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Subject: [External_Sender] Consolidated Intervenor Petition for Review "Powertech USA 40-9075-MLA"
Date: Tuesday, January 21, 2020 11:47:40 PM
Attachments: [CI Petition 1-21-20.pdf](#)

Greetings,

Counsel for Consolidated Intervenor are currently unable to access the EIE and thereby file this attached Petition for Review of LBP-19-10, LBP-17-09, and Board Ruling on Motion to Strike by this email. Please let me know if you have any trouble downloading or opening the document.

Thank you,

Tom Ballanco
Counsel for Consolidated Intervenor

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**UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	Docket No. 40-0975-MLA
POWERTECH (USA), INC.)	ASLBP No. 10-898-02-MLA-BD01
)	
(Dewey-Burdock)	January 21, 2020
In Situ Leach Facility))	

**CONSOLIDATED INTERVENORS PETITION FOR REVIEW OF LBP-19-10,
LBP-17-09 AND BOARD RULING ON MOTION TO STRIKE**

Pursuant to 10 CFR 2.1212 and 10 CFR 2.341, Consolidated Intervenor¹ hereby seek review of the Atomic Safety and Licensing Board’s rulings in LBP-19-10, LBP-17-09 and its Ruling on the Motion to Strike. As some of the Consolidated Intervenor¹s are enrolled members of the Oglala Sioux Tribe, the Consolidated Intervenor¹s also adopt all the assertions and arguments of the Oglala Sioux Tribe [“OST”] in their Petition for Review filed on this date.

The Consolidated Intervenor¹s also reiterate their position first raised in the Commission mandated filing after the U.S. Court of Appeals (D.C. Cir) decision in *Oglala Sioux Tribe v. NRC*, 896 F.3d 520 (D.C. Cir 2018). While apparently lost on NRC Staff, that ruling demonstrates that despite OST’s direct connection to this specific site and the cultural properties located there, the protection of cultural resources from damage or destruction during federally licensed activity, generally, is a compelling public interest under NEPA, whether or not a federally recognized tribe appears to assert and prosecute a claim:

¹ Susan Henderson, Dayton Hyde and Aligning for Responsible Mining.

We know that the environmental values protected by NEPA are of high order—because Congress has told us so *referencing* 42 U.S.C. § 4331 recognizing ‘the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man’ and declaring the federal government’s responsibility to ‘preserve important historic, cultural, and natural aspects of our national heritage.’

Id. at fn 6. NRC Staff’s decision, now adopted by the Board makes the consideration of cultural resource values entirely dependent upon the active participation of the OST.

Consolidated Intervenors read the above passage from *Oglala Sioux Tribe v. NRC* to lead to the exact opposite conclusion.

NRC Staff owes a duty, imposed by NEPA, independent of the participation of involvement of the OST, a duty which has not been met in actual practice. No affirmative steps have been taken by NRC Staff to further identify and protect cultural resources in the project area since the Board’s initial determination that the effort was lacking.

CONCLUSION

Consolidated Intervenors hereby request the Commission to overturn LBP-19-10, LBP-17-09 and the Ruling on the Motion to Strike and compel NRC Staff to continue its efforts to develop a methodology that is actually protective of the known cultural resources in the Dewey Burdock and related project areas, thereby conserving valuable time and resources before we inevitably end up back here wrestling with the same questions several years from now.

Dated this 21st day of January, 2020.

Respectfully submitted,

/S/

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the foregoing **CONSOLIDATED INTERVENORS PETITION FOR REVIEW OF LBP-19-10, LBP-17-09 AND BOARD RULING ON MOTION TO STRIKE** were served by email filing, in the above-captioned proceeding.

Dated: January 21, 2020.

Signed (electronically) by Thomas J. Ballanco

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