

**Mendiola, Doris**

**Subject:** FW: Dewey-BurdockInSituEIScomments  
**Attachments:** Dewey-BurdockInSituEIScomments.docx

11/26/2012

**From:** william.walksalong [mailto:william.walksalong@cheyennenation.com]  
**Sent:** Monday, January 14, 2013 10:37 AM  
**To:** Yilma, Haimanot  
**Subject:** Dewey-BurdockInSituEIScomments

77 FR 70486

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Yilma Haimotnot:

This is a e-mail version of the comments to the SEIS for the Dewey Burdock In-Situ Recovery Project in Fall River and Custer Counties, South Dakota (Docket No. 040-9075). This SEIS information and many of the associated documents concerning this ISR project were not obtained by my office until recently after the holiday break. In addition, the transition of elected Northern Cheyenne Tribal leaders delayed the process of assigning and developing SEIS comments on behalf of the Northern Cheyenne Tribe. I understand that the Ogalala Sioux Tribe received an extension until January 25, 2013 to submit additional contentions before the Atomic Safety and Licensing Board. Our Tribe has had similar factors in developing and submitting written comments for the SEIS issued by the NRC, dated November 16, 2012. My office was assigned to comment on the SEIS by "new" Tribal leadership on November 27, 2012.

The simple reason my office is providing an explanation is because my department was required to adjust my work schedule to include this major review and drafting of formal comments for NRC review. The issue of uranium mining and a processing facility in our Tribe's ancestral homelands near our historic and sacred sites in very sensitive. I would hope that NRC considers including our Tribe's comments into the federal record. Thank you for your due consideration.

William Walks Along, Director  
Natural Resources Department  
Northern Cheyenne Tribe

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RULES AND DIRECTIVES  
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Add= H. YILMA (HX4)

January 7, 2013

Cindy Bladey, Chief  
Rules, Announcements and Directives Branch  
Division of Administrative Services/Office of Administration  
Mailstop TWB-05-B01M  
U.S. Nuclear Regulatory Commission,  
Washington, D.C. 20555-0001

*Attention: SEIS Dewey-Burdock InSitu Recovery Project/ Docket ID NRC-2012-0277*

Dear Madame Bladey:

The Northern Cheyenne Tribe ("Tribe") is a federally recognized Indian tribe under applicable sections of the *Indian Reorganization Act* of June 18, 1934 (Ch. 576, 48 Stat. 987, 25 U.S.C. 476) occupies the Northern Cheyenne Indian Reservation ("Reservation") encompassing 444,775 acres or 699 square miles of land in southeastern Montana and unpopulated tracts near Bear Butte (Sturgis), South Dakota and south of the Reservation in Montana. Pursuant to the National Environmental Policy Act ("NEPA"), the Tribe submits these comments to the Nuclear Regulatory Commission that address the draft Supplemental Environmental Impact Statement ("SEIS") for the *Dewey-Burdock In-Situ Recovery Project* in Fall River, and Custer Counties, South Dakota. This document will focus on the special environmental concerns related to this project that may potentially adversely impact Tribal members who conduct annual spiritual, religious and special community events within or near the proposed project area which the Tribe considers ancestral hunting, gathering and ceremonial grounds prior to the U.S. government's forced removal of the Northern Cheyenne people to a small Indian reservation in Montana the 1880s. These comments also address other potential impacts that may have adverse effects on the Tribe's interests, e.g. surface and ground water resources. The SEIS is a supplement to the generic environmental impact statement for *In-Situ* leach uranium milling facilities in various other regions in the western United States which may potentially impact other areas with Native American have a "foot-print."

