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January 7, 2013

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Division of Administrative Services, Office of Administration
Mailstop TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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11/26/2012
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Docket ID: NRC-2012-0277

Dear Ms. Bladey:

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RULES AND DIRECTIVES
BRANCH
USNRC

I submit these comments regarding the SEIS for the Dewey-Burdock Project on behalf of the Standing Rock Sioux Tribe Tribal Historic Preservation Office (SRST-THPO).

The Dewey-Burdock Project is a proposal to construct and operate an in-situ leach uranium recovery facility as well as to conduct associated aquifer restoration, site decommissioning and reclamation activities on approximately 10,000 acres within Custer and Fall River counties, South Dakota.

The proposed project has attracted much attention and generated considerable alarm here for the Standing Rock Sioux Tribe as well as among other Tribes of the Oceti Sakowin (also known as the Great Sioux Nation) and our allies because it is located in the Black Hills – the heart of everything that is an area that we consider sacred and central to our well-being and very existence.

The proposed project's close proximity to the Pine Ridge Indian Reservation raises additional concerns for the SRST-THPO regarding the health and well being of our relatives residing there particularly impacts to ground water and uranium contamination.

In addition to the above concerns, several critical issues have been omitted from or misrepresented in the analysis presented in the Draft SEIS.

Treaty Rights

Under the Fort Laramie Treaties of 1851 and 1868, the entire project area is the legal land holding of the Great Sioux Nation and the Cheyenne and Arapaho Nations. A treaty made between the United States and another nation or nations, such as the Great Sioux Nation and the Cheyenne and Arapaho Nations is protected under Article VI of the US Constitution. It should be noted that the Standing Rock Sioux Tribe along with other Tribal Nations party to these Treaties continue to assert their sovereignty and right to

dominion over the stolen treaty lands maintaining that until this issue of legal land title is finalized, no actions of any kind should be taken in this geographic area without the express permission of the members of the Great Sioux Nation and the Cheyenne and Arapaho Nations. For any federal employee or agency to do otherwise would be a violation of their oath of office to uphold the Constitution of the United States and federal law.

Despite the above facts, the DSEIS contains no discussion of Treaty rights. Failure to consider these issues is not only an omission in the NEPA review process but also represents a violation of both federal and international law. SRST-THPO requests that this omission be corrected for the FSEIS.

Environmental Justice

SRST-THPO strongly disagrees with the analysis and conclusions drawn from the Environmental Justice section of the Draft SEIS. According to this document, NRC finds “that there will be no disproportionately high or adverse impacts to minority or low-income populations from the construction, operation, aquifer restoration and decommissioning of the proposed Dewey-Burdock ISR Project.” (DSEIS Executive Summary at xli). And also goes on to state that: “Environmental justice impacts to Native American tribes will primarily be no different than those experienced by other populations within the vicinity of the project area” (DSEIS, 5-55).

Limiting the analysis to populations within the vicinity of the project area flies in the face of CEQ 1997 guidance cited at the front of the section; “In assessing cultural and aesthetic environmental impacts, impacts that uniquely affect geographically dislocated or dispersed minority or low-income populations or American Indian tribes are considered” (DSEIS, 4-169)

The fact is, regardless of how close we live to the project area, the loss of these significant sites and the degradation of this land *does* affect our Tribe and the citizenry of the other consulting Tribes uniquely and more than other populations; we are the ones that hold this land sacred and the proposed project threatens the burial places of our ancestors as well as places that are fundamental to the spiritual practices that define and sustain us as a people.

Cultural resources

As stated in the DSEIS, efforts to identify properties of religious and cultural significance to Native American Tribes remain incomplete and Section 106 consultation between NRC, SD SHPO, BLM tribal representatives and the applicant regarding potential impacts to these sites is ongoing. (DSEIS, xxxix). For this reason, the analysis of Cultural Resources within the SEIS document is also incomplete. Although the DSEIS contains statements acknowledging that the proposed action may result in the loss of cultural resources, the analysis is based only on the archaeology conducted by Augustana College with no Tribal review of the project area per Section 101(d)(6)(B) of NHPA. As a result, the conclusions reached are vague at best, describing potential impacts to cultural resources as ranging from “SMALL to LARGE depending on the presence or absence of historic and cultural resources within the project area” (DSEIS, 4-139).

