewey-Burdock Project. This letter represents Powertech (USA) Inc.'s ("Powertech") formal response to your proposal. We appreciate the spirit of your proposal; however, due to the open-ended nature, cost structure and expected timeline to completion, which, based on past experience, may be overly optimistic, and as certain items within the proposal are not clearly defined, Powertech finds the proposal to be cost prohibitive. The proposal will result in exorbitant costs being incurred and provides no guarantee of successfully resolving the Final Supplemental Environmental Impact Statement ("FSEIS") deficiencies identified by the Atomic Safety and Licensing Board ("ASLB").

Costs for this effort have already been exorbitant to the applicant and licensee. Two previous attempts have been made to satisfy the National Environmental Policy Act ("NEPA"): 1) the initial licensing action completed in 2014, which involved approximately five years of consultation efforts and 2) an attempt at consultation following the ASLB Partial Initial Decision in April 2015. The repeated unsuccessful attempts by Nuclear Regulatory Commission ("NRC") to gather such information has already cost the applicant hundreds of thousands of dollars and this latest proposal appears to be similar to the previous proposals in many regards. Further, the latest proposal appears to closely resemble a Section 106 effort, which has already been satisfied per the Board's Order. As the applicant and licensee, Powertech has borne the cost of these unsuccessful efforts by the NRC, with the exception of the NRC litigation efforts. Further, as Dewey-Burdock cannot operate until this part of the licensing process is completed and the



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ongoing efforts to resolve the NEPA process inhibit other regulatory approvals, Powertech must continue to finance efforts to support this licensing process. Powertech believes that both the financial and human capital costs to date have been exorbitant and highly unusual, as well as relatively dissimilar to what has been observed for similar licensing actions. Powertech does not believe it should be further burdened with additional costs, since NRC has twice before failed to accomplish a task for which it is solely responsible for completing. Powertech believes the latest proposal does not provide a guaranteed path forward to successful completion.

Regarding the proposal itself, Powertech appreciates the inclusion of interviews with tribal councils, leaders and elders. However, to propose a third attempt at a site survey, that is open-ended in nature, does not seem prudent or at least a fully conceived path forward to successfully resolving this issue given previous history. There are many specifics to the proposal that Powertech needs to understand before it could accept such a proposal. For example, several components of the proposal are not well defined, a perfect “methodology” for incurring substantial, unanticipated costs, as well as delays. Further, Powertech would like to see NRC be accountable for its efforts and its lack of performance on this issue, not passing on the cost to repair errors it has made in the licensing process to the licensee.

In addition, the timeframe as proposed is unacceptable, particularly when considering previous efforts, which may deem the timeline to be overly optimistic, especially as certain items in the proposal are not clearly defined, Powertech’s monthly cash burn attributable to the project and the approvals required from other agencies for the project. As public documents judicially noticed under the ASLB proceeding highlight, other agency approvals would rely on the extensive and costly efforts completed by NRC to satisfy both NEPA and the National Historical Preservation Act (“NHPA”). Otherwise, permit approvals, such as those pending under the Environmental Protection Agency (“EPA”) and the Bureau of Land Management (“BLM”), may have to be supplemented with a separate and duplicative process to address these requirements<sup>1</sup>, at the cost of additional millions as evidenced by NRC expenditures on these tasks to date. The timeframe proposed here further extends and delays these approvals as these agencies wait for NRC to complete its NEPA process.

Finally, no provisions within this proposal provide any assurance for completing this process in a timely fashion. As the record shows, these efforts have continued with repeated lack of adherence to deadlines and there is nothing here that suggests this is likely to change. Powertech will now address some specific points of concern with the proposal, discuss its alternative proposal to resolve the NEPA process and discuss the cost prohibitive nature of this proposal.

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<sup>1</sup> Attached is letter dated, Jan. 9, 2018 from BLM South Dakota Field Office in support of this statement. Further supporting public documents can be found in Powertech December 11, 2017, judicial notice.



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The following are a few points of concern from the proposal.

1.) It is unclear if Lakota Tribes, including the Oglala Sioux, would accept this proposal.

The proposal may be inconsistent with the most recent feedback from the Oglala Sioux. For example, it references the May 31, 2017 letter which was written by the Oglala Sioux THPO in response to NRC's April 2017 proposed site survey where the "open-site" approach is proposed, and the Oglala Sioux noted "While the Office appreciates the proposal, it appears to be virtually identical to the former "open-site" proposals made by NRC Staff that have been rejected by every single Lakota Sioux Tribe that has considered this approach." Powertech believes the current proposal resembles another open-site approach and it is unclear why this would be interpreted differently a third time. Though there are differences in the current proposal, much of it is the same as the two previous proposals. Powertech also has concerns that the proposal has not been discussed with the Oglala Sioux or other Lakota Tribes. The proposal itself says that it will seek input on the methodology from the Tribes. Obviously, a large part of the scope here is yet to be determined. It should be further added that the proposed methodology already appears in conflict with previous efforts, particularly as interviews with elders were previously considered not acceptable by consulted tribes. From the testimony of Haimanot Yilma during the evidentiary hearings held by the ASLB (ML 14171A805 pg. 8), "The Staff also inquired about the willingness of tribal elders to provide information on historic properties known to the tribes through oral histories. Ex. NRC-071. None of the consulting tribes, however, expressed interest in participating in the collection of oral histories." Further, the testimony continues on pg. 9 of the same document as follows, "For the Dewey-Burdock Project, however, the Staff used all of the methods stated in § 800.4(b)(1), except for oral history interviews, which we were unable to obtain."