The proposed Dewey-Burdock *In-Situ Recovery (ISR)* project would include processing facilities and sequentially developed wellfields sited in two (2) contiguous areas, the Burdock area and the Dewey area which are proposed sites for new sources of uranium and byproduct material located in Fall River

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and Custer Counties, South Dakota. The applicant Powertech (USA), Inc. is proposing to recover uranium ore using the *In-Situ leach (ISL)* also known as *In-Situ Recovery (ISR)* process. In addition, the proposed facilities would include a central processing plant in the Burdock area, a satellite facility in the Dewey area, wellfields, Class V deep injection wells and/or land application areas for disposal of liquid wastes and the attendant infrastructure (e.g. pipelines and surface impoundments). The Atomic Energy Act of 1954 (AEA) as amended by the Uranium Mill Tailings Radiation Control Act of 1978, authorized the Nuclear Regulatory Commission (NRC) to issue licenses for the possession and use of source material and byproduct material {10 CFR 51.20(b)(8)}. The Tribe has a significant interest in the proposed action due to the potential long-term adverse impacts to the environment, especially to cultural, historic and sacred sites and water resources, in the ancestral hunting and gathering lands of the Northern Cheyenne people that are encompassed or in close proximity to the proposed In-Situ project site(s). In light of this interest the Tribe requests the NRC to deny Powertech, Inc.'s application for a license for the Dewey-Burdock In-Situ Recovery Project.

#### I. Background

The Northern Cheyenne Tribe or people, as briefly noted above, inhabited the area encompassing the Black Hills, the Powder River, the Yellowstone and the Tongue River Regions in the Dakota and Montana Territories in the 1800s. The Northern Cheyenne preferred to live close to their Lakota relatives and in the mild climate of their northern homelands, while the Southern Cheyenne preferred the amenities of trading and living the southern regions in the southern part of Colorado Territory. The Fort Laramie Treaty of 1851 assigned the Cheyenne and Arapahoe to the lands south of the North Platte River and north of the Arkansas River, from their headwater eastwards to the forks of the Platte (in present day Wyoming, Nebraska, Colorado and Kansas). The area north of the North Platte River was assigned to the Sioux, however, there were bands of both Northern Cheyenne and Northern Arapaho living in the Sioux Territory. The Tribal territories assigned by the 1851 Treaty were essentially ignored and inter-marriage between the Tribes resulted in a strong military alliance, trade relations and sharing of migration patterns in traditional hunting grounds associated with the nomadic lifestyle of these plains tribes.

The Fort Laramie Treaty of 1868 attempted to end hostilities by the allied Tribes and intruding white settlers protected by the U.S. military. The U.S. government acceded to the demands of the Sioux, Northern Cheyenne and Northern Arapaho nations and established the *Great Sioux Reservation* in South Dakota. An "unceded Indian territory" was provided for in this treaty, encompassing lands north of the North Platte River, from east of the summit of the Bighorn Mountains eastward to the Missouri River, to

be held in common by all the Tribes. The Treaty of 1868 failed to bring a lasting peace and a prolonged state of war brought about the eventual surrender of all "free roaming" bands of Sioux, Northern

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Cheyenne, and Northern Arapaho people by 1880. A major group of 972 Northern Cheyenne were "exiled" to Oklahoma Indian Territory in 1877 amongst their Southern Cheyenne relatives, however, the Northern Cheyenne suffered from disease in the hot and humid climate and approximately 300 Northern Cheyennes under the leadership of Chief Dull Knife and Little Wolf decided to go home to their northern homelands in the region of the Tongue River Valley in September, 1878.

In the difficult trek north the two chief's bands divided with Dull Knife's band surrendering to the U.S. military near Fort Robinson, NE and while Little Wolf's band sought winter refuge in the Sand Hills of Nebraska. Faced with being forced to return to Oklahoma Territory Chief Dull Knife's people "broke out," on January 9, 1879, from the heavily guarded army barracks they were imprisoned in without food or water at Fort Robinson. Out of the one hundred and forty-nine (149) Northern Cheyennes at the Fort, 61 were killed, many summarily executed by their captors. They survivors were sent to Pine Ridge Agency and allowed to stay with their Lakota relatives. Eventually four (4) separate groups of Northern Cheyenne were allowed to move and take homesteads in the Tongue River Country south of Fort Keogh, near the present day Miles City, MT. In 1884, U.S. President Chester A. Arthur issued an Executive Order creating the Northern Cheyenne Indian Reservation. In 1900 another Presidential Executive Order expanded the Reservation east to the present borders with the expansion consisting of an estimated 447,000 acres with a currently Tribal enrollment of 10,000 Northern Cheyenne people.

