

DeweyBurdPubEm Resource

From: Diaz Toro, Diana
Sent: Tuesday, February 5, 2019 11:08 AM
To: Paige.Olson@state.sd.us
Cc: Baer, Lorraine; Monteith, Emily; Roman-Cuevas, Cinthya; Trefethen, Jean
Subject: RE: Dewey Burdock Project
Attachments: Letter to Oglala Sioux Tribe to Resume Implementation of NRC March 2018pdf;
Letter to Powertech to Resume Implementation of NRC March 2018 Approach.pdf;
Powertech reponse to NRC Nov 21 Letter.pdf; OST Response to NRC Nov Letter.pdf;
OgalalLetter.pdf

Good morning Paige,

Thank you for reaching out to us. As discussed yesterday, the area of potential effects (APE) for the Dewey-Burdock project has not changed. The NRC staff has not received any notifications, letters of intent, or requests from Powertech to amend the license to expand its uranium recovery activities in South Dakota. Additionally, any license amendments to expand the facility would require a separate NEPA review, which would be conducted after the licensee officially submits a license amendment request.

I'm also providing the most recent correspondence between the NRC, the Oglala Sioux Tribe, and Powertech regarding the efforts to resolve the remaining contention regarding identification of historic and cultural resources of significance to the Tribe.

If you need additional information, feel free to contact me.

Regards,
Diana

Diana Diaz-Toro
Project Manager
NMSS/FCSE
301-415-0930
diana.diaz-toro@nrc.gov

From: Olson, Paige <Paige.Olson@state.sd.us>
Sent: Monday, February 4, 2019 10:10 AM
To: Baer, Lorraine <Lorraine.Baer@nrc.gov>; Monteith, Emily <Emily.Monteith@nrc.gov>; Trefethen, Jean <Jean.Trefethen@nrc.gov>; Roman-Cuevas, Cinthya <Cinthya.Roman-Cuevas@nrc.gov>
Cc: Spencer, Ted <Ted.Spencer@state.sd.us>; Brenda Shierts <bshierts@blm.gov>
Subject: [External_Sender] Dewey Burdock Project

Good morning,

I understand that the Area of Potential Effects (APE) for the Dewey Burdock Project has changed. Since the South Dakota State Historic Preservation Office is a signatory to the agreement entitled "Programmatic Agreement among U.S. Nuclear Regulatory Commission, U.S. Bureau of Land Management, South Dakota State Historic Preservation Office,

Powertech (USA), Inc and Advisory Council on Historic Preservation regarding the Dewey-Burdock In Situ Recovery Project located in Custer and Fall River Counties, South Dakota,” please provide an update on the status of the project.

Thank you,

Paige Olson
Review and Compliance Coordinator
South Dakota State Historic Preservation Office
900 Governors Drive
Pierre, SD 57501
605-773-6004

Hearing Identifier: Powertech_Uranium_Dewey_Burdock_LA_Public
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Subject: RE: Dewey Burdock Project
Sent Date: 2/5/2019 11:08:07 AM
Received Date: 2/5/2019 11:04:00 AM
From: Diaz Toro, Diana

Created By: Diana.Diaz-Toro@nrc.gov

Recipients:

"Baer, Lorraine" <Lorraine.Baer@nrc.gov>
Tracking Status: None
"Monteith, Emily" <Emily.Monteith@nrc.gov>
Tracking Status: None
"Roman-Cuevas, Cinthya" <Cinthya.Roman-Cuevas@nrc.gov>
Tracking Status: None
"Trefethen, Jean" <Jean.Trefethen@nrc.gov>
Tracking Status: None
"Paige.Olson@state.sd.us" <Paige.Olson@state.sd.us>
Tracking Status: None

Post Office: SN6PR09MB3134.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	2407	2/5/2019 11:04:00 AM
Letter to Oglala Sioux Tribe to Resume Implementation of NRC March 2018pdf		
5169812		
Letter to Powertech to Resume Implementation of NRC March 2018 Approach.pdf		
168212		
Powertech reponse to NRC Nov 21 Letter.pdf		3629276
OST Response to NRC Nov Letter.pdf		58030
OgalalLetter.pdf	5026763	

Options

Priority: Standard
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:
Recipients Received:



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 21, 2018

Mr. Tom Brings
Tribal Historic Preservation Office
Oglala Sioux Tribe
PO Box 320
Pine Ridge, SD 57770

SUBJECT: RESUMING IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S MARCH 2018 APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK *IN SITU* URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

Dear Mr. Brings:

The U.S. Nuclear Regulatory Commission (NRC) staff remains committed to an open dialogue to finalize the methodology to be used for conducting a physical site survey to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe and Lakota Sioux Tribes that could be affected by the Dewey-Burdock *in situ* uranium recovery (ISR) project. The NRC staff would like to build upon progress that has been achieved to date regarding an approach for identifying sites of significance to the Lakota Sioux Tribes and gathering information to supplement the NRC staff's analysis in the final supplemental environmental impact statement (FSEIS, NUREG-1910 Supplement 4). Earlier this year, the NRC staff developed an approach that the Oglala Sioux Tribe, Consolidated Intervenor, and Powertech (USA), Inc., accepted as reasonable. This approach (the March 2018 Approach; (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18074A393)) incorporated elements that the Oglala Sioux Tribe described in its May 31, 2017, letter (ADAMS Accession Number ML17152A109) to the NRC staff as necessary for accomplishing a comprehensive cultural resource survey. The March 2018 Approach specifically incorporated the following elements:

- A contractor with the necessary experience and training to facilitate the site survey and implementation of the approach.
- Involvement of other Lakota Sioux Tribes.
- Iterative opportunities to survey the site by providing two non-contiguous, two-week periods for conducting the site survey.
- Involvement of Tribal elders via oral history interviews and during the site survey, as appropriate.

The March 2018 Approach was constructed such that all elements of a cultural resource survey would work in harmony rather than in a compartmentalized manner, a design that was based on the Oglala Sioux Tribe's input and recommendations in its May 31, 2017, letter. Specifically, all elements are connected and play a key role in the execution of the approach in an integrated

and comprehensive manner. For example, the preliminary findings of the first phase of the site survey would inform the oral history interviews, and Tribes would have the opportunity to discuss these preliminary findings with Tribal elders and spiritual leaders. Consequently, the success of the second phase of the physical site survey is directly connected to the success of the first phase of the physical site survey and the oral history interviews.

Building upon the previous agreements among the parties embodied in the March 2018 Approach, the NRC staff is proposing to resume discussions with the Oglala Sioux Tribe and the participating Tribes on the site survey methodology in an open and consultative process. As discussed in the Atomic Safety and Licensing Board's (Board's) October 30, 2018, decision, however, "...the only aspect of the Approach that is open for discussion is the site survey methodology. That is, any tribal negotiating position or proposal should encompass the specific scientific method that would fit into the two-week periods set out in the March 2018 Approach for visiting the physical site, i.e., how the contractor and the Tribe members will walk the site and mark or record located Tribal resources."

Accordingly, it will be essential for the reinitiated negotiations to remain focused on ensuring the site survey methodology can be accomplished within the two two-week periods and the cost parameters outlined in the March 2018 Approach, and the Board's October 30, 2018, Order. To provide additional context for those negotiations, the NRC staff would like to provide information on the background of the proposed methodology for surveying the site that was discussed during the June 1, 4, and 5, 2018 teleconference calls and webinars.

In developing its proposal, the NRC staff and contractor considered previous concerns raised by the Tribes. The Tribes had previously expressed concerns about the NRC staff proposing methodologies so detailed that there was no room for discussion and negotiation. The Oglala Sioux Tribe also objected to methodologies that lacked scientific integrity and has reiterated that the expertise of the Tribes is essential in the development and implementation of a meaningful and comprehensive tribal cultural survey. Therefore, the NRC contractor developed a methodology at a level of detail that provided ample room for discussion and negotiation with Tribal experts. Accordingly, the NRC staff and contractor solicited and encouraged the input, comments, and modifications from the invited Tribes on the proposed plan.

