

From: [Terence Clouthier](#)
To: [Yilma Haimanot](#); [Bruce Nadeau](#); [Hsueh, Kevin](#); ["Withrow, Randy"](#); [Jamerson, Kellee](#)
Cc: [Waste"Win Young](#); [dianned@swo-nsn.gov](#); [Russell Eagle Bear](#) ([reaglebear@yahoo.com](#)); [Ben Rhodd](#) ([brhodd1@yahoo.com](#)); [Conrad Fisher](#) ([conrad.fisher@cheyennation.com](#)); [Wanda Wells](#) ([wandawells@midstatesd.net](#)); [Lana Gravatt](#) ([gravattlana@yahoo.com](#)); [Clair Green](#) ([clairsgreen@yahoo.com](#)); [jb.weston@fsst.org](#); [Elgin Crows Breast](#) ([redhawk@mhanation.com](#)); [Dennis Yellow Thunder](#) ([ostnrrafd@gwtc.net](#)); [Fred Mousseau](#) ([ostnrrathpo@gwtc.net](#)); [Curly Youpee](#) ([cultres@nemontel.net](#)); [James Whitted](#) ([jmswhitted@yahoo.com](#)); [Steve Vance](#) ([steve.vance@crst-nsn.gov](#)); [Valerie Hauser](#); [John Eddins](#)
Subject: RE: FW: TRANSMITTAL OF SURVEY PROPOSAL FOR THE PROPOSED DEWEY-BURDOCK ISR PROJECT
Date: Friday, November 02, 2012 3:32:29 PM

Haimanot and Kevin,

This latest proposal does absolutely nothing to address the concerns that all of the participating tribes (well the tribes that were participating from June 2011 until this latest failure anyway) have with this project. From all appearances, your agency accepted the proposal because it went along with the applicants financial constraints. That is the only reason it was accepted as it is just another predictive model which we have repeatedly told you are insufficient to address our concerns. Yet, here you are, ignoring the information gathered pursuant to 36CFR800.4 (a) and accepting a predictive model. I will have a letter for you on Monday morning on THPO letterhead to explain to you for the millionth time how your agency has done nothing but fail the 106 process.

As I mentioned in my voice mail. If you issue your SEIS based off the work done on this latest proposal without addressing all of the concerns that have been brought up since June of 2011 - i will fight you every step of the way.

This is an utter failure on your agencies part to accept a proposal from a tribe at the 11th hour that does nothing to address the concerns that were brought up through information gathered pursuant 36CFR800.4 (a) and expect this proposal to show that a good faith effort was met per 36CFR800.4 (b) (1). Especially, considering that your own agency purposely kept them out of the consultation process based on their granting of a no historic properties affected determination back in 2010. They should have been at the table the entire time and not used to pit one tribe against the other as you are doing now. The fact that a federal agency is encouraging this kind of strife between tribes is alarming. Bringing them back in as the accepted proposal in concert with the letters that you have issued where you have been trying to ignore the tribes requests and "move the 106" process forward without all of the tribes who have actually consulted since 2011 is nothing but a slap in the face to every one of us. This just further enforces the opinion that your agency has no intention of negotiating in good faith for this project. All your agency is apparently concerned with is making sure a timeline is kept so you can issue your permit and that you don't anger your applicant.

I encourage your agency to reconsider its current position based on the letter of October 31, 2012 before this escalates further.