The Northern Cheyenne Tribe has a long history of taking extraordinary steps to protect the environment in around its Reservation, off-Reservation lands owned by the tribe and ancestral lands to avoid adverse impacts of energy development or other proposed actions that would impinge on the sovereign rights of our Indian Nation. It has done so despite facing severe economic and social challenges in protecting or asserting its people's interests. The radioactive material proposed for mining and processing in the 10,580 acre Dewey-Burdock ISR Project is major development that has the potential to threaten and endanger historic and cultural resources and natural resources that are considered part of the during identity of the Northern Cheyenne Nation and its people.

## **II. Impacts to the Environment and Northern Cheyenne Tribe**

The National Environmental Policy Act of 1969, as amended, requires the Nuclear Regulatory Commission (NRC) to consider all direct, indirect and cumulative impact that may result from the proposed Dewey-Burdock ISR project as well as connected and cumulative actions. *See 40 CFR, Sec.1508.25.* The Tribe is concerned that the Proposed Action could have significant disproportionate impact to the Tribe and its members, urges NRC to thoroughly evaluate and mitigate potential adverse impacts. Disproportionate impacts are likely since the Tribe's nearby land in around Bear Butte, in Meade County, SD and the burial sites for Northern Cheyenne

people killed in the January 9, 1879 "outbreak" from Fort Robinson (near Chadron, NE) are within the 10,580 acres in the proposed ISR project area. In addition, the annual ultra-

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marathon run by primarily Northern Cheyenne children is scheduled every January 9<sup>th</sup>, occurs in the proposed project area. The Northern Cheyenne Tribe did not participate in the Atomic Safety and Licensing Board's August 5, 2010 hearing (Docket No. 40-9075-MLA) pertaining to PowerTech, Inc.'s application requesting a license to construct and to operate a proposed In-Situ leach uranium recovery facility in Custer and Fall River Counties, SD, however, the Northern Cheyenne Tribe has reviewed numerous documents provided by NRC that factually indicates that at least 18 historic sites listed in the National Register of historic Places or eligible for listing are in the ISR project area. There also exist unevaluated historic burial sites and many other unevaluated sites may exist. Finally, the Northern Cheyenne Tribe is very concerned that NRC, the lead federal agency, has not properly consulted with Native American Tribes under applicable provisions of Section 106 of the National Historic Preservation Act of 1966 (NHPA), and amended in 1992 (P.L. 102-575) to identify properties of religious and cultural significance to Indian Tribes that once inhabited the region, more recently, Sioux and Northern Cheyenne people. Our Tribe is aware of the Ogalala Sioux Tribe's petition to intervene and challenge NRC's consideration of PowerTech's application to operate a proposed In-Situ leach uranium facility and our Tribe stands in support of our allied Indian Nation's contentions in opposition to PowerTech's application.

**a. Immediate Impacts to Northern Cheyenne Interests**

The Tribe is concerned that the Proposed Action may undermine its significant effort to protect the environment and human health of its Tribal members who make annual religious pilgrimages to the Bear Butte ("Noavose") a sacred and holy place of worship for the Cheyenne people since time immemorial. It is at this site that the *Sacred Arrows*, a sacred covenant, were brought to the *Tse'tsehese'stahase* people by their spiritual leader *Sweet Medicine*. Bear Butte, is located in Meade County, South Dakota in close proximity to the proposed 10,580 acre development area, the project area requested in the NRC license application. The proposed project's adverse impacts include potential contamination (by chemicals used extract uranium ore and byproducts from the processing facilities) of surface and groundwater that flows in a northeasterly direction toward Noavose and six hundred (600) acres of tribal land surrounding this sacred mountain. Furthermore, Northern Cheyenne Tribal members, mostly tribal youth, hold an annual *ultra-marathon, a 400 mile relay run*, that originates at Fort Robinson, Nebraska and ends Busby, MT where the human remains of twenty-six (26) of our tribal members were killed at or near the U.S. Army Fort, were repatriated in 1994 from the Smithsonian Institute and the Peabody Museum at Yale University. The "Fort Robinson Run," with a route directly through

the project area, is in commemoration of the Northern Cheyenne outbreak (discussed above) from the old military fort on January 9, 1879. The youth and others involved in the annual run