Powertech cannot agree to a proposal where the methodology of the proposal is open-ended and has not been fully vetted with the Tribes.

2.) The proposal has no agreed upon specifics, thus, costs could be significantly underestimated. The proposal allows for input from the Lakota Tribes to determine tribal reimbursement costs. While the previous reimbursement rate is provided as a starting point, Powertech has no idea what the acceptable cost would be from the tribe(s) and does not believe this proposal has considered any input from tribes, other than the Oglala Sioux at this stage. Given that these are the same rates previously deemed not acceptable by the Oglala Sioux and that the Oglala Sioux communications reference the Makoche Wowapi proposal of \$818,000 from several years ago, in which the reimbursement rate is not separated, the reimbursement rate remains questionable for acceptance. Also, the Makoche Wowapi proposal only specified a survey for 2,637 acres. The current proposal contemplates the total license area, which is 10,580 acres or about 4 times larger. Therefore, as the methodology has not been determined and the area of survey is



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substantially larger than what was considered in the Makoche Wowapi proposal, how can the contractor costs be reasonably estimated? Based on the information available, the contractor costs would appear to be underestimated.

Powertech cannot agree to an open ended cost proposal. Such costs need to be appropriately determined by NRC following discussions with the tribe and then presented to Powertech.

- 3.) The proposal is not specified with respect to how many tribes and tribal participants would attend. This uncertainty means that costs for tribal reimbursements could be multiplied several times. For example, there are five Lakota Tribes, which could be readily envisioned participating. If five tribes were to participate under the Makoche Wowapi (ML12886A310) proposal, it is unclear what the resulting cost would be. Would this cost be over US\$4 million for tribal reimbursement and contractor costs? The number of participants is set at three in the NRC cost estimate; however, based on previous feedback from the tribes, and its consultants, there could be as many as 20 participants.<sup>2</sup> It is unclear if this represents only the interests of the Oglala Sioux, and how many participants would be required for five tribes.

Reimbursement costs are determined based on the number of tribes and participants, yet in the NRC proposal, it is unknown how many tribes and participants for each tribe would be attending and there is large range of possibilities that can substantially affect the overall costs. Also, the qualifications of those who would participate in the survey is not specified.

Powertech cannot agree to a proposal where the number of participants for each tribe and the number of tribes needs has not been determined as Powertech cannot understand the overall cost and scope of the proposal.

- 4.) NRC does not provide for the involvement of other regulatory agencies and fails to consider the relationship to NHPA. Further, NRC does not account for a potential modification to the Programmatic Agreement. NRC ongoing mitigation efforts and protective procedures for protection historic properties (as well as cultural resources) are currently encapsulated in the programmatic agreement for Dewey-Burdock. Should NRC efforts discover further properties for inclusion into the national register, than it would be assumed that the programmatic agreement would have to be updated to include such properties and provide a similar process for mitigation of adverse effects. Cultural resources are also protected in the programmatic agreement. Further, all signatories including the Advisory Council on Historic Preservation, BLM, South Dakota SHPO, and

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<sup>2</sup> Makoche Wowapi Proposal, 2012, stated that 20 field workers were necessary. (ML12886A310)



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others must approve this type of amendment and this should be part of the proposed schedule. This speaks to how these proposed efforts would need to be consistent with those under Section 106, and must be handled in this fashion, regardless of the auspices of meeting requirements of NEPA. The proposal also does not mention coordinating efforts with the BLM, who is a cooperating agency on the FSEIS.

Powertech cannot agree to a proposal that does not consider involvement of all appropriate agencies and account for all NHPA implications.

- 5.) There have not been effective deadlines set and upheld by NRC and based on past experiences, this will likely lead to years of additional effort. While the schedule is preliminary, such a schedule is aggressive given the proceeding history. Particularly since the initial April 2015 ASLB order, it has been difficult to arrange any meetings between the NRC and Oglala Sioux. For example, NRC originally requested a government-to-government meeting in June 2015 following the decision. It took until May 2016 to hold such a meeting, despite repeated attempts to communicate. As the record shows, in over eight years of effort, meaningful progress on the issue of cultural resources has been challenging, including the two and a half years following the initial ASLB order. During these two and a half years, NRC staff was only able to complete a single face-to-face meeting with the Oglala Sioux and NRC was not able to receive input on a scope of work for a site survey when requested. NRC held a second meeting, by teleconference, during this period wherein it was reported that the Oglala Sioux would provide parameters on a site survey by mid-March 2017. This input from the Oglala Sioux was not provided until NRC sent letters in April and May proposing another site survey, at which point the Oglala Sioux responded, at the end of May, informing the NRC that the proposed site survey parameters were not acceptable and well after the agreed mid-March deadline. Powertech remains concerned that NRC has not accounted for the difficulties seen in previous efforts and what steps would be taken if communication from the tribes is not forthcoming. Further, Powertech is also concerned that NRC has not considered the increased logistics should several tribes chose to participate in the process. Given previous history, Powertech estimates that the NRC proposal will realistically take 3-4 years to complete.