The physical site survey would have started with a "windshield tour" of the entire site to familiarize the Tribes with the Dewey-Burdock ISR site, the landscape, and scope of the proposed construction and operation activities. To focus the survey efforts in a systematic manner that would fit within the bounds of the agreed-upon March 2018 Approach, the NRC staff and contractor proposed a method to prioritize the areas to be traversed based on the likelihood of potential effects. That is, the survey team would have first visited previously identified Tribal resources to fully document them, giving priority to places and features located in the project areas where construction and operation activities would occur, and then on those resources outside the area of direct impact. When determining additional project areas to be traversed, the survey team would have further focused its efforts on the project areas surrounding the previously identified resources as well as additional areas of interest to the participating Tribes. The proposal did not identify the length of transects to be used for traversing the project areas because the expectation was to discuss and negotiate such details with the participating Tribes. The length of transects would have been informed by factors such as terrain, visibility, landscape, and topographical features. The NRC staff and contractor repeatedly emphasized that the plan did not intend to limit the project areas of the proposed ISR site to be surveyed.

In addition, the project site maps provided to the Oglala Sioux Tribe on June 11, 2018, and the literature review report developed by the NRC contractor, provided valuable information about the site, landscape, and geographic region to inform the site survey methodology. The NRC contractor also developed documentation forms, shared with the Oglala Sioux Tribe the week of June 11, 2018, to be used during the site survey to record (i) the geographic location and physical description of the Tribal sites and (ii) the ethnographic description and context. Oral history interviews would have been conducted by the NRC contractor after the first phase of the physical site survey. Phase 2 of the physical site survey would have been informed by the preliminary findings of Phase 1 and oral history interviews, and the methodology would have been adjusted accordingly, if necessary.

The NRC staff maintains that the proposed methodology discussed above is reasonable and scientific, as it employs a systematic method for surveying the site, but also provides the parties with the opportunity to discuss and incorporate matters that the Oglala Sioux Tribe, as the experts, find important.

The Oglala Sioux Tribe has not provided specific objections to the NRC staff's proposed methodology, but instead proposed its own alternative site survey methodology. In particular, the Tribe proposed a 10-meter interval field survey of the entire Dewey-Burdock ISR site by trained Tribal members, which would require more than a year to complete. Similarly, with respect to oral history interviews, the Oglala Sioux Tribe proposed that the NRC contractor provide training to the Oglala Sioux Tribe on the methodology to be used for the oral history interviews, and the Tribe itself would conduct the interviews. The interviews would take a year to complete, plus additional time to prepare the oral history report. Those aspects of the methodology proposed by the Tribe would not fit into the timeframe or cost parameters set out in the March 2018 Approach and in accordance with the Board's October 30, 2018, Order.

In order to implement the site survey as outlined in the March 2018 Approach, recognizing the Tribe's expertise for developing and implementing a tribal cultural site survey, the NRC staff needs additional input from the Oglala Sioux Tribe. Specifically, if the Tribe objects to the NRC staff methodology proposal outlined above, the NRC staff respectfully requests that the Tribe document its specific concerns in writing so that the NRC staff can assess how those might be addressed within the bounds of the March 2018 Approach, including the budget, the two two-week periods for a physical site survey, and the overall timeline. Alternatively, the NRC staff requests that the Tribe propose a site survey methodology of the Dewey-Burdock ISR license area that the Tribe would consider scientific and reasonable but that would also fit within those same parameters of the March 2018 Approach. The Tribe's response would be used to effectively focus discussions and negotiations with the goal of reaching an agreement on a site survey methodology. Consistent with previous discussions with the Tribe, the NRC staff looks to the Oglala Sioux Tribe's leadership role in coordinating with the other Lakota Sioux Tribes on the implementation of the March 2018 Approach, gathering input on the site survey methodology, facilitating meetings, and coordinating the input for the survey report.

With respect to sensitive unclassified non-safeguards information (SUNSI) and confidentiality matters, in its June 8, 2018, letter to the NRC staff, the Oglala Sioux Tribe identified a "...list of prerequisites that must precede any field work or other revelation of cultural resource information," including an updated SUNSI Protective Order, NRC/SC&A/Powertech execution of Oglala Sioux Tribe-required confidentiality agreements, and executed "Authorized Persons" affidavits and agreements protecting intellectual property of Tribes (ADAMS Accession Number ML18159A621). The Tribe's participation in the March 2018 Approach is essential to the successful implementation of the approach. Based on these representations from the Tribe,

however, the NRC staff is under the impression that the Tribe will not conduct any field surveys and oral history interviews until these confidentiality concerns are resolved. The NRC staff has previously explained that it will protect sensitive and confidential information associated with the Tribal field survey and oral history interviews consistent with applicable federal laws and regulations. In accordance with the Board's October 30, 2018, decision, if the Tribe believes that revisions to the protective order are necessary, a coordinated motion to modify the Order filed with the Board would be an appropriate mechanism.

If the Tribe is willing to continue discussions regarding the site survey methodology based on the information provided in this letter, we request that you so inform the NRC staff by December 5, 2018. If so, to most effectively focus the next steps in these negotiations, the NRC staff also respectfully requests that the Tribe share its specific objections to the NRC's survey methodology outlined in this letter, or the Tribe's alternative survey methodology proposal, by December 28, 2018. In an effort to be open and proactive, the NRC is copying the Lakota Sioux Tribes in this letter and appreciates the Oglala Sioux Tribe's assistance in coordinating with the Lakota Sioux Tribes. The NRC staff looks forward to the Tribe's response.

Finally, consistent with the Board's October 30, 2018, decision, if the Tribe is willing to resume negotiations, the NRC staff has identified corresponding adjustments to the March 2018 Approach schedule (see Enclosure 1). These milestones reflect key near-term steps for outreach, negotiations, and decisions points. The NRC staff is already taking measures within its control in furtherance of these milestones; in particular, the NRC staff is working actively with its contractor SC&A to select a replacement for Dr. Paul Nickens, who is no longer with SC&A. Therefore, as part of resuming negotiations, the NRC staff is requesting your cooperation in ensuring that the milestones are met, particularly the target date for reaching agreement on a site survey methodology (March 1, 2019). Because the initial milestones affect the feasibility of the overall schedule, as discussed above, if an agreement cannot be reached by March 1, 2019, the NRC staff will pause the negotiation process to determine next steps.

The NRC staff is also corresponding with Powertech to seek to confirm its willingness to continue to provide the reimbursement proposed in its letter to the NRC dated April 11, 2018, (ADAMS Accession Number ML18101A223) to facilitate tribal participation.

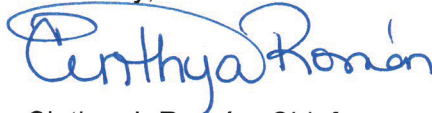
T. Brings

- 5 -

In accordance with 10 CFR 2.390, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or concerns, please contact Ms. Diana Diaz-Toro of my staff. Ms. Diaz-Toro can be reached at (301) 415-0930 or via e-mail at Diana.Diaz-Toro@nrc.gov.

Sincerely,

A handwritten signature in blue ink that reads "Cinthya Román". The signature is fluid and cursive, with the first name "Cinthya" and the last name "Román" clearly distinguishable.

