

DeweyBurdPubEm Resource

From: Yilma, Haimanot
Sent: Wednesday, June 01, 2011 6:04 PM
To: Klukan, Brett; Hsueh, Kevin; Goodman, Nathan
Cc: Jehle, Patricia; Clark, Michael
Subject: RE: Dewey Burdock Crow Butte Informal Information Gathering at Pine Ridge Jun 7,8,9

Thanks Brett for forwarding this email.

Haimanot

From: Klukan, Brett
Sent: Wednesday, June 01, 2011 4:43 PM
To: Hsueh, Kevin; Goodman, Nathan; Yilma, Haimanot
Cc: Jehle, Patricia; Clark, Michael
Subject: FW: Dewey Burdock Crow Butte Informal Information Gathering at Pine Ridge Jun 7,8,9

Kevin, Nathan, and Haimanot,

FYI.

Cheers,
Brett

From: Klukan, Brett
Sent: Wednesday, June 01, 2011 4:42 PM
To: 'David Cory Frankel'
Cc: Chris Pugsley; Smith, Tyson R.; Bruce Ellison; Tom Ballanco; Jeffrey C. Parsons; Jehle, Patricia; Clark, Michael
Subject: RE: Dewey Burdock Crow Butte Informal Information Gathering at Pine Ridge Jun 7,8,9

David,

The purpose of the June 8, 2011 meeting—and, to a more limited extent, the site visits on June 7 and 9, 2011—is to allow the Staff and interested Indian Tribes an opportunity to discuss traditional cultural properties that may potentially be affected by the proposed operations at the Dewey-Burdock or the Crow Butte sites. For that reason, neither the ASLBP nor the respective applicants, Powertech and Cameco, have been invited to participate in the June 8, 2011 meeting. (In the case of Dewey-Burdock, the Staff expects that there will be at some point in the future an additional site visit involving the ASLBP and the parties.) However, as Powertech and Cameco control access to the respective sites, representatives from Powertech or Cameco will be present during the site visits on June 7 and 9. With that said, Powertech and Cameco representatives accompanying the site visits will have no formal role in NHPA-related discussions.

The Staff does not know if counsel for Powertech or Cameco will be present during the site visits. The Staff's view is that the decision as whether to have counsel present for the site visits rests with either Powertech or Cameco. With respect to the June 8, 2011 meeting, the Staff understands that a participating Tribe may decide to have counsel present. However, because the June 8th meeting is between the Staff and interested Tribes, the Staff did not anticipate that counsel representing non-Tribal intervenors would attend this meeting.

It is not anticipated by the Staff that counsel will make any formal statements during the June 8th meeting or the site visits. Counsel for the Staff intends to avoid discussing issues arising in litigation (unless, of course, such discussions are with other counsel). The role of counsel for the Staff at the meeting will be to advise the Staff on any issues that may arise during the course of the meeting. Counsel's participation in the site visits will be primarily for educational benefit of attending counsel. For your information, Mike Clark, co-counsel in the Dewey-Burdock proceeding, will also be attending the meeting and site visits.

The Staff acknowledges your concerns over what constitutes "consultation" under the NHPA. The Staff believes that information-gathering is one part of the consultation process outlined in NHPA section 106. However, the Staff is aware that there are other steps that need to be taken before consultation is considered complete.

The Staff has arranged to have the June 8th meeting transcribed. However, the NRC staff understands that the Tribal representatives may raise issues in consultation that should be kept confidential and nonpublic; the Staff is committed to maintaining confidentiality of this type of information.

Cheers,
Brett Klukan

-----Original Message-----

From: David Cory Frankel [mailto:davidcoryfrankel@gmail.com]

Sent: Wednesday, June 01, 2011 11:01 AM

To: Klukan, Brett; Jehle, Patricia

Cc: Chris Pugsley; Smith, Tyson R.; Bruce Ellison; Tom Ballanco; Jeffrey C. Parsons

Subject: Dewey Burdock Crow Butte Informal Information Gathering at Pine Ridge Jun 7,8,9

Hello Brett and Patricia,

I note from the attached notice that the intervenors are not on the agenda.

As you know, the intervenors include OST tribal members who have raised contentions related to cultural resources and failure to consult under treaty and Section 106 of NHPA.

It appears that this event is being billed as an "Informal Information Gathering" meeting but the agenda also makes reference to it being a 'consultation' -

Please be aware that this event may not represent a formal consultation under either treaty or Section 106 because the sovereign representatives of the Tribe will not be present as a group but only certain administrative staff of certain tribal subparts - therefore this event must be expressly and consistently characterized as solely for 'informal information gathering.'

I would like to know if any lawyers or other representatives for either Powertech or Cameco/Crow Butte will be present at this gathering at Pine Ridge or for the scheduled site visits. If so, intervenors' counsels should also attend.

I would also like to know if any of the judges from the panels in the ASLBP hearings for these matters will be there. Again, if so, intervenors' counsels should attend.

If no lawyers or representatives from either Powertech or Cameco/Crow Butte will attend then we are less likely to attend.

Finally, we would like assurances that either a transcript will be taken and made available at both the informal gathering at Pine Ridge and at the site visits or if no transcript will be taken at any such time or at a particular time, we would like confirmation that there will be no discussions of legal import or factual matters that are not also entered into the record. That is, if there's no transcript, there should be no substantive discussions.

I would like Brett and Patricia as NRC counsels to advise whether they will be making any statements during the informal gathering or site visits because any such statements would be likely advocative or advisory and therefore Intervenors' Counsels should attend.

As an OST lawyer, I need to remind any and all representatives from the uranium companies that maybe be planning to attend that there is a ban on uranium business at Pine Ridge and therefore no business licenses

have been or will be issued that would permit any activities on the Reservation that would promote uranium mining businesses.

Tribal Court precedent confirms that promoting uranium mining business on the Reservation is grounds for physical removal from the Reservation under a Removal Order and you should know that the last uranium company to attempt to promote uranium mining on the Reservation was in fact ordered to be physically removed and was physically removed, peacefully, by Tribal Police accompanied by a private society of tribal members known as the Akicita Society.

As a result, it would seem best if none of the uranium company executives or representatives go onto the Reservation or attend the informal information gathering at Pine Ridge. Please be aware that the Akicita Society will likely be attending the informal gathering or will be present nearby and will likely accompany Chief Red Cloud should he decide to attend the event.

Please advise asap as I have already made travel arrangements to attend next week but some of the other intervenors counsels have yet to make arrangements.

Sincerely,

David Frankel
Attorney for Intervenors in
Powertech/Dewey-Burdock and Cameco/Crow Butte

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Jun 7,8,9
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From: Yilma, Haimanot

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