Have a good weekend

Terry

From: Yilma Haimanot [[Haimanot.Yilma@nrc.gov](#)]
Sent: Thursday, November 01, 2012 2:10 PM
To: Bruce Nadeau; Terence Clouthier; Hsueh, Kevin; 'Withrow, Randy'; Jamerson, Kellee
Cc: Waste"Win Young; [rwithrow@louisberger.com](#); [dianned@swo-nsn.gov](#); Russell Eagle Bear ([reaglebear@yahoo.com](#)); Ben Rhodd ([brhodd1@yahoo.com](#)); Conrad Fisher ([conrad.fisher@cheyennation.com](#)); Wanda Wells ([wandawells@midstatesd.net](#)); Lana Gravatt ([gravattlana@yahoo.com](#)); Clair Green ([clairsgreen@yahoo.com](#)); [jb.weston@fsst.org](#); Elgin Crows Breast ([redhawk@mhanation.com](#)); Dennis Yellow Thunder ([ostnrrafd@gwtc.net](#)); Fred Mousseau ([ostnrrathpo@gwtc.net](#)); Curly Youpee ([cultres@nemontel.net](#)); James Whitted ([jmswhitted@yahoo.com](#)); Steve Vance ([steve.vance@crst-nsn.gov](#))
Subject: RE: FW: TRANSMITTAL OF SURVEY PROPOSAL FOR THE PROPOSED DEWEY-BURDOCK ISR PROJECT

Good Afternoon,

NRC staff welcomes all comments from tribes regarding the Dewey-Burdock project. We've received several important responses to yesterday's letter announcing our intent to move forward with a tribal survey proposal initiated by the Turtle Mountain Band of Chippewa Indians and Three Affiliated Tribes of the MHA Nation in collaboration with the consulting firm Kadrmas, Lee & Jackson (KLJ).

NRC shares the concern expressed by the Standing Rock Sioux Tribe regarding individuals who show disrespect for tribes, tribal members and resources important to tribes. We have asked KLJ to provide us with the names of all individuals scheduled to participate in the survey effort and we will provide this information to all parties for review as soon as we have it. It is our understanding that the survey team will be led and conducted by tribal members affiliated with the Turtle Mountain Band of Chippewa Indians and Three Affiliated Tribes of the MHA Nation. As presented in yesterday's letter we are also extending an invitation for all consulting tribes to participate in the field survey.

In response to other concerns expressed about NRC's compliance with Section 106 requirements for tribal consultation regarding the Dewey-Burdock project, NRC recognizes that the consultation process is ongoing. On September 18, 2012 NRC directly addressed several outstanding concerns including plans to develop a Programmatic Agreement and address indirect effects. The September 18, 2012 letter is attached to this email for your reference. It is NRC's intent to continue consultation with all interested tribes on these and other concerns.

Thanks you,

Sincerely,

Haimanot Yilma
Project Manager
FSME/DWMEP/EPPAD/ERB
U.S Nuclear Regulatory Commission
Phone: 301-415-8029
email: haimanot.yilma@nrc.gov
Mail Stop : T8F05

From: Bruce Nadeau [<mailto:brucefnadeau@gmail.com>]

Sent: Thursday, November 01, 2012 1:15 PM

To: Terence Clouthier

Cc: Waste'Win Young; Yilma, Haimanot; rwithrow@louisberger.com; dianned@swo-nsn.gov; Russell Eagle Bear (reaglebear@yahoo.com); Ben Rhodd (brhodd1@yahoo.com); Conrad Fisher (conrad.fisher@cheyennation.com); Wanda Wells (wandawells@midstatesd.net); Lana Gravatt (gravattlana@yahoo.com); Clair Green (clairsgreen@yahoo.com); jb.weston@fsst.org; Elgin Crows Breast (redhawk@mhanation.com); Dennis Yellow Thunder (ostnrrafd@gwtc.net); Fred Mousseau (ostnrrathpo@gwtc.net); Curly Youpee (cultres@nemontel.net); James Whitted (jmswhitted@yahoo.com); Steve Vance (steve.vance@crst-nsn.gov)

Subject: Re: FW: TRANSMITTAL OF SURVEY PROPOSAL FOR THE PROPOSED DEWEY-BURDOCK ISR PROJECT

Thanks for the information Terry.

At present we are concerned only with the land/area of potential effect with which we have been contracted to provide inventory for. Any other issues outside of this discrete area is something that would require additional scrutiny beyond the current proposed scope.