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would be potentially exposed to toxic materials and other hazards resulting from the permitting of the Dewey-Burdock ISR mining and processing facilities.

### **III. Impacts to the Environment and Northern Cheyenne Tribe**

Representatives of the Nuclear Regulatory Commission were contacted In December, 2012 by Tribal officials working for the Northern Cheyenne Natural Resources Department, who were seeking additional information concerning the proposed Dewey-Burdock In-situ Recovery (ISR) Project for the purposes of submitting formal comments by the Tribe. On the November 26, 2012, the Northern Cheyenne Tribal President had received a formal notice, dated November 16, 2012, from the NRC to comment on the Draft Supplemental Environmental Impact Statement for this specific ISR project in Fall River and Custer Counties, South Dakota. The following comments relating to historic and cultural resources and surface and ground water resources are derived from the information obtained through electronic information data-bases suggested by a NRC contact. In brief, the Northern Cheyenne Tribe supports the opinions and recommendations concerning Section 106 of NHPA submitted by the Ogalala Sioux Tribe's Tribal Historic Preservation Office (THPO) and the scientific analyses and declarations made by Dr. Robert E. Moran, an expert in hydrology contracted as a consultant by the Ogalala Sioux Tribe for the purposes of drafting contentions to the application by PowerTech, Inc. submitted to NRC for a ISR license for the Dewey-Burdock Project (Docket NO. 40-9075-MLA). The following is a synopsis of our comments associate with potential long-term impacts to historical and cultural resources and surface and ground water resources in or near the in proposed ISR project area.

#### **a. Historic and Cultural Resources**

It is noted above that under the Fort Laramie Treaty of 1868 that Sioux, Northern Cheyenne and Arapaho people inhabited the "unceded Indian Territory" also referred to as the *Great Sioux Reservation*, aboriginal lands which are now encompassed in PowerTech, Inc.'s proposed ISR project. Therefore the cultural resources, artifacts, sites, etc. are in the ownership of the respective Tribe that can positively identify rights to possess such material objects, artifacts or sites due to previous human activity in the ISR project area. The United States Congress by enacting NEPA (42U.S.C. Sec. 4330 et seq.), NAGPRA (25 U.S.C. 300 et seq.), NHPA (16 U.S.C. Sec. 470 et seq.) and other applicable statutes and implementing regulations has obligated the United States Government to provide legal assurances that the cultural resources of a federally recognized tribe be protected even if the identified resources are not within a respective Tribe's Reservation boundaries.

In all probability that there are numerous unidentified or unevaluated cultural resources in PowerTech's ISR license application submitted to NRC and there may be more than one Tribe  
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that can positively identify and ensure that they are properly protected. The Northern Cheyenne Tribe, primarily through its Tribal THPO office, has the responsibility to assert and protect the Tribe's interests in this SEIS process. Any potential threat or harm that has already occurred to these artifacts due to potential misjudgment or lack of traditional cultural and tribal knowledge can pose significant, permanent or potential injury to the Northern Cheyenne and other Tribes who own such artifacts or other cultural resources that may have been identified or may be identified in on the ground activities if the ISR license is approved and mining, infrastructure construction and processing activities at ISR facilities commence. The Northern Cheyenne Tribe asserts that the NRC, the Tribe's trustee, has failed to appropriately consult with the Tribe and other Tribes who may be adversely impacted by this specific ISR project. Our Tribe joins in with the Ogalala Sioux Tribe in its contention that the proposed ISR project application has not determined the extent of historic and cultural resources in project area. In short, a comprehensive historic and cultural survey by various Indian Tribes needs to be completed prior to the start of ISR project activities in the aboriginal and treaty territory where discovery of pre-historic artifacts and other cultural resources may impinge on the rights of Tribe's.