Powertech cannot agree to a proposal without firm deadlines and a schedule that has been fully vetted and accepted by the tribes. Consistent with previous attempts, Powertech believes this part of the process alone is likely to take longer than a year.

The proposal also does not account for the hearing, which is scheduled to begin in June 2018. As such, there is no secondary or back up plan should information not be forthcoming from the tribe. There should be some contingency plan so that Powertech has some assurance that the process can be completed in a timely fashion. Previous



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history indicates this has been a repeated problem. Until such a fully vetted schedule can be provided, Powertech cannot agree to the proposal.

- 6.) The scope of work for the contractor is vaguely specified. Powertech is concerned regarding NRC management of the contractor role in this effort, especially as this is one of the largest costs provided by the NRC staff cost estimate. Powertech would like to see transparency in contractor billing, understand how NRC determines proper qualifications of the contractor to complete such work prior to their selection, and also would like to know what tasks will be specifically done by the contractor in this process. This is important, as based on NRC estimate, Powertech will pay approximately US\$250,000 for the contractor.

Powertech cannot agree to a proposal where transparency in the selection and the scope of the contractor are not clearly defined and addressed.

- 7.) The proposal appears to clearly be a repetition of NHPA efforts and an effort to conduct a Section 106 process. The proposal is consistent with other previous proposal's for Dewey-Burdock as well as several other recently NRC licensed projects for the purpose of completion of the Section 106 process. The proposal does not look for alternatives to address deficiencies found by the ASLB in LBP-17-09, but largely repeats previously unsuccessful efforts. Powertech sees these efforts as being cost exorbitant and likely to fail again. From the ALSB decision in LBP-17-09, "We again emphasize that under NEPA, the NRC Staff is not required to use "the best scientific methodology" to assess environmental impacts, but it is required to use a reasonable methodology. Thus, the NRC Staff may wish to consider available alternatives to determine if there is a reasonable method, other than its current open-site survey proposal, capable of yielding the information on the cultural resources of the Lakota Sioux Tribes. Exploration of such alternatives could result in an agreement among the parties on a survey methodology, the major bone of contention among them, so as to permit the resolution of Contention 1A. We note, however, that if the NRC Staff chooses a methodology that does not include complete information about adverse effects on the Tribe's cultural resources, the NRC Staff would need to include an explanation that satisfies the requirements of 40 C.F.R. § 1502.22. As our Partial Initial Decision made clear, the FSEIS does not contain an analysis of Sioux tribal cultural resources even though this information is essential to determining "potentially necessary mitigation measures." Powertech believes that the NRC has failed to grasp the decision of the ASLB. Further, Powertech is unaware that NRC has made attempts to further discuss with the "Sioux Tribes" how to satisfy this order before proposing to Powertech a proposal for the third time, which does not appear to pursue an alternative approach.





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Powertech cannot agree to a proposal that is not consistent with the direction proposed by the ASLB and does not consider alternatives.

### Powertech's Alternative Proposal

Powertech would like to pursue an alternative proposal from that presented by NRC to resolve the outstanding FSEIS deficiencies; a proposal that is not cost prohibitive, unlike the proposal presented by the NRC. Due to the exorbitant costs that will be incurred to obtain the additional information required to resolve the FSEIS deficiencies, evidenced by the recent NRC estimates to implement this proposal, as well as years of effort without a resolution, Powertech believes NRC should update the FSEIS as provided for in the regulations. This can be done for missing or incomplete information under 40 CFR 1502.22. Powertech believes that an ethnographic study should be performed to support an update to the FSEIS and if possible, supplemented with interviews from Tribal Elders, Councils and Leaders. Powertech estimates, based on input from an independent contractor, the process of completing an ethnographic study, which is based strictly on a literature survey, can be completed within approximately 2 months and could begin immediately without an extensive procurement process of several months. This study will include Lakota Tribes as well as non-Lakota Tribes in the region. Further, the costs associated with completing the ethnographic study are approximately US\$24k and Powertech is prepared to hire and pay for the consultant and commence this work immediately. A copy of the contractor's proposal is attached to this letter. We see this as a positive step forward that could potentially bring additional information to the analysis and be used to update the FSEIS. As noted by the ASLB in LBP-17-09, "Even if the NRC Staff selects a methodology without further input from the Oglala Sioux Tribe, we do note that the Oglala Sioux Tribe will have additional meaningful opportunities to consult during future phases of the project pursuant to the Programmatic Agreement."