Cinthya I. Román, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-9075
License No. SUA-1600

Enclosure:

Revised Timeline for NRC Staff's March 2018 Approach for Obtaining Information on Lakota Sioux Cultural Resources Potentially Impacted by the Dewey-Burdock ISR Project

cc w/enclosure:

Mr. Troy "Scott" Weston, President
Oglala Sioux Tribe
Jeff C. Parsons, Counsel
Travis E. Stills, Counsel
Steve Vance, THPO
Cheyenne River Sioux Tribe
Garrie Kills A Hundred, THPO
Flandreau-Santee Sioux Tribe
Ben Rhodd, THPO
Rosebud Sioux Tribe of Indians
Jon Eagle, THPO
Standing Rock Sioux Tribe
Clair Green, Cultural Resources Office
Lower Brule Sioux Tribe
Kip Spotted Eagle, Director/ THPO
Yankton Sioux Tribe
Mr. Merle Marks, THPO
Crow Creek Sioux Tribe

Revised Timeline for NRC Staff's March 2018 Approach for Obtaining Information on Lakota Sioux Cultural Resources Potentially Impacted by the Dewey-Burdock ISR Project
November 21, 2018

By November 21, 2018	NRC staff sends letters to Oglala Sioux Tribe and Powertech seeking to confirm their willingness to continue discussions and negotiations on a site survey methodology within the overall parameters of March 2018 Approach.
By December 5, 2018	Responses from Oglala Sioux Tribe and Powertech regarding their willingness to participate in further site survey methodology negotiations.
Between December 5 and December 28, 2018	The NRC staff is willing and open to have discussions with the Oglala Sioux Tribe on a site survey methodology prior to the submittal of the specific objections to the NRC's proposal as outlined in this letter, or its alternative proposal.
By December 28, 2018	Response from Oglala Sioux Tribe regarding specific objections to the NRC staff's proposal as outlined in the NRC staff's November 20, 2018, letter to the Oglala Sioux Tribe, or its alternative proposal.
Between January and February 2019	Conduct webinars/teleconference calls with Oglala Sioux Tribe and Lakota Sioux Tribes to discuss, negotiate, and agree on a site survey methodology and areas to be examined during the field survey.
By March 1, 2019	Reach agreement on the site survey methodology and areas to be examined during the field survey.
By March 8, 2019	NRC staff will transmit the final methodology to the Lakota Sioux Tribes.
April 1-12, 2019	Conduct first phase of Tribal field survey.
Mid-May, 2019	Provide preliminary findings and results of first phase of the field survey to participating Lakota Sioux Tribes for a 30 day review and comment period.
May 20-31, 2019	NRC staff and contractor conduct oral history interviews with Tribal elders. Opportunity to discuss preliminary findings and results of first phase of the field survey.
June 10, 2019	Responses from participating Tribes on preliminary results of first phase of field survey.
June 17-28, 2019	Conduct second phase of Tribal field survey.
July 2019	Sun Dance ceremonies.
Mid-August 2019	Send draft survey report and draft oral history interviews document to participating Lakota Sioux Tribes for a 30-day review and comment period.
Mid-September 2019	Responses from participating Tribes on the survey report and oral history interviews.
Beginning of November 2019	Share final survey report and oral history interviews document with participating Tribes.
Mid-December 2019	NRC staff publishes draft supplemental analysis to the FSEIS for 45-day public review and comment period.
January 2020	NRC staff considers public comments and revises supplemental analysis to the FSEIS, as appropriate.
February 2020	NRC staff publishes final supplemental analysis to the FSEIS.

Enclosure



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 21, 2018

Mr. John M. Mays
Chief Operating Officer
Azarga Uranium Corporation
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111-3012

SUBJECT: RESUMING IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S MARCH 2018 APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK *IN SITU* URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

Dear Mr. Mays:

In light of the Atomic Safety and Licensing Board's (Board's) October 30, 2018, decision, the U.S. Nuclear Regulatory Commission (NRC) staff plans to continue its efforts to implement the approach developed for identifying sites of historical, cultural, and religious significance to the Oglala Sioux Tribe and Lakota Sioux Tribes that could be affected by the Dewey-Burdock *in situ* uranium recovery (ISR) project, and gather information to supplement the NRC staff's analysis in the final supplemental environmental impact statement (FSEIS, NUREG-1910 Supplement 4). The NRC staff would like to build upon the progress that has been achieved to date.

Earlier this year, the NRC staff developed an approach that the Oglala Sioux Tribe, Consolidated Intervenor, and Powertech (USA), Inc., accepted as reasonable. This approach (the March 2018 Approach; (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18074A393)) incorporated elements that the Oglala Sioux Tribe described in its May 31, 2017, letter to the NRC staff as necessary for accomplishing a comprehensive cultural resource survey (ADAMS Accession Number ML17152A109). The March 2018 Approach specifically incorporated the following elements:

- A contractor with the necessary experience and training to facilitate the site survey and implementation of the approach.
- Involvement of other Lakota Sioux Tribes.
- Iterative opportunities to survey the site by providing two non-contiguous, two-week periods for conducting the site survey.
- Involvement of Tribal elders via oral history interviews and during the site survey, as appropriate.

Additionally, as part of the March 2018 Approach, Powertech agreed to provide reimbursement for up to three Tribal representatives in addition to an honorarium. Therefore, the NRC staff is seeking to confirm Powertech's willingness to continue to provide reimbursement and support for the field survey as discussed in your letter to the NRC staff dated April 11, 2018 (ADAMS Accession Number ML18101A223).

The NRC staff has reached out to the Oglala Sioux Tribe to seek to confirm the Tribe's willingness to resume discussions on the site survey methodology. As discussed in the Board's October 30, 2018, decision, however, "...the only aspect of the Approach that is open for discussion is the site survey methodology. That is, any tribal negotiating position or proposal should encompass the specific scientific method that would fit into the two-week periods set out in the March 2018 Approach for visiting the physical site, i.e., how the contractor and the Tribe members will walk the site and mark or record located Tribal resources."

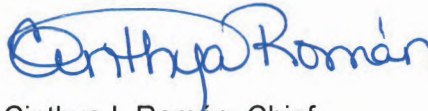
Consistent with the Board's October 30, 2018, decision, if the Oglala Sioux Tribe is willing to resume negotiations, the NRC staff has identified corresponding adjustments to the March 2018 Approach schedule (see Enclosure). These milestones reflect key near-term steps for outreach, negotiations, and decisions points. The NRC staff is already taking measures within its control in furtherance of these milestones; in particular, the NRC staff is working actively with its contractor SC&A to select a replacement for Dr. Paul Nickens, who is no longer with SC&A. Therefore, as part of resuming negotiations, the NRC staff is requesting your cooperation in ensuring that the milestones are met. Because the initial milestones affect the feasibility of the overall schedule, if an agreement cannot be reached with the Oglala Sioux Tribe by March 1, 2019, the NRC staff will pause the negotiation process to determine next steps.

Additionally, the NRC staff is requesting that by December 5, 2018, you inform the NRC staff whether Powertech remains willing to provide reimbursement to Tribal representatives and support the field survey.

In accordance with Title 10 of the *Code of Federal Regulations* Section 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy is available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC website at: <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or concerns, please contact Ms. Diana Diaz-Toro of my staff. Ms. Diaz-Toro can be reached at (301) 415-0930 or via e-mail at Diana.Diaz-Toro@nrc.gov.

Sincerely,



Cinthya I. Roman, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-9075
License No. SUA-1600

Enclosure:
NRC Staff's March 2018 Revised Timeline Approach
for the Dewey-Burdock ISR Project

cc w/enclosure:
Mr. Blake Steele, President and CEO
Powertech (USA), Inc.
A. Thompson, Counsel
C. Pugsley, Counsel

**Revised Timeline for NRC Staff's March 2018 Approach for Obtaining Information on Lakota Sioux Cultural Resources
Potentially Impacted by the Dewey-Burdock ISR Project**
November 21, 2018

By November 21, 2018	NRC staff sends letters to Oglala Sioux Tribe and Powertech seeking to confirm their willingness to continue discussions and negotiations on a site survey methodology within the overall parameters of March 2018 Approach.
By December 5, 2018	Responses from Oglala Sioux Tribe and Powertech regarding their willingness to participate in further site survey methodology negotiations.
Between December 5 and December 28, 2018	The NRC staff is willing and open to have discussions with the Oglala Sioux Tribe on a site survey methodology prior to the submittal of the specific objections to the NRC's proposal as outlined in this letter, or its alternative proposal.
By December 28, 2018	Response from Oglala Sioux Tribe regarding specific objections to the NRC staff's proposal as outlined in the NRC staff's November 20, 2018, letter to the Oglala Sioux Tribe, or its alternative proposal.
Between January and February 2019	Conduct webinars/teleconference calls with Oglala Sioux Tribe and Lakota Sioux Tribes to discuss, negotiate, and agree on a site survey methodology and areas to be examined during the field survey.
By March 1, 2019	Reach agreement on the site survey methodology and areas to be examined during the field survey.
By March 8, 2019	NRC staff will transmit the final methodology to the Lakota Sioux Tribes.
April 1-12, 2019	Conduct first phase of Tribal field survey.
Mid-May, 2019	Provide preliminary findings and results of first phase of the field survey to participating Lakota Sioux Tribes for a 30 day review and comment period.
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January 2020	NRC staff considers public comments and revises supplemental analysis to the FSEIS, as appropriate.
February 2020	NRC staff publishes final supplemental analysis to the FSEIS.