PowerTech's application to NRC includes some evidence of a cultural resources investigation which Tribe's may not be able to verify as a comprehensive study simply because Tribes have not participated in the cultural resource study(s) conducted by PowerTech's contractor. The Northern Cheyenne Tribe has not participated in a historic or cultural resource study as part of the NEPA, NAGPRA or NHPA processes required by federal statutes and implementing regulations. It is our Tribe's assertion that any historic and cultural study will invariably generate thousands of cultural artifacts in the region previously inhabited by respective Indian Tribes including the Northern Cheyenne people. Because our ancestors lived in the proposed ISR project area there are sure to exist burial grounds, ceremonial sites and camping sites.

Failure by the NRC to involve the Northern Cheyenne Tribe in the analysis of sites identified by Power Tech's contractor, or to conduct any ethnographic studies in tandem with a field studies involving Tribal representatives further exacerbates the potential adverse impacts to Northern Cheyenne interests. Exclusion of our Tribe's participation negatively affects our ability to protect our cultural resources. Our Tribe does not believe that the section in the SEIS for the Dewey-Burdock ISR project falls short in addressing the adverse impacts and mitigation required to protect the historic and cultural resources of the Northern Cheyenne Tribe.

**b. Surface and Ground Water Resources**

The Northern Cheyenne Tribe agrees with the majority of the contentions by Dr. Robert E. Moran, consultant for the Ogalala Sioux Tribe, concerning the technical aspects of PowerTech's application to the NRC for an ISR license for the Dewey-Burdock In-Situ uranium and processing

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project in Fall River and Custer Counties, South Dakota. In Dr. Moran's declaration before the NRC Atomic Safety and Licensing Board he asserts that the application is deficient with respect to the baseline ground water, surface water, and hydrogeological characterizations. Our Tribe supports Dr. Moran's technical argument that the toxic mining fluids and mobilized constituents cannot be contained within the mine production zone and that impacted ground water cannot be restored to acceptable standards as asserted by PowerTech. In addition, we agree that the PowerTech's application does not provide an adequate presentation of the potential impacts associated with waste disposal from the proposed ISR mining operations, either by the proposed deep well injection method of surface land application.

A review by Northern Cheyenne Natural Resources personnel has assisted our Tribe in its determination that Dr. Moran's contentions to PowerTech's ISR application are substantive and technically sound based on his over thirty-eight (38) years of domestic and international experience in conducting and managing water quality, geochemical and hydrogeologic work for private investors, industrial clients, tribal and citizens groups, NGO law firms, and governmental agencies at all levels. Our Tribe is of the opinion that Dr. Moran could teach NRC and PowerTech scientists or technical experts about the quality and geochemistry of natural and contaminated waters and sediments related to mining, nuclear fuel cycles sites, industrial development, geothermal resources, hazardous wastes, and water supply development. He is the expert's expert in the field of uranium mining, processing and related environmental impacts. He has expertise in natural resources issues, development of resources policy and litigation support. The Northern Cheyenne Tribe agrees with Dr. Moran's scientific comments associated with the proposed Dewey-Burdock ISR project:

- PowerTech's Application is technically deficient and disorganized.
- An Independent Review of the application is necessary.
- Water Use: the Dewey-Burdock Project will use and contaminate tremendous volumes of ground water.
- The PowerTech application fails to define pre-operational baseline water quality and quantity-both in the ore zones and peripheral zones, both vertically and horizontally.
- Without adequate baseline water quality data (both ground water and surface water) there is not reasonable method for either the public or the NRC to evaluate the success or failure of either fluid containment or aquifer restoration.
- Surface Water Quality Baseline Data: Application fails to include statistically reliable summaries of detailed data.