Powertech's alternative approach enables a path towards resolving the FSEIS issues in advance of an evidentiary hearing, based on the schedule provided by the ASLB. However, we think that these efforts should be time-limited, for example, discussions with Tribal Elders, Councils and Leaders need to have firm timelines, so that the process may move forward in an assured fashion. Powertech's alternative proposal is an approach outlined by the ASLB and is possible should NRC determine that the effort to obtain data identifying sites of historical, cultural, and religious significance is cost prohibitive. As noted throughout this response, Powertech believes the latest NRC proposal is cost prohibitive.

### Cost for gathering the data are Exorbitant with respect to NRC proposal

Powertech would also like to further discuss the exorbitant costs associated with the NRC proposal. Consideration must be given to the amount of money Powertech has already expended on this effort. Overall, Powertech has already incurred approximately US\$10 million in



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expenditures over eleven years directly related to NRC licensing, including consultant costs, and including an initial survey for seven tribes that expended approximately US\$115 thousand for tribal reimbursement alone. This total does not include Powertech's litigation costs and staff costs during this time period. The NRC has invoiced Powertech for approximately US\$3.8 million for the licensing process for Dewey-Burdock. While the cost of consultation with Native American tribes, or specifically the Lakota Tribes are not readily separable from other licensing activities, this activity was undoubtedly the largest part of the licensing effort. Of the US\$3.8 million invoiced by NRC pertaining to the licensing process, approximately US\$2.6 million was invoiced by the Environmental Review Branch, which encompassed the activities involved in preparation of the FSEIS and consultation with Native American tribes and represents the largest portion billed by NRC.

Powertech also incurs considerable expenditures to sustain the project while NRC further deliberates. As evidenced by Powertech's December 11<sup>th</sup> judicial notice, other agencies are awaiting the NRC to complete their work on cultural resources. During that time Powertech must sustain the project and its entire corporation off of funds it must raise through financing, as cash flows from Dewey-Burdock are not possible until all necessary permits and authorization are granted. The Company has estimated that it will incur approximately US\$1 million of expenditures related to the project in 2018. This amount does not include the US\$792,300 cost estimate provided by the NRC for their December 2017 proposal, which, as Powertech discusses throughout, believes could be significantly underestimated.

The cost to resolve the FSEIS deficiencies under the NRC proposal could easily exceed a few million dollars, making this effort disproportionately the largest part of the entire licensing effort, which it is arguably already. The proposal also provides no guarantee that NRC efforts will be sufficient to resolve the remaining FSEIS deficiencies noted by the ASLB. Powertech does not have confidence in the NRC efforts to risk such funding, which could again not result in resolution of the FSEIS deficiencies. The lack of accountability by NRC cannot be accepted and it is not fair treatment to the licensee to be required to pay for repeated failures. Powertech requests that if such new efforts are undertaken for a third time, NRC accept responsibility for the cost of these proposed efforts until a successful resolution can be reached.

Powertech has attached preliminary cost estimates for conducting the various proposed methodologies for obtaining data found to be deficient in the FSEIS, as requested by the ASLB on January 9, 2018. This estimate includes amounts provided by NRC on January 17, 2018.

### Conclusion

Powertech believes that its alternative proposal enables the resolution of the FSEIS deficiencies identified by the ASLB and is not cost prohibitive, unlike the NRC proposal. However, Powertech is open to further discussion on the NRC proposal, provided its concerns can be





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addressed and the proposal is not cost prohibitive. Before fully understanding associated costs, the NRC's December 2017 proposal (based on the NRC's cost estimate) represents nearly the a substantial amount of the reimbursement costs determined to be "patently unacceptable" by the Board. NRC should undertake serious efforts, which have been sorely lacking and are in evidence within the criticism of the ASLB within its October 2017 decision on summary disposition. Quoting the decision,

*"We grant the motion as to Contention 1B, concluding that over the past two years the combination of multiple attempts at direct correspondence, a May 19, 2016 face-to-face meeting, and a January 31, 2017 teleconference between the Oglala Sioux Tribe and the NRC Staff satisfies, at a bare minimum, the NHPA's requirement that the NRC Staff consult with the Oglala Sioux Tribe." (emphasis added)*

The ASLB went on further to list errors made by NRC throughout the consultation process including failure to include counsel, failure to complete mandatory disclosures and failure to move from its negotiating position. Further, the ASLB stressed that the parties, including NRC, need to be more timely and responsive with their communication. From Powertech's position, this last item is the main reason why so little has been achieved over such a long period. Powertech requests that the NRC take responsibility for these errors.

As the NRC proposal currently stands, it is an open-ended proposal with a vague cost structure. In the current proposal, information is entirely too vague and one cannot determine an overall cost or reasonable timeline. Based on Powertech's experience, the preliminary timeline is likely overly optimistic, as certain items within the proposal are not clearly defined. Powertech currently envisions this proposal to result in millions of dollars of additional expenditures to its business.