Enclosure



POWERTECH (USA) INC.

December 5, 2018

John Mays
Powertech (USA) Inc.
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111

Cinthya I. Román, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards, and Environmental Review
Office of Nuclear Material Safety and Safeguards

RE: RESUMING IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES (DOCKET NUMBER: 40-9075): RESPONSE TO NOVEMBER 21, 2018 LETTER

Dear Ms. Román,

Thank you for your letter dated November 21, 2018 regarding your proposal to resume the March 2018 Approach (the "Approach") to identify historic, cultural, and religious sites at the Dewey-Burdock Project.

Powertech (USA) Inc. ("Powertech") will continue to provide reimbursement and support for the field survey as discussed in its letter dated April 11, 2018 (ADAMS Accession Number ML18101A223) for the Approach. Powertech would request that the United States Nuclear Regulatory Commission ("NRC") staff confirm that the expected costs to resume and complete the Approach are consistent with the previous budget provided by NRC staff on January 17, 2018 (ADAMS ML 18017B322) less amounts incurred to date by Powertech to support this Approach.

Further, as the timeline has been extended by almost one year from the initial schedule provided to complete the Approach, Powertech would like to request that NRC staff take steps to optimize this new schedule. Powertech provides the following suggestions and comments:

- 1.) The time allotted for agreeing on a site survey methodology is significantly greater than in the initial schedule. Powertech would request that NRC staff work proactively with

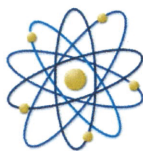


POWERTECH (USA) INC.

the Lakota Sioux Tribes to agree a site survey methodology in advance of March 1, 2019. Powertech understands that weather, such as snow, may prevent necessary visibility of the ground for conducting the first phase of the Tribal field survey, but weather conditions that allow for this portion of the Approach to be commenced may exist before the April 1-12, 2019 first phase of the Tribal field survey. Instead of waiting until April 1-12, 2019, Powertech would suggest adding some additional windows, consisting of earlier dates, for completing the first phase of the Tribal field survey should weather permit.

- 2.) Oral history interviews with Tribal elders be conducted over the winter months in early 2019 before completing the first phase of the Tribal field survey and after a site survey methodology has been agreed. We understand that the current work plan envisions oral history interviews after the first phase of the Tribal field survey; however, preliminary discussion with Tribal Elders at the point suggested above may improve the efficiency of the first phase of the Tribal field survey. Further, it would compress the schedule on the backend as the oral history interviews scheduled for May 20-31, 2019 could be compressed, as the initial oral history interviews will already have provided significant information.
- 3.) Firm dates should be adopted in the schedule. As opposed to using “mid” for certain months, please define this as the 15th of the applicable month. As opposed to using “beginning” for certain months, please define this as the 1st of the applicable month.
- 4.) As previously requested, Powertech would like clarification on how the Advisory Council on Historic Preservation involvement and National Historic Preservation Act requirements will be addressed by the Approach if there are new eligible discoveries made while completing the Approach. Given the existing programmatic agreement that is in place, Powertech would like to know how NRC staff will update the existing programmatic agreement for data gathered if there are new eligible discoveries made while completing the Approach and how this is accounted for in the timeline.

Though Powertech will continue to support the Approach, as noted above, Powertech would like to restate its concern to the Atomic Safety and Licensing Board (“ASLB”) and NRC staff regarding the amount of time spent attempting to resolve Contention 1A. Powertech would respectfully request that all parties involved in this process make a good faith effort to resolve



POWERTECH (USA) INC.

Contention 1A in accordance with the updated schedule, taking into consideration the requests made above by Powertech. As a licensee, Powertech is not directly involved in this process and has been frustrated by the actions taken by both the Oglala Sioux Tribe and NRC staff in attempting to resolve Contention 1A. Efforts to resolve Contention 1A have been ongoing since April 2014 and Powertech stands by willing to assist in whatever capacity necessary to execute the Approach within the defined scope. The prolongation of Contention 1A being resolved continues to strain the financial resources of Powertech. Further, as documented to the ASLB and NRC staff, the fact that Contention 1A continues to remain unresolved directly prevents the completion of the regulatory process and the finalization of regulatory approvals from at least three others agencies that would allow construction and operation of the Dewey-Burdock Project. NRC staff is now on a fourth attempt to complete a "site survey" with the Oglala Sioux Tribe. Two of these attempts included the original April/May 2013 survey, which was successfully conducted with other Native American Tribes, but rejected by the Oglala Sioux Tribe and the previous attempt to complete the Approach, in which the Oglala Sioux Tribe's alternative approach, according to the NRC staff's motion for summary disposition, would be at least three (3) times the cost of the previously offered Makoche Wawopi proposal that the ASLB previously stated was "patently unreasonable" in its Partial Initial Decision, LPB-15-16 of April 2015.

Regardless, as it has repeatedly done before, Powertech stands ready to provide full cooperation to execute the Approach and looks forward to working constructively with all parties to resolve the outstanding contention.

Sincerely,

John Mays
Chief Operating Officer

CC: Blake Steele, President and CEO
John Tappert, NRC
Diana Diaz Toro, NRC
Lorraine Baer, NRC
Emily Montieth, NRC
Kellee Jamerson, NRC
Bill Von Till, 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)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
POWERTECH (USA) INC.,)	Docket No. 40-9075-MLA
)	
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	

OGLALA SIOUX TRIBE'S RESPONSE TO NRC STAFF'S NOVEMBER 21, 2018 LETTER

The Tribe, through counsel, submits this response to the November 21, 2018 NRC Staff letter setting out a general approach to a cultural resources survey methodology ("November 21 Letter"). On December 5, 2018, the Tribe's counsel sent an email inviting further discussions to establish a suitable methodology and ensure the involvement of the Tribe in the selection of a qualified contractor, but NRC Staff chose not to provide the Tribe any opportunity for input. It bears repeating that in the Tribe's view, developing a suitable methodology requires: 1) prompt involvement of an NRC Staff contractor that has the necessary experience and training, particularly experience in Oceti Sakowin culture; and 2) a protocol for effective, fair, and good faith communications between the NRC Staff (including the contractor) and the Tribe's personnel and contractors. NRC Staff has in past largely ignored both these requests, resulting in the existing generic NRC Staff outline that contains no methodology.

The lack of detail in NRC Staff's letter has to date been compounded by decisions to rely on federal personnel and a contractor without the necessary experience and training in carrying out cultural resource investigations involving Oceti Sakowin culture. An email was received from NRC Staff on January 7, 2019 that announced another new NRC lead project manager had been assigned. The email also announced that SC&A had either subcontracted or hired an archeologist (Mr. Jerry Spangler) whose online qualifications appear limited to the "prehistoric" peoples of the Desert Southwest. <http://www.cparch.org/Uinta%20Research/web/26.html>. No further information regarding qualifications for this project was provided, and the Tribe looks forward to a more complete description of NRC Staff's efforts to ensure the engagement of persons with the necessary qualifications to carry out the interviews and field work required for the cultural resource survey. The email from NRC Staff (sent January 4, 2019 after close of business) makes no mention of NRC Staff's efforts, if any, to engage NRC's Tribal Liaison. Lastly, the Tribe has repeatedly requested a copy of the scope of work NRC Staff has used to select and describe the work to be conducted by the contractor. This information is critical to the Tribe's ability to fully frame its methodological approach – and the Tribe hereby again requests a copy of the documents used to communicate the scope of work to its unilaterally chosen contractor.