- The groundwater extracted from the formation could result in a depletion of flow in nearby streams and springs if the ore-bearing aquifer is hydraulically connected to such features.

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- The presence of high-quality ground water within the Dewey-Burdock Project boundary have not been adequately defined.
- The application documents fail to present an adequate database and summary of baseline ground water levels, both within the project boundary or outside.
- *Baseline spring and seep survey is not presented in the application.*
- Chemical analyses (detailed) of ores, pregnant leach solutions, liquid wastes are not presented in the application.
- The Dewey-Burdock water-bearing units are hydrogeologically interconnected.
- Potential hydrogeologic pathways to nearby wells have not been adequately investigated and documented.
- Potential impacts to ground water have been unrealistically minimized and inadequately characterized.
- *Land application is not an approved method of radioactive liquid waste disposal.*
- Deep Well injection of Liquid Wastes: The application fails to provide necessary details on the chemical composition of the wastes and water treatment specifics.
- Ground waste sampling results presented in the E.R. section 6.1.8 (Groundwater Sampling pg. 2-62) should be combined and integrated with those in ER, Ch. 3.
- The technical and regulatory literature amply documents the numerous failures to restore aquifer water quality at other ISL sites. It is reasonable assume that portions of the Dewey-Burdock ground water surrounding the leached zones will have degraded water quality and may be unfit for future uses.
- The application fails to adequately describe the common names (in addition to commercial names) and quantities of chemicals, fuels and explosives to be used and stored per year at the Dewey-Burdock site.
- Soil contamination (radiation and metals/metalloids) from past mining and exploration should be incorporated into determining baseline.
- Baseline soil and stream sediment databases should include data for a broad suite of other chemical constituents (metals, organic, etc.) besides simply selected radiochemical constituents.

The Northern Cheyenne Tribe does not support an approval of PowerTech's application for Dewey-Burdock In-Situ Uranium Recovery Project in Fall River and Custer Counties, South Dakota. The discussion above attests to the Northern Cheyenne Tribes special historic and cultural resources and surface and groundwater resources concerns associated with this highly sensitive uranium development

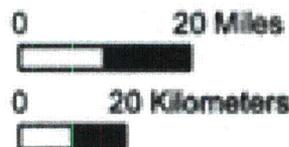
project proposed by PowerTech, Inc. We believe our Tribe has "standing" to emphatically state our interests due to the potential immediate and long-term adverse impact to our ancestral homelands, our tribal lands in Meade County (the Bear Butte sacred site), South Dakota and to annual tribal historic commemoration event by our children and grandchildren at Fort Robinson, Nebraska, all of which are

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encompassed in the proposed PowerTech project area. It is our Tribe's recommendation that PowerTech's ISR application be remanded back to the applicant to address all the concerns lodged by our allied Indian Nation, the Ogalala Sioux Tribe and others who have delivered substantive information that must be given due consideration by the Nuclear Regulatory Commission in accordance with NEPA, NHPA, NAGPRA, and other governing statutes and implementing regulations that will ensure preservation of cultural and historical properties and compliance with environmental standards that protect the public health and safety of U.S. citizens that may be adversely impacted by uranium mining in Fall River and Custer Counties, SD and the surrounding area. More importantly, NRC must ensure that future generations are not threaten with toxic waste and the aftermath of ill-considered decision to issue a ISR license to PowerTech. The Northern Cheyenne Tribe implores the NRC to hear Indian Nation's collective voice on this atomic energy project that we believe has not properly received the appropriate level of public discussion and comment.

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William Walks Along, Director  
Natural Resources Department  
Northern Cheyenne Tribe



## SOUTH DAKOTA - NEBRASKA REGION

- ▲ Ur milling Sites (NRC)
- ▭ South Dakota - Nebraska Milling Region
- Interstate Highway
- US Highway

- State Highway
- Railroad
- State Boundary
- Counties

### Cities by Population

- Over 50,000
- 10,001 - 50,000
- 1,000 - 10,000
- Less than 1,000