We would request your response to this letter no later than February 19, 2018.

Sincerely,

John Mays  
Chief Operating Officer

Enclosures: Powertech (USA) Inc. Cost Estimates of Proposed Methodologies, January 19, 2018

Summary of Existing Evidence for Evaluating Foreseeable Significant Adverse Impacts from the Azarga Uranium Corporation Dewey-Burdock Project for



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Lakota Sioux and Non-Lakota Tribal Places of Religious or Cultural Significance  
Scope of Work and Cost Estimate, Paul R. Nickens, Ph.D. January 18, 2018

Letter from U.S. Bureau of Land Management (BLM) to Powertech (USA) Inc.  
Regarding BLM's Processes Pending NRC Completion of FSEIS, January 9,  
2018

CC: Blake Steele, President and CEO  
John Tappert, NRC  
Andrea Kock, NRC  
Diana Diaz Toro, NRC  
Emily Monteith, NRC  
David Cylkowski, NRC  
Kellee Jamerson, NRC  
Bill Von Till, NRC  
Antoinette Walker-Smith, NRC  
U.S. Senator, Mike Rounds, South Dakota (R)  
U.S. Senator, John Thune, South Dakota (R)  
U.S. Representative, Kristi Noem, South Dakota (R)

## Powertech (USA) Inc. Cost Estimates of Proposed Methodologies

As requested by the Atomic Safety and Licensing Board's order January 9, 2018 please see the following estimates of proposed cost for conducting four separate methodologies to obtain information/assess cultural, historic, and religious sites at the Dewey-Burdock Project. The estimates include NRC estimated costs for three field surveys as provided January 17, 2018 as well as additional cost estimated by Powertech for all four scenarios. It should be noted that realistically, costs of the methodologies cannot be definitely determined pending a final decision upon terms, which is subject to further input from the parties, including further communication with Native American tribes which would participate in the proposed work. Note that NRC did not estimate costs for Powertech's Alternative which includes development of a literature based approach by a contractor, paid for by Powertech, and is detailed in the attached quotation, "Summary of Existing Evidence for Evaluating Foreseeable Significant Adverse Impacts from the Azarga Uranium Corporation Dewey-Burdock Project for Lakota Sioux and Non-Lakota Tribal Places of Religious or Cultural Significance, Scope of Work and Cost Estimate," prepared by Paul R. Nickens, Ph.D.

### NRC Estimated Costs

| <b>NRC Estimated Costs</b>                           | <b>NRC's December 2017 Proposal<sup>1</sup></b>                                | <b>NRC's April 2017 Proposal<sup>1</sup></b>                           | <b>Makoche Wowapi Proposal<sup>1</sup></b>                                     | <b>Powertech Alternative</b> |
|------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------|
| NRC FTE                                              | Approximately 1 full time equivalent (FTE)                                     | Approximately 1 FTE                                                    | Approximately 1 FTE                                                            | ? FTE<br>(not estimated)     |
| NRC Staff Travel Cost                                | Meetings with Tribal Leaders and Oral History Interviews<br><br>~ \$3,600      | N/A                                                                    | N/A                                                                            | \$0                          |
|                                                      | Field Survey (two weeks per trip; two NRC staff; two trips)<br><br>~ 13,200    | Field Survey (two weeks; two NRC staff; one trip)<br><br>~ \$6,600     | Field Survey (four weeks per trip; two NRC staff; two trips)<br><br>~ \$25,600 | \$0                          |
| Contractor                                           | Approximately \$250,000                                                        | Approximately \$200,000                                                | Approximately \$818,000                                                        | \$0                          |
| Reimbursement to Tribes (mileage, per diem, lodging) | Field Survey (five Tribes; three Tribal representatives/Tribe)<br>~ \$81,000   | Field Survey (one Tribe; three Tribal representatives)<br>~ \$8,100    | N/A                                                                            | \$0                          |
| Potential stipend/honoraria to Tribes                | Field Survey (five Tribes; three Tribal representatives/Tribe)<br><br>\$50,000 | Field Survey (one Tribe; three Tribal representatives)<br><br>\$10,000 | N/A                                                                            | \$0                          |
| Total                                                | ~ 1 FTE + \$397,800 =<br><b>~ 792,300</b>                                      | ~ 1 FTE + \$224,700 =<br><b>~ 619,200</b>                              | ~ 1 FTE + \$843,600 =<br><b>~ 1, 238,100</b>                                   | ? FTE                        |

<sup>1</sup> NRC Staff Response to January 9, 2018 Order (Scheduling Third Telephonic Conference Call) Docket No. 40-9075-MLA, January 17, 2018

It is acknowledged the NRC will have time associated with review, approval, and publishing of an updated FSEIS as part of Powertech's Alternative Proposal. Powertech cannot estimate this, but believes this to be a fraction of their already proposed cost based upon the timeline provided in the December 2017 proposal.