NRC Staff Has Provided No Cultural Resource Survey Methodology or Response

Importantly, despite claims to the contrary in the November 21 Letter, NRC Staff has not provided any description of a cultural resources survey methodology, precluding the Tribe from providing a detailed response. As the Tribe has repeatedly communicated, simply having “elders” walk the site after conducting a “windshield tour,” as the letter proposes, is not an accepted methodology.

NRC Staff, without the benefit of any qualified persons, simply asserts in the November 21 Letter that the discussion is “reasonable and scientific.” Letter at 3. However, the description appears to be nothing more than a restatement of the one-page summary of a work-plan prepared by Dr. Nickens in June of 2018. The Tribe responded on June 15, 2018, at significant cost to the Tribe, with a detailed description of potential components for NRC Staff and its contractor to review to provide the basis for a negotiation over methodology. Neither NRC Staff nor any contractor has to date provided any substantive response. Until NRC Staff secures the necessary expertise, either by private contractor or retaining the services of the Tribe, and employs that expertise to provide some substantive responsive information to the Tribe as to the Tribe’s prior discussion draft proposals, it is difficult and unreasonable for NRC Staff to expect the Tribe to continue to spend its resources developing additional methodologies.

The publicly available information on Mr. Spangler’s website does not identify any published methodology or experience relevant to Oceti Sakowin cultural resources. Instead, Mr. Spangler’s curriculum vitae lists cultural and work experiences based on a narrow but distinguished specialization of archeological interpretations of artifacts from the northern Colorado Plateau created in the 1000c.e - 1300c.e era. This initial apparent lack of relevant experience is of concern to the Tribe.

NRC Staff’s November 21 Letter lacks even the basic information that a qualified contractor would include to identify and support a cultural resources methodology. The letter effectively tasks the Tribe with carrying out NRC Staff’s duties, without providing any compensation for tasks normally subject to NRC’s full cost recovery provisions. Once a qualified contractor produces a response to the Tribe aimed at a scientifically and traditionally supported methodology, with the necessary protections of the information obtained, the Tribe anticipates that it, NRC Staff, and NRC Staff’s contractors can resume detailed negotiations over the methodology.

Importantly, the November 21 Letter relies on a series of erroneous assertions about what happened in June 2018. At no time did NRC Staff or the contractors propose a recognized methodology endorsed by qualified persons. Dr. Nickens, who was removed for unexplained reasons, confirmed over meetings with the Tribe during the June 2018 efforts that he did not agree with NRC Staff’s ad hoc open site survey. Dr. Nickens’ preferred methodology was never disclosed to the Tribe. NRC Staff’s erroneous account of what might have been done in June 2018 does not warrant a response here, but is thoroughly rebutted in the Summary Disposition briefing and attachments, which are incorporated by reference.

Throughout the proceeding, Powertech and NRC Staff have repeatedly suggested that no methodology exists and that only the Tribe can carry out the necessary surveys. This is incorrect. The June 2018 Literature Review Report produced by Dr. Nickens identifies two methodologies associated with the work of Dr. Richard Stoffle and Dr. Sebastian LeBeau. While both methods have shortcomings, and there are other scientific and traditional methods of gathering and interpreting the necessary information, these methodologies should be considered in the upcoming discussions. In any case, the elements of these approaches do confirm that there are methods for “identifying particular places of traditional cultural and religious significance on a given parcel of land [that] takes into account the Lakota views for the individual places and the larger landscape setting.” June 2018 Literature Review Report at 16.

Again, it is NRC Staff’s duty to hire a contractor with the qualifications to work with the Tribe prepare an acceptable methodology. The Tribe remains willing to engage a discussion of qualified contractors that NRC Staff could hire to do this work.

The Previously Provided Literature Review Report is Based on Erroneous Information

In June 2018, SC&A hurriedly prepared a Literature Review Report for NRC Staff based on controversial and discredited accounts of the Lakota’s current and historic relationship to the Black Hills region. The errors are too numerous and significant to detail in this letter, and the Tribe has expertise to provide to NRC Staff a detailed critique, but three are provided by way of example. First, several recent books and key publications are not recognized that are more in line with the Lakota world view. Second, the location of the culturally-significant Race Track, as depicted on page 22 of the Review, is inaccurate and taken from an outdated map that was prepared by Dr. Craig Howe for purposes that did not involve location/protection of specific cultural sites or sacred landscapes. Third, the Lakota histories set out on pages 16-18 rely on uncited and erroneous statements based on a profound misunderstanding of the legal, cultural, and spiritual accounts of the Lakota. Instead, SC&A provided a culturally uninformed and therefore biased account based on “opening unallotted lands for white homesteading.” Literature Review at 16. The Lakota are deeply offended by the perpetuation of an erroneous history based on uncited and erroneous references to a series of treaties, wars, and unilateral statutory pronouncements by the United States of America. By ignoring the body of literature that reflects the Lakota world view, using Dr. Howe’s map for an unintended purpose, and misstating the history the Lakota Tribes, the SC&A’s Literature Review Report as it stands is of little to no value to the cultural resource survey or the NEPA process.

The Tribe asks NRC Staff to formally disavow the Literature Review Report and direct a qualified NRC Tribal Liaison to work with NRC Staff, contractor and Tribes’ representatives to prepare a Literature Review Report that accurately provides a culturally supported interdisciplinary account of the Lakota Tribe’s physical, cultural, and spiritual history.

Correcting the erroneous information, and properly representing the available literature in an interdisciplinary NEPA process involves sensitive information. For any qualified person to prepare a Literature Review Report informed by necessary cultural background, NRC Staff must first agree to the required confidentiality agreements, review by the appropriate Institutional Review Boards for consistency with Tribes’ customs and relevant ordinances.

Notably, in June 2018, when the Tribe asked the University of Arizona to confirm Dr. Stoffle's representations regarding these accepted practices, Dr. Stoffle's involvement with the project suddenly and inexplicably ceased and the University of Arizona disavowed any involvement with the SC&A contract. The Literature Review Report is a direct consequence of NRC Staff's reliance on ad hoc methods deployed by unqualified contractors. The Tribe looks forward to NRC Staff's use of qualified persons to prepare a Literature Review Report within the normal protections required of cultural resource analysis.

Project Proposal and Site Maps are Outdated

The maps provided in June 2018 appear no longer sufficient to conduct the cultural resource surveys. The project proponent has confirmed that the project has expanded since June 2018. On December 21, 2018, Powertech announced it had published a report stating that the project area had expanded, and that it expected to mine three times more uranium than had been previously considered. <http://azargauranium.com/azarga-uranium-files-ni-43-101-technical-report-for-increased-resource-at-dewey-burdock/>. This report has been attached for NRC Staff's consideration of NRC's NEPA and other statutory duties to analyze and disclose this new information.

Importantly, the Resource Estimate contains a map on page 60, that when compared with the FEIS map at 2-12, confirms that the expected extent of the proposed wellfields has changed, thereby altering the area likely to be impacted by Powertech's proposal. The Tribe's review of this newly discovered, but not yet formally disclosed, information is ongoing, but it appears that significant new information and changes to Powertech's project proposal require additional scrutiny under a range of federal laws, including NEPA and the National Historic Preservation Act. Importantly, Powertech has developed a new "reasonable production alternative" that is still under review, with completion expected in 2019. Report at 81-82.

Based on the Tribe's initial review, it appears that NRC Staff's review may require a hold on further work on a cultural resources survey until the new area of potential effects is delineated based on this significant and new information and ongoing Powertech alterations to the Dewey-Burdock project.