Respectfully,

Bruce Nadeau

On Thu, Nov 1, 2012 at 11:28 AM, Terence Clouthier
<tclouthier@standingrock.org<<mailto:tclouthier@standingrock.org>>> wrote:
Hi Bruce,

I'm not sure if you are up to date on the current status of this project and the attempts by the federal agency to apparently ignore the Section 106 process. It wouldn't surprise me if you were not given the lack of good faith consultation that this project exemplifies. In particular, there has been a concentrated effort by the federal agency to move this project along without addressing the pressing concerns that all of the consulting tribes currently have. Your office issued a no historic properties determination back in 2010 for this project and stated that you had no concerns at all with this project and that it would not affect any sites of significance for your tribe (stamped on a letter from March 19th, 2010). The fact that the NRC is now going with a proposal from your office at basically the 11th hour and ignoring all of the information that has been provided since 2011 further illustrates the lengths this federal agency will apparently go to not complete the Section 106 process in a good faith manner.

In particular, the consulting tribes that have been in consultation with the NRC and applicants for the past year and a half have issues with the following:

- Sites of significance to tribes cannot be identified by archaeologists. This was proven to them in the field during the meetings in June of 2011 when the consulting tribes visited the project area and showed the NRC sites that were missed by their archaeological consultants. The consulting tribes have requested a 100% survey of the entire area of potential effects (indirect and direct)- we have never waived on this. Yet, the current proposal will not conduct a 100% survey of the entire project area. A project area that constantly changes numbers from the entire license boundary (10000+acres) to 2673 acres to 3000+ acres depending on which disposal method is used.
- Information was given at a meeting in February 2012 illustrating that a predictive model cannot address the sites of concerns for the consulting tribes. This information was given directly to the Federal agencies involved in this project only and not to the applicant or any third party consultants. The current proposal that your office is involved in is a predictive model without actually naming it that. The NRC is ignoring the information they gained during the February 2012 meeting to keep to their and the applicants timeline for the EIS to be issued.
- The current proposal only addresses the direct area of potential effect of the project. I'm not sure how familiar you are with the Section 106 process Bruce as I understand you are just recently appointed into your position and I apologize in advance if you are very familiar with the 106 process. 36CFR800.16 (d) defines the area of potential effects as both the indirect and direct effects that an undertaking may have on historic properties. This has been a sticking point for the consulting tribes. The applicant and the NRC only want to complete a survey for the direct effects. They are ignoring the law. The Scope of work submitted by the tribes addressed this concern and a PA was supposed to be developed to address the other 8000 acres that would need to be surveyed. They are continuing to ignore this and your current proposal allows them to do this.
- The NRC basically tried to move the 106 process forward without doing any identification efforts that are required by 36CFR800.4 per their letter of August 30, 2012. The only reason the letter from Oct 12 even came out was because the NRC was informed by the consulting tribes and by the ACHP that what they were trying to do was essentially illegal. There is no provision within 36CFR800.4 that allows them to stop consulting with the tribes for the identification efforts. The only place where they can terminate consultation is 36CFR800.7 for the resolution of adverse effects not during the identification phase. Once again, the NRC is apparently trying to find a way out of their Section 106 responsibilities.

Unfortunately , I could spend all day illustrating to you exactly how this federal agency is apparently trying to circumvent the 106 process but I will just stop here. I have attached the Standing Rock Sioux Tribes response to the October 12 letter which illustrates the points above. The ACHP is well aware of the issues involved in this project and unfortunately, the latest proposal by your office with the Three Affiliated Tribe and KLJ does absolutely nothing to address these issues besides create another avenue for the federal agency to try and avoid the consulting tribes concerns. I truly wish that your office and the THPO office of the Three Affiliated Tribes had been involved in this process from the beginning of consultation back in June of 2011 so that these backdoor attempts by the federal agency to apparently drive the tribes apart could have been avoided.