Powertech (USA) Inc. Estimated Additional Costs

| <b>Powertech (USA) Inc. Estimated Additional Costs</b> | <b>NRC's December 2017 Proposal</b>       | <b>NRC's April 2017 Proposal</b>      | <b>Makoche Wowapi Proposal</b> | <b>Powertech Proposed Alternative</b> |
|--------------------------------------------------------|-------------------------------------------|---------------------------------------|--------------------------------|---------------------------------------|
| Van Rental                                             | 5 vans at<br>\$4,000/month =<br>~\$20,000 | 1 van at<br>\$4,000/month =<br>~4,000 | \$0                            | \$0                                   |
| Powertech Field Labor                                  | ~150,000 <sup>2</sup>                     | ~ \$20,000 <sup>3</sup>               | ~\$50,000 <sup>4</sup>         | \$0                                   |
| Contractor                                             |                                           |                                       |                                | <b>\$23,850<sup>5</sup></b>           |
| Powertech Estimated Additional Costs                   | ~\$170,000                                | ~\$24,000                             | ~\$50,000                      | ~\$23,850                             |
| <b>NRC Estimated Costs</b>                             | <b>\$792,300</b>                          | <b>\$221,950<sup>6</sup></b>          | <b>\$1,238,100</b>             | <b>Not estimated</b>                  |
| <b>Total</b>                                           | <b>\$962,300</b>                          | <b>\$245,950</b>                      | <b>\$1,288,100</b>             | <b>\$23,850 + NRC FTE</b>             |
| Powertech Sustaining Costs                             | ~\$1,000,000                              | ~\$500,000                            | ~\$1,000,000                   | ~\$410,000                            |
| <b>Total with Sustaining Costs</b>                     | <b>\$1,962,300</b>                        | <b>\$745,950</b>                      | <b>\$2,288,100</b>             | <b>\$433,850 + NRC FTE</b>            |

Powertech estimated costs covers responsibilities to provide transportation, disperse payments, GPS location, and landowner coordination for the two field surveys proposed by NRC. For the Makoche Wowapi proposal, transportation and GPS locating is included in the contractor costs and it is assumed Powertech would be need personnel only for coordinating landowner access and dispersing payments.

<sup>2</sup> Estimated cost for Powertech personnel to conduct associated work with survey, 5 tribes, assumed 15 participants, over a (2) two week survey periods. Calculation assumes 10 Powertech personnel, \$10,000/month, 1.5 months each. Note that Powertech does not have 10 employees currently to assist with this process.

<sup>3</sup> Estimated cost for Powertech personnel to conduct associated work with survey, 1 tribe, assumed 3 participants, over a (1) two week survey period. Calculation assumed 2 Powertech personnel, \$10,000/month, 1 month each.

<sup>4</sup> Estimated cost for Powertech personnel to conduct associated work with survey over an eight week survey period. Calculation assumed 2 Powertech personnel, \$10,000/month, 2.5 month each.

<sup>5</sup> See attached quotation.

<sup>6</sup> The April 14, 2017 proposal letter did not include a contractor, thus, the \$200,000 cost associated with the contractor in the NRC estimate has been removed. NRC FTE was also reduced by half based on assumption the effort is not equivalent to December 2017 where 5 tribes are involved.

Powertech would like to bring attention to the fact that not accounted for in the NRC estimate is cost associated with sustaining the project during the activities described above. Powertech estimates that this cost is approximately US\$1 million over the 17-month duration of the schedule within the December 2017 proposal. It should be noted that for the April 2017 proposal or the Makoche Wowapi proposal there were no similar timelines provided. Powertech has assumed that the December 2017 proposal and the Makoche Wowapi proposal would have the same timeline and the same sustaining costs; however, as the April 2017 proposal only pertained to the Oglala Sioux Tribe and a more defined scope, Powertech has assumed the timeline and sustaining costs to be approximately 50% of the US\$1 million. For Powertech's alternative proposal, 5 months have been assumed for NRC to complete its FSEIS efforts (based on the December 6, 2017 NRC letter) and 2 months for completion of contractor efforts within the quotation provided. Total duration of sustaining costs would then be a total period of 7 months or about 41% of the 17 months estimated by NRC and sustaining costs have been proportioned accordingly.

It should be further noted that a total of 31 months has passed between the April 2015 ASLB partial initial decision and October 2017 ASLB decision. No sustaining cost for this is included despite ongoing discussions on the approach taking place.

# **Summary of Existing Evidence for Evaluating Foreseeable Significant Adverse Impacts from the Azarga Uranium Corporation Dewey-Burdock Project for Lakota Sioux and Non-Lakota Tribal Places of Religious or Cultural Significance**

## **Scope of Work and Cost Estimate**

**Prepared by Paul R. Nickens, Ph.D.  
January 18, 2018**

### **Scope of Work**

#### **Objective**

The NRC ASLB Order LPB-17-09, dated October 19, 2017, covers the factual dispute for the Oglala Sioux Tribe's challenge to the NRC's proposed methodology for completing a field study to ascertain potential places of tribal religious or cultural significance at the Dewey-Burdock project area. At the same time, the Board raises the opportunity for an argument of proceeding with "incomplete information" within NEPA guidelines, particularly if the costs of obtaining such information are exorbitant (e.g. if the Oglala Sioux Tribe fails to move from the earlier *Makoche Wowapi* proposal as the sole avenue to gain the information). CEQ Regulations call for the following agency responses in this case:

1. A statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment;
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. (40 CFR 1502.22.)