Remaining Budget - Cooperating Agency Funding

NRC Staff asks for comment on the budget (November 21 Letter at 3) but does not provide any information on the budget NRC Staff has allocated. Despite repeated requests, NRC Staff has declined to provide routine agency records such as contacts and scope of work. Powertech has stated in its filings that it wishes NRC Staff to deduct any amounts already spent and to cap the costs of the project. The Tribe asks that NRC Staff produce all relevant documents, disavow Powertech's "cost-capping" approach, and confirm that completion of the necessary survey in a competent fashion will drive the cost analysis instead of arbitrary limits based Powertech's undocumented assertions of dire financial condition.

NRC Staff has agreed to Powertech's proposal to allocate ten thousand dollars from the cost recovery budget for the Tribe's use during the cultural resource survey. The Tribe has chosen to

allocate the bulk of the remainder of this inadequate amount to defray expenses of Elders and other traditional persons who may participate in the survey and to provide feedback to NRC Staff's detailed survey methodology proposal, once it is presented for review.

It now appears that NRC Staff expects the Tribe to voluntarily provide uncompensated contractor services by proposing, preparing, and implementing the survey methodology on the ground. It is important to note that this approach by NRC Staff puts the Tribe in an unreasonable position – essentially requiring the Tribe to “volunteer” its services to fulfill NRC's NEPA duties. To be clear, the Tribe is not willing to voluntarily provide NRC Staff with services normally obtained through federal contract. However, the Tribe is willing to discuss compensation that federal law requires in order to provide expertise and services that NRC Staff and its contractor may lack. 31 U.S.C. § 1342 (federal “government may not accept voluntary services for either government or employ personal services exceeding that authorized by law”). Similarly, Executive Order 13175 ensures that the federal agencies “reduce the imposition of unfunded mandates upon Indian tribes.”

Although federal laws guard against imposing NRC Staff's NEPA compliance costs on the Tribe, NEPA does provide mechanisms by which NRC Staff can marshal funds for the Tribe to participate as a NEPA cooperating agency. 40 C.F.R. § 1501.6 & § 1508.5. The Tribe invites NRC Staff to discuss cooperating agency status for the Bureau of Indian Affairs and the Tribe, which provides a recognized mechanism to involve the Tribe in the manner NRC Staff has proposed for the ongoing NEPA analysis. One potential mechanism for providing this funding is through the a “self-determination” grant or cooperative agreement pursuant to the Indian Self-Determination Act. 25 U.S.C. §§ 5304(j), 5308. NRC Staff's continuing dispute with Powertech over full cost recovery can take place outside of this mechanism. “Self-determination” funding for the Tribe as a cooperating agency respects and furthers the government-to-government relationship that must exist between the Tribe and NRC throughout this proceeding. The Tribe looks forward to NRC Staff's response.

Arbitrary Timeline are not Based on Accepted Methodology

As was discussed in confidential meetings held in June 2018, and referenced in the Literature Review Report at 20, celestial knowledge and observations are required to locate certain cultural resources. Once the necessary confidentiality agreements are in place, the survey schedule should be reconfigured to ensure the survey methodology integrates the necessary celestial, and other, conditions required to conduct the survey. The need to reconsider the project timeline in the context of the proposed timeline was specifically addressed and acknowledged during the December 6, 2018 conference call with the Board and parties. December 6, 2018 Transcript at 1478-1479.

Confidentiality and Ownership of Cultural Resources Information

NRC Staff is neither qualified nor authorized to obtain, receive, or possess all of the sensitive cultural resource information at issue in this endeavor. As the Tribe has communicated to NRC Staff, any such information, if not covered by protective order, is vulnerable to release to unauthorized persons within NRC, to Powertech, or to the general public via the Freedom of

Information Act. Moreover, Powertech has no need to review sensitive cultural information. From the Tribe's perspective, NRC Staff has shown a general lack of understanding of federal trust responsibilities and role of Tribal Ordinances dealing with confidentiality. Therefore, the Tribe seeks to spell out these responsibilities and obligations in an agreement. The Tribe provided NRC Staff with the Tribal Ordinances and other relevant information in June of 2018.

The Tribe asserts that the next step in this process is for Mr. Spangler to review the information provided to NRC Staff by the Tribe and produce (redacted if necessary) agreements he routinely uses when working as a contractor for the Department of the Interior. Once these documents are assembled, the Tribe will provide draft agreements for consideration of NRC Staff, S&CA, and Mr. Spangler. Once the necessary agreements are formalized, a draft motion to update the protective order, and a draft protocol for adding "authorized persons" will be provided for NRC Staff's consideration.

NEPA Path Forward to Develop and Implement Cultural Resources Survey Methodology

Because these activities take place within the NEPA process, several key NEPA procedures must be addressed at the earliest stages to ensure the preparers have the necessary qualifications to carry out the interdisciplinary analysis of cultural resource impacts, alternatives that avoid impacts, and mitigation measures. *See e.g.* 40 C.F.R. §, 1502.6. These are normally carried out in accordance with NEPA's scoping procedures. 40 C.F.R. § 1501.7. The Tribe renews its request for NRC Staff to follow NEPA's scoping process in light of these new circumstances, including Powertech's expanded mining project. For example, qualified preparers must be engaged and other agencies with expertise and jurisdiction must be invited to participate in the NEPA process. The entities that work on the federal level include the National Trust on Historic Preservation, Advisory Council on Historic Preservation, Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, and Environmental Protection Agency.

A few key points have arisen to help guide NRC Staff's preparation of a detailed methodology for conducting the cultural resource survey:

Elder Interviews

Elders must be comfortable – interviews must be conducted in conformance with the principles of Free and Prior Informed Consent. Audio recording can be a problem, and tribal members often communicate in Lakota language instead of English. The Tribe needs access to the scope of work being used by NRC Staff and its selected contractor in order to understand the goal of the interviews and to better understand the proposed methodology for conducting elder interviews before, during, and after field visits. The Tribe had previously provided NRC Staff the information related to the Tribe's research and review board policies, including review by the Tribe's review board. These policies must be complied with for any elder interviews.

Literature Review Document

As discussed, the Tribe has expertise to provide a review and critique of S&CA's Literature Review Report. In any case, the Tribe's review of the Literature Review and Report must be incorporated into the NEPA analysis. The Tribe's initial review of this document has identified significant errors that the Tribe anticipates submitting its review to NRC Staff and into the administrative record.

Elements of a Cultural Resources Survey Methodology

Some key elements must be included, regardless of the methodology or qualifications of such persons employed by NRC Staff. Most of these elements were discussed in June 2018, both in the June 15, 2018 letter and in person. Now that NRC Staff has employed a contractor who will presumably provide a response in a detailed methodological proposal, the Tribe looks forward to reviewing a detailed proposal to address the elements that must be present.

Report - Preparation and Handling

It is important that the Tribe have a significant role in drafting the final cultural resource survey report. A second version, with sensitive information withheld, should be prepared by NRC Staff, with review and approval by Tribe, for use in the NEPA process.

This approach allows the detailed and sensitive information and work product to reside in one full document for use by authorized Tribes' and NRC Staff personnel only. This is a common way for cooperating agencies to interact with the NEPA lead agency. The second report would also be a meaningful document but would be presented in a way that does not reveal key sensitive information. The second document would be prepared according to the interdisciplinary mandates of NEPA for use by Consolidated Intervenor, Powertech, Tribal Members, unauthorized government officials, and the general public. The second report would be used by the interdisciplinary team and others charged with preparing of the Draft and Final NEPA document.

National Historic Preservation Act

While the Tribe understands the Board has found in favor of NRC Staff regarding the Tribe's previously raised National Historic Preservation Act contention dealing with adequacy of government-to-government consultation, the Act still bears relevance in the identification, evaluation, eligibility review for the National Register of, and mitigation of impacts to, cultural resources. The Tribe expects these relevant portions of NHPA will continue to inform NRC Staff's interdisciplinary duties in gathering information and carrying out the NEPA analysis.