It is critically important to SRST-THPO that impacts to cultural resources are fully considered and given due weight in the NEPA process and that Section 106 and NEPA be coordinated in accordance with the governing federal regulations (36 CFR 800.8 (a)(3)) rather than brushed aside or postponed until after the licensing decision has already been made.

It should be noted here that based on these ongoing Section 106 consultations, SRST-THPO is concerned about NRC's willingness to continue the Section 106 process in good faith. Consultations to date have been extremely contentious with NRC threatening to terminate the process and repeatedly taken to task by Tribes and ACHP for rushing the process at the urging of the applicant. In addition to this, several important issues remain unresolved first and foremost being the identification of historic properties by Tribal representatives upon which any meaningful consideration of historic properties/cultural resources through either the NEPA or Section 106 process depends.

A representative from SRST-THPO visited the proposed project area in May of 2012. All consulting Tribes are in agreement that the area within which this project has been proposed is dense with burials and related stone features significant to Tribes many of which were overlooked during the archeological survey already conducted in the area.

As noted in one of the early drafts of a scope of work for identifying properties of religious and cultural significance at the Dewey Burdock project site, from the beginning, consulting Tribes have "indicated that the appropriate method for identifying places of religious and cultural significance to them is through an examination of the ground surface by knowledgeable representatives from the interested tribes." Consulting Tribes have repeatedly stated in unison that this examination must take the form of a thorough and comprehensive Traditional Cultural Properties survey conducted on the entire license boundary by someone with expertise in identifying sites of significance to our people and that such a survey is the only way for these cultural sites to be correctly identified and given full weight in the planning process and NEPA documents.

However the TCP survey that SRST-THPO together with other Tribes have endorsed has not been taken seriously and dismissed as cost-prohibitive. The fact that the applicant underestimated the amount of people, time and money required to meet this level of effort is not a reason to abandon identification efforts. NRC cannot walk away from their responsibility based on the applicants dream budget or schedule and claim to be working in good faith.

Throughout discussions of the cultural resources, DSEIS states that identified resources will be avoided; it should be noted that those statements are meaningless if neither the applicant nor agency is willing or able to complete the first step and identify these resources as required by law.

Mitigation of Adverse Effects to Cultural Resources

"Although the proposed action may potentially affect certain sites of religious or cultural significance to the tribes, the impacts to such sites would be reduced through mitigation strategies developed during Section 106 consultations." SEIS at 5-55. For reasons stated above, this statement and others like it throughout the document is concerning. Decision makers should be aware that reliance on mitigation

strategies is misleading at best. When it comes to cultural resources of significance to Tribes, mitigation of affected resources is much easier said than done and the SRST-THPO has concerns that as with the identification of cultural resources, the agency and applicant have in their planning also underestimated this challenge as well.

Within consultations with Tribes, mitigation strategies have yet to be discussed let alone agreed upon. This is in part because we don't feel we should resort to mitigation before identification has been completed. It also bears repeating that the Standing Rock Sioux Tribe and its allies view the whole Black Hills region as sacred ground and the individual petroglyphs, stone feature sites and burials located there as irreplaceable. The SRST-THPO objects to the archeological approaches to mitigation alluded to in the DSEIS when it comes to resolving adverse effects to resources that we value. These mitigation measures involve things such as data recovery and testing through excavation and in no way address or alleviate the loss of the resources experienced by our communities and the Tribal spiritual practitioners who use and value them instead they only further contribute to the misrepresentation, exploitation and degradation of our cultural beliefs and practices attached to sites significant to Oceti Sakowin and allied nations.

I urge decision makers to think carefully about how they proceed with this project. It is possible to spin the analysis in any number of directions but the reality is that the consequences for misjudging the risks associated with this proposed action; from the contamination of ground water and unleashing of radioactive material, to the violation of Federal and International Law, to the disturbance of burials and destruction of sacred lands, are severe.

Sincerely,



Mary S. Wilson
Section 106 Coordinator
Tribal Historic Preservation Office
Standing Rock Sioux Tribe