The objective of effort proposed herein basically focuses on requirement No. 3, but also provides supporting information for meeting the fourth condition. Stated simply, the objective is to provide a summary of extant credible and relevant historical and ethnographic data that address Lakota Sioux cultural and religious significance for the Dewey-Burdock project. A secondary objective involves similar review for such places important to Non-Lakota tribes in the region. The summary results can be used to reflect progress by the NRC in remedying the NEPA deficiencies in the previous FSEIS,



as identified by the ASLB, at least partially, and can be employed to strengthen the planned supplemental FSEIS document.

Two aspects of the proposed effort are clarified. First, the written summary outlined below is not intended to be a full or complete “ethnographic context” for the Dewey-Burdock project area. Following ASLB directions for Contention 1A, the focus is on the Lakota Sioux Tribes (as discussed in the following section), to specifically include the interests of the Oglala Sioux Tribe, the primary intervenor in the ASLB proceeding and the nearest Lakota Tribe to the project area. Secondly, the proposed summary of existing information for Lakota Sioux interests in important religious and cultural places at or adjacent to the project area is not a substitute for data that could be acquired through an effective field methodology achieved through positive and functional consultation between the NRC and the Oglala Sioux Tribe. Rather, the proposed summary serves to supplement such an effort and, in the event the field effort is not successfully concluded, a summary of existing information can still be used to support preparation of a supplemental FSEIS for the Dewey-Burdock license, as necessary.

### Scope of the Review

The proposed summary of existing published and unpublished data for Lakota Sioux places of religious or cultural significance within and proximal to the Dewey-Burdock project area and the surrounding region (i.e. the Black Hills) will, in the larger context, evaluate cultural and religious significance for the Lakota Sioux Nation as a whole. The ASLB decision clearly indicates this focus:

Nonetheless, as our Partial Initial Decision noted, the [Dewey-Burdock] FSEIS analysis based on that survey [i.e. the 2013 tribal field effort] is deficient for failing to address Sioux Tribe cultural resources generally. Thus, to resolve the identified FSEIS deficiencies, the reasonableness of the NRC Staff’s chosen methodology, in part, depends on its ability to assess **all of the Lakota Sioux cultural resources** [emphasis added] missing in the FSEIS. (ASLB LPB-17-09, dated October 19, 2017, fn. 183.)

The Lakota Sioux, sometimes called “Teton Sioux,” include the seven western bands of the “Seven Council Fires” (*Oceti Sakowin*, the Great Sioux Nation, also including the central Nakota and eastern Dakota groups). The Lakota people formerly occupied the “Great Sioux Reservation” (established in the Fort Laramie Treaty of 1868 and included all of present-day western South Dakota). In March 1889, Congress passed an act partitioning the expansive Great Sioux Reservation into five smaller reservations. Lakota Tribes/reservations recognized today by the U.S. government include:

- *Oglala* (Pine Ridge Indian Reservation, SD and NE)
- *Sicangu* (Upper Brule at Rosebud Indian Reservation, SD) (Lower Brule Indian Reservation, SD)
- *Hunkpapa* (Standing Rock Reservation ND and SD)
- *Minneconjou* (Cheyenne River Sioux Reservation, SD)

- *Itazipco* (Cheyenne River Sioux Reservation, SD)
- *Sihasapa* (Cheyenne River Sioux Reservation, SD)
- *Oohanunpa* (Cheyenne River Sioux Reservation, SD)

Owing to their status as the principal intervenor for the Dewey-Burdock ASLB proceeding, existing credible information for the Oglala Sioux Tribe will be accorded closer scrutiny within the examination of the larger Lakota Sioux cultural setting.

As noted above, to further develop and enhance the coverage for the supplemental FSEIS analysis the proposed literature review for known and potential places of tribal cultural or religious places at the Dewey Burdock project area will be expanded to include non-Lakota tribes, i.e. those consulted during the initial FEIS process.

## **Approach**

The proposed effort includes two successive phases: 1) identification of data sources and acquisition thereof for relevant credible information related to the objective; and 2) preparation of a written report that summarizes salient aspects of the extant data as they pertain to the Dewey-Burdock project area.