Conclusion

The Tribe looks forward to working with NRC Staff to ensure proper review of the impacts of the Powertech project to the significant cultural resources at the Dewey-Burdock site. While no doubt the effort will require significant effort, the Tribe is prepared and willing to engage with NRC Staff to work toward a successful result. As stated above, the Tribe remains concerned that Mr. Spangler's publicly available information does not contain the types of cultural and professional experience and training one would expect for a person qualified to develop and implement a cultural resources survey outside the Northern Colorado Plateau. Even if Mr. Spangler does not bring the necessary qualifications, the Tribe expects that he can assist NRC Staff understand and address the shortcomings of the November 21 Letter. Nevertheless, the Tribe looks forward to further discussions with NRC Staff on the cultural resources survey methodology, informed by the participation of Mr. Spangler and NRC's Tribal Liaison.

Respectfully Submitted this 11th day of January 2019.

/s/ Jeffrey C. Parsons

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
POWERTECH (USA) INC.,)	Docket No. 40-9075-MLA
)	
(Dewey-Burdock In Situ Uranium Recovery)	
Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Oglala Sioux Tribe's Response to NRC Staff's November 21, 2018 Letter in the above-captioned proceeding were served via the Electronic Information Exchange ("EIE") on the 11th day of January 2019, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by_____

Jeffrey C. Parsons
Western Mining Action Project



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 25, 2019

Mr. Tom Brings
and Mr. Kyle White
Tribal Historic Preservation Office
Oglala Sioux Tribe
PO Box 320
Pine Ridge, SD 57770

SUBJECT: RESPONSE TO OGLALA SIOUX TRIBE'S LETTER DATED JANUARY 11, 2019, REGARDING THE IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S MARCH 2018 APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

Dear Mr. Brings and Mr. White:

On January 11, 2019, the U.S. Nuclear Regulatory Commission (NRC) staff received the Oglala Sioux Tribe's response (Agencywide Documents Access and Management System [ADAMS] Accession Number ML19011A459) to the NRC's November 21, 2018, letter (ADAMS ML18325A029). In its November 21 letter, the NRC staff reaffirmed its commitment to continue discussions with the Tribe to develop a physical site survey methodology to identify sites of historic, cultural, and religious significance that could be affected by the Dewey-Burdock in situ uranium recovery (ISR) project. In the interest of further focusing the important next steps in these negotiations, we provide the NRC staff's perspective on several topics raised in the Tribe's January 11 response.

The November 21 letter provided background information regarding the proposed methodology discussed during the June 2018 teleconference calls and webinars, and meetings in Pine Ridge, South Dakota, as a starting point for ongoing discussion, negotiation, and modification. As that letter explained, the proposed methodology is consistent with the parameters established in the NRC staff's March 16, 2018, approach (March 2018 Approach; ADAMS ML18074A393), which was accepted as reasonable by the Tribe, Consolidated Intervenor, and Powertech (USA), Inc. It is also consistent with the October 30, 2018, Atomic Safety and Licensing Board's (Board's) Order regarding the scope of the discussions and negotiations, which states that "the only aspect of the Approach that is open for discussion is the site survey methodology. That is, any tribal negotiating position or proposal should only encompass the specific scientific method that would fit into the two-week periods set out in the March 2018 Approach for visiting the physical site, i.e., how the contractor and Tribe members will walk the site and mark or record located tribal resources."

In the November 21 letter, the NRC staff requested that by December 28, 2018, the Tribe document its specific concerns with the proposed methodology in writing, or propose an alternative methodology that the Tribe would consider scientific and reasonable but that would

also fit within the parameters of the March 2018 Approach and the Board's October 30, 2018, Order. At the request of the Tribe, the response date was extended to January 11, 2019. Also in its November 21 letter, the NRC staff acknowledged the Tribe's interest in revising the protective order. On December 12, 2018 (ADAMS ML18347A047), the NRC staff requested the Tribe's views regarding any need for changes to the protective order be submitted by the same date.

The NRC staff remains committed to an open dialogue regarding the development of a site survey methodology and revising the protective order. The NRC staff appreciates that the January 11 response provided the Tribe's views on a variety of matters. The NRC staff is, however, concerned that the Tribe did not detail its concerns with the proposed site survey methodology or specify input on amendments to the protective order that would resolve the Tribe's views regarding confidentiality. It was the NRC staff's intention, using the Tribe's response to effectively focus additional discussions and negotiations, to reach an agreement on a site survey methodology by March 1, 2019, and, in parallel, to begin working with the Tribe on a coordinated motion to modify the protective order before the execution of the site survey, should the Tribe deem such a motion necessary. Consequently, the NRC staff still considers its proposed methodology, as described in the November 21 letter, to be the appropriate foundation for continuing those negotiations.

In light of certain views the Tribe shared in its January 11, 2019 response, the staff offers the following clarifications to help facilitate the upcoming negotiations.

Cultural Resource Survey Methodology and Roles of the Tribe and Contractor

The Tribe's January 11 letter appears to suggest that the Tribe is being asked to "voluntarily provide uncompensated contractor services by proposing, preparing, and implementing the survey methodology on the ground." Tribe's Response at Page 5. On the contrary, the March 2018 Approach reflects the NRC staff's ongoing central responsibilities for developing, facilitating, and implementing the survey methodology, including contractor support to enable that effort, while at the same time recognizing the importance of the Tribe's expertise in the development of a site survey methodology. The Tribe's response also asserted that the NRC staff "Has Provided No Cultural Resource Survey Methodology". Tribe's Response at Page 2. However, the NRC staff's November 21, 2018 letter proposed and explained the reasoning for each step of a survey methodology, based on a proposal prepared by Dr. Nickens that was previously discussed during the June 2018 teleconference calls and webinars. The proposal in the letter was intended to be a starting point for further discussion and negotiation.

In its January 11, 2019, response, the Tribe stated that its own June 15, 2018, proposal contains "key elements" and looks forward to an NRC contractor providing "a detailed proposal to address the elements that must be present." Tribe's Response at Page 7. The June 15, 2018, proposal, however, outlines a methodology that is incompatible with the scope, timeline, and costs of the NRC staff's March 2018 Approach (as discussed in the NRC staff's July 2, 2018, response to the Tribe (ADAMS ML18183A304)), and the Board's October 30, 2018, Order.

With regard to the staff's contractor, as previously discussed, the NRC staff awarded a contract to SC&A, Inc. to facilitate implementation of the March 2018 Approach. An SC&A, Inc. employee will work with the Tribe to develop and conduct the survey

because, as reiterated by the Tribe in its letter dated May 31, 2017 (ADAMS ML17152A109), the expertise of the Tribes is essential in the development and implementation of a meaningful and comprehensive tribal cultural survey. The NRC staff recognizes that Tribes have the unique expertise to identify, interpret, and ascribe significance to resources, and there is no substitution for the Tribes' expertise. The NRC staff accordingly awarded a contract to a company experienced in planning, performing, and reporting surveys to assist in developing and implementing the survey methodology and survey report, rather than requesting the Tribe to solely and voluntarily develop, prepare, and implement the site survey methodology.

Additionally, as previously discussed, Mr. Jerry Spangler has replaced Dr. Nickens after he resigned from SC&A, Inc. Enclosed please find Mr. Spangler's most recent resume (Enclosure 1).

Confidentiality and Protective Order

In its November 21, 2018, letter, the NRC staff reaffirmed its commitment to protect sensitive and confidential information associated with the tribal field survey and oral history interviews consistent with applicable federal laws and regulations. The NRC staff has also repeatedly invited the Tribe to provide revisions to the protective order if it believes they are necessary. To date, however, the Tribe has not proposed modifications or provided comments on the NRC staff's proposed protective order amendments, which were sent to the Tribe's counsel on June 7, 2018.