As an aside, I urge your office to reconsider its current proposal and sit at the table with the tribes that have been consulting on this project since 2011 so that proper 106 procedures can be followed and not the feeble attempt at 106 compliance that is currently being conducted. The NRC specifically did not include the Three Affiliated Tribe or your office in the meeting of June 2011 due to the 2010 letters granting a no historic properties affected determination. Your offices have every right under the law to reenter the consultation process at any time, unfortunately, the way the NRC is conducting it – it is pitting your offices against the tribes who have been consulting for the past 1.5 years. This adversarial relationship that is apparently being encouraged by the NRC is not consultation in good faith by them. We should be united in our voice and opinions for this and all projects and not pitted against one another to circumvent the requirements for a federal law that they must follow.

If you have any questions about any of this – I would be more than happy to respond to them. 701 854 8510<tel:701%20854%208510> although email is probably better as I will not be in the office later today

Terry Clouthier
Standing Rock Sioux Tribe
Tribal Archaeologist

From: Bruce Nadeau [<mailto:brucefnadeau@gmail.com> <<mailto:brucefnadeau@gmail.com>>]
Sent: Thursday, November 01, 2012 9:02 AM
To: Waste'Win Young
Cc: Haimanot.Yilma@nrc.gov<<mailto:Haimanot.Yilma@nrc.gov>>;
rwithrow@louisberger.com<<mailto:rwithrow@louisberger.com>>; Terence Clouthier; dianned@swo-
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Subject: Re: FW: TRANSMITTAL OF SURVEY PROPOSAL FOR THE PROPOSED DEWEY-BURDOCK ISR
PROJECT

Just a point of order.

The fact that the project area is part of Sioux Territory (Ft. Laramie Treaty) is a moot point. It seems to me just recently that Makoche Wowapi conducted a few TCP surveys in northwestern North Dakota on lands that are Chippewa and Three Affiliated Tribes territory under the 1904 Davis Agreement and Fort Laramie Treaty (MHA portion). Obviously respecting treaty boundaries wasn't a consideration then.

Sincerely,

Turtle Mountain Tribe THPO

On Wed, Oct 31, 2012 at 3:54 PM, Waste'Win Young

<wyoung@standingrock.org<<mailto:wyoung@standingrock.org>>> wrote:

Just for the record. The Standing Rock Sioux Tribal Council passed a resolution in 2010 against working with KLJ because of comments made by a KLJ archeologist Brian O'Danacha in 2009 that "they should just bulldoze all this Indian shit." This is a documented incident.

In addition to this, Turtle Mountain and Three Affiliated Tribes have sites of significance that are different from the Dakota, Lakota and Nakota.

This area was classified as Sioux Territory under the Fort Laramie Treaties of 1851 and 1868.

Please forward this to Kevin.

Wašté Win Young

Standing Rock Sioux Tribe

Tribal Historic Preservation Officer

(701)-854-8645<tel:%28701%29-854-8645> work

(701)-854-2138<tel:%28701%29-854-2138> fax

From: Yilma, Haimanot [<mailto:Haimanot.Yilma@nrc.gov><<mailto:Haimanot.Yilma@nrc.gov>>]

Sent: Wednesday, October 31, 2012 2:37 PM

To: Yilma, Haimanot

Cc: Jamerson, Kellee

Subject: TRANSMITTAL OF SURVEY PROPOSAL FOR THE PROPOSED DEWEY-BURDOCK ISR PROJECT

Dear Tribal Historic Preservation Officers:

Please find attached a letter enclosing a survey proposal for the proposed Dewey-Burdock In-Situ Recovery Project. The NRC staff will also mail this letter to each Tribal President or Chair with a cc to the THPOs.

If you have any questions regarding this email or its contents, please contact Randy Withrow or myself.

Thank you,

Haimanot Yilma

Project Manager

FSME/DWMEP/EPPAD/ERB

U.S Nuclear Regulatory Commission

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Randy Withrow

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