Phase 1: Existing credible information, from both published and unpublished sources, is expected to fall under one of the following categories:

- Information pertaining to the larger level of cultural and religious significance held by the Lakota Sioux Tribes for the Black Hills region as a whole. The proposition that the Black Hills hold special significance for the Lakota, along with other regional tribes, cannot be denied. Published sources for this topic are plentiful and need not be dealt with extensively, the point being readily accepted by experts.
- Information generated from a critical review of previous Dewey-Burdock cultural resources efforts, including the 2013 field survey by tribal specialists (none of the tribes involved in this undertaking was Lakota Sioux).
- Information for formally designated or otherwise identified special tribal places within the greater Black Hills cultural and spiritual landscape and their proximity to and visibility from the Dewey-Burdock project area.
- Information gained from ethnographic data acquired for nearby projects or federally-managed lands; e.g. National Park Service, Forest Service, and Bureau of Land Management. This effort will include telephonic contacts with cultural resource specialists from neighboring federal and state land management agencies to identify relevant published or unpublished sources
- Information from past personal statements, many of which are unpublished, documenting the significance of the Black Hills and its individual places for tribal elders and resource managers, especially those from the Oglala Sioux Tribe.

Phase 2: A written report will be prepared, including source citations, that: 1) summarizes and evaluates the findings of the literature review; and 2) presents the

results in the format of the NEPA EIS documentation, i.e. affected environment, impacts, and cumulative impacts.

A tentative outline for the written report is as follows:

- Introduction

  - Purpose and Need

- Technical Approach and Sources for the Review

- Lakota Places of Religious or Cultural Significance

- Non-Lakota Tribal Places of religious or cultural significance

- Suggested Draft Sections for the Dewey-Burdock Supplemental FEIS

  - Affected Environment

  - Environmental Impacts

  - Cumulative Impacts

- Bibliography

- Appendices (as applicable)

## Cost Estimate

Task: Provide a written summary report evaluating foreseeable significant impacts on Lakota Sioux and Non-Lakota tribal places of religious or cultural significance at the Dewey-Burdock project area, based on a review of credible existing information. The effort will be completed in two phases, including: 1) identification, accumulation, and critical review of extant published and unpublished information; and 2) preparation of a written report summarizing the findings of the review.

### Estimated hours/cost:

#### Phase 1:

|                        |                      |                          |
|------------------------|----------------------|--------------------------|
| Principal Investigator | 140 hrs. @ 72.00/hr. | \$10,080.00 <sup>1</sup> |
|------------------------|----------------------|--------------------------|

#### Phase 2:

|                        |                      |                   |
|------------------------|----------------------|-------------------|
| Principal Investigator | 120 hrs. @ 72.00/hr. | <u>\$8,640.00</u> |
|                        |                      | \$18,720.00       |

### Other costs:

|                                                                                    |                    |
|------------------------------------------------------------------------------------|--------------------|
| Indirect on salary – 25% <sup>2</sup>                                              | \$4,680.00         |
| Miscellaneous direct costs (reproduction, acquisition of relevant materials, etc.) | <u>\$450.00</u>    |
| <b>Total estimated cost</b>                                                        | <b>\$23,850.00</b> |

Note: No out-of-town travel is anticipated. Relevant background information will be acquired via telephonic or Internet avenues, as necessary, and through the local university library.

Schedule and Format of Final Deliverable: A written report will be submitted to the client within two months following the notice to proceed.

Payment: The preferred payment schedule would be by monthly invoice.

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<sup>1</sup> Based on current salary rate as a part-time employee at SC&A.

<sup>2</sup> Based on current part-time benefits and self-employment Social Security and Medicare taxes.



# United States Department of the Interior



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In Reply Refer To:  
3736(MTC040)

JAN 09 2018

RECEIVED JAN 12 2018

John Mays, COO  
Azarga Uranium Corp.  
5575 DTC Parkway, Suite 140  
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Mr. Mays,

The Bureau of Land Management (BLM) has NEPA processes pending completion of the FSEIS by the Nuclear Regulatory Commission (NRC) regarding the Dewey-Burdock In Situ Uranium Recovery Facility. The NRC is the lead agency and BLM is a cooperating agency on this project.

In 2014, a complete Plan of Operation (POO) was submitted to BLM by Powertech, Inc. In November, 2014, the BLM notified Powertech (Azarga) that the Plan of Operation was complete per 43 CFR 3809.411. The next step was for the BLM to proceed with the NEPA process. BLM is planning to produce an EA that tiers to NRC's NEPA documents but was put on hold due to litigation filed against the NRC questioning the adequacy of their processes.

In an order dated November 21, 2017, the Board found that "the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R Part 40. The Board ruled that the FSEIS and the Record of Decision in this case must be supplemented, if necessary to include any cultural, historic or religious sites identified and to discuss any mitigation measures necessary to avoid any adverse effects." As such, it is not possible for the BLM to continue with tiered NEPA processes until the parent document is complete and accepted by the Board.

The only other alternative would be for Azarga to fund an independent EIS, separate from the NRC process, for BLM to evaluate the Plan of Operation.

Assuming that the original plan for an EA is the approach we will pursue, we will continue monitoring the process of these legal actions and, upon completion of the FSEIS, the BLM will proceed with public comment on the Environmental Assessment of the POO.

Sincerely,

Lori "Chip" Kimball  
Field Manager