The NRC staff maintains that the current protections in place are sufficient to protect the Tribe's sensitive and confidential information. And consistent with the Board's October 30, 2018, Order, a revision to the protective order is the appropriate mechanism by which the parties may address additional issues regarding sensitive unclassified non-safeguards information (SUNSI) and confidential information. The NRC staff will certainly consider the Tribe's input on the NRC staff's proposed amendment or on modifications the Tribe wishes to develop and share. The NRC staff, however, requests the Tribe's cooperation and consideration in providing timely input so that any motion to modify the protective order is filed with the Board prior to the site survey taking place. The staff will not file a motion to modify the protective order unless it receives feedback from the Tribe, and plans to move forward with negotiations with the existing protections in place.

Tribal Liaison Involvement

On December 12, 2018 (ADAMS ML18347A047), the NRC staff informed the Tribe that it was coordinating with the NRC's Federal, State, and Tribal Liaison Branch to seek a tribal liaison's involvement in future meetings. A NRC tribal liaison will be invited to upcoming meetings, as requested by the Tribe, and will facilitate negotiations on the site survey methodology. During these negotiations, the NRC staff will follow the guidance in the NRC's Tribal Policy Statement (January 9, 2017; 82 FR 2402), which established the principles the NRC staff will follow to promote effective government-to-government interactions with Indian and Alaska Native Tribes, and to encourage and facilitate tribal involvement in the areas over which the NRC has jurisdiction.

The Site Survey Report

Once the site survey has been completed, the contractor will document the findings of the survey based on the input provided by the participating Tribes, and will prepare a report that will be provided to the participating Tribes for review and comment. Input and comments submitted by the Tribe will be considered and included in the report. Sensitive information will be withheld and reported separately.

As summarized above, the NRC staff understands the scope of the resumed negotiations to be defined by the Board's October 30, 2018, Order. Many of the specific matters raised in the Tribe's January 11, 2019, response appear to fall outside of that scope or otherwise appear incompatible with the adjusted timelines underpinning the March 2018 Approach. However, in the interest of cooperation and further efficiency in the negotiations, the NRC staff offers the following responses.

Scope of the Dewey-Burdock Project

In its January 11, 2019, letter, the Tribe references a report, "NI 43-101 Technical Report Resource Estimate Dewey-Burdock Uranium ISR Project South Dakota, USA," published by Powertech on December 21, 2018, as the basis for its request for additional review of Powertech's project. The NRC staff has not received any notifications, letters of intent, or requests from Powertech to amend the license to expand its uranium recovery activities in South Dakota. Until the NRC staff receives a formal notification from the licensee of an intent to pursue a modification or expansion of its licensed activities, the referenced report does not warrant additional National Environmental Policy Act (NEPA) consideration in this proceeding. Further, any license amendments to expand the facility would require a separate NEPA review, which would be conducted after the licensee officially submits a license amendment request.

Scope of Work

The Tribe requested a copy of the scope of work describing the work to be conducted by the NRC staff's contractor. Tribe's Response at Page 1. The NRC staff has previously explained why the Tribe was legally precluded from involvement in the NRC staff's contract award process, and the NRC staff does not view its contract award as a subject for discussion during future negotiations on the survey methodology. However, for the Tribe's awareness, the NRC staff has enclosed the publicly available portions of the statement of work issued upon award of the contract (Enclosure 2). The document does not prescribe final details regarding the site survey methodology and elder interviews because, as the NRC staff has explained, the intention of the March 2018 Approach was to develop the site survey methodology with the input of the Tribes during the June 2018 webinars and teleconference calls (and now during the resumed negotiations).

NRC's Literature Review Report

On June 7, 2018, Dr. Nickens provided the literature review report to the invited Tribes (ADAMS ML18159A191 and ML18159A192). The report summarizes publicly available information in the open literature regarding historic, cultural, and religious resources of significance to the invited Tribes and focused on the Dewey-Burdock project area and its immediate region. The NRC staff was surprised by the Tribe's reaction in its January 11

letter, as this was the first time the NRC staff heard these concerns regarding the literature review report. It was never the NRC staff's intention to offend the Lakota, and for that the NRC staff apologizes. The NRC staff welcomes the Tribe's input to this literature review report, and, consistent with agency practice, will reference the Tribe's input in its NEPA supplemental analysis. Although the literature review report cannot revise what is already in existing literature, the NRC staff can incorporate the Tribe's specific objections.

Additional Funding

In its response, the Tribe requested to be granted NEPA cooperating agency status, receive "self-determination" grants, or execute cooperative agreements. Tribe's Response at Pages 4-5. These requests fall outside the scope of negotiations on the methodology, and also could not feasibly be achieved within the adjusted timeline of the March 2018 Approach. However, the staff would like to reiterate that in its letter dated December 5, 2018 (ADAMS ML18345A265), Powertech confirmed its willingness to provide reimbursement to the Tribe in the same amount as described in its letter to the NRC dated April 11, 2018, (ADAMS ML18101A223) to facilitate tribal participation. This reimbursement is consistent with reimbursement provided to Tribes during the 2013 tribal field survey and in other NRC projects, and the Tribe has previously agreed that such an amount would be appropriate (ADAMS ML18046A171).

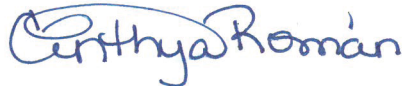
In summary, although the Tribe's January 11, 2019, response addresses a number of issues that are outside the Board's stated scope of negotiations about a site survey methodology consistent with the March 2018 Approach, the NRC staff looks forward to productively continuing negotiations with the Tribe. As we are five weeks away from the March 1, 2019, milestone, and in an effort to conduct timely discussions and negotiations, the NRC would like to propose a teleconference meeting to introduce the NRC staff to the Tribe's new Tribal Historic Preservation Officer and discuss the framework for future negotiation meetings during the week of January 28, 2019 or the first week of February 2019. From there on, the NRC staff invites the Tribe to meet on a weekly basis to discuss and develop the site survey methodology. Weekly meetings would provide the appropriate time to discuss and develop the methodology as a group, but also provide reasonable time for each party to confer internally about the information developed.

Weekly meetings would also allow the parties to be prepared for the planned meeting of the Oglala Sioux Tribe Tribal Historic Preservation Advisory Council on February 22, 2019, in Rapid City, South Dakota, which the NRC staff anticipates attending in response to the Tribe's counsel's January 18, 2019, e-mail invitation (ADAMS ML19022A061). The NRC staff looks forward to a productive discussion at this meeting, but would like to emphasize that given the adjusted timeline of the March 2018 Approach, substantive discussions regarding a site survey methodology will also need to take place in advance of that meeting.

In accordance with Title 10 of the Code of Federal Regulations (CFR) 2.390, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or concerns, please contact Ms. Diana Diaz-Toro of my staff. Ms. Diaz-Toro can be reached at (301) 415-0930 or via e-mail at Diana.Diaz-Toro@nrc.gov.

Sincerely,



Cinthya I. Román, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-9075
License No. SUA-1600

Enclosures:

1. Spangler's Resume
2. SC&A Contract Statement of Work

cc:

Mr. Troy "Scott" Weston, President
Oglala Sioux Tribe
Mr. Jeff C. Parsons, Counsel
for the Oglala Sioux Tribe
Mr. Travis E. Stills, Counsel
for the Oglala Sioux Tribe
Mr. Steve Vance, Tribal Historic Preservation Office
Cheyenne River Sioux Tribe
Mr. Garrie Kills A Hundred, Tribal Historic Preservation Officer
Flandreau-Santee Sioux Tribe
Mr. Ben Rhodd, Tribal Historic Preservation Officer
Rosebud Sioux Tribe of Indians
Mr. Jon Eagle, Tribal Historic Preservation Officer
Standing Rock Sioux Tribe
Ms. Clair Green, Cultural Resources Office
Lower Brule Sioux Tribe
Mr. Kip Spotted Eagle, Director
Tribal Historic Preservation Office
Yankton Sioux Tribe
Mr. Merle Marks, Tribal Historic Preservation Office
Crow Creek Sioux Tribe