

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Dewey-Burdock in Situ
Uranium Recovery Facility

Docket Number: 40-9075-MLA

ASLBP Number: 10-898-02-MLA-BD01

Location: (teleconference)

Date: Monday, August 12, 2013

Work Order No.: NRC-159

Pages 530-540

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING TELECONFERENCE

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In the Matter of: :
POWERTECH USA, INC. : Docket No. 40-9075-MLA
 : ASLBP No. 10-898-02-MLA-BD01

(DEWEY-BURDOCK IN SITU:

URANIUM RECOVERY :
FACILITY) :

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Monday, August 12, 2013

Teleconference

BEFORE:

WILLIAM J. FROEHLICH, Chair
DR. RICHARD F. COLE, Administrative Judge
DR. MARK O. BARNETT, Administrative Judge

1 APPEARANCES:

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P R O C E E D I N G S

1:04 p.m.

1
2
3 CHAIR FROEHLICH: Good afternoon. This is
4 Judge Froehlich. Good afternoon to those of you on
5 the line in Washington and good morning to those of
6 you out West. We'll be on the record in the matter of
7 a telephone conference which was noticed by order
8 issued from the Board on July 31st.

9 With me here in Rockville is Judge Cole
10 and on the line we have Judge Barnett from Alabama.

11 This telephone conference was noticed by
12 an order issued on July 31, 2013 and it included a
13 list of items the Board was interested in discussing
14 with the parties leading up to the events which will
15 take place leading up to an evidentiary hearing,
16 hopefully to be held in spring 2014.

17 In the past, we've discussed the
18 possibility of a site visit and limited appearance
19 sessions. If we're going to do these items, it would
20 probably be best if we did them before the end of this
21 fiscal year.

22 At this point, could I please take the
23 appearances of those of you who are on the line and
24 then I think we'll start with the report from the
25 parties, if you've had a chance to discuss the items

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1 in the July 31st order amongst yourselves prior to
2 this meeting.

3 Do we have someone from the staff on line?

4 MR. CLARK: Yes, good afternoon, Your
5 Honor. It's Mike Clark and Patty Jehle.

6 CHAIR FROEHLICH: Thank you. And from
7 Powertech?

8 MR. PUGSLEY: Yes, sir. Christopher
9 Pugsley, counsel to Powertech.

10 MR. THOMPSON: Anthony Thompson, counsel.

11 CHAIR FROEHLICH: Hello, Mr. Thompson,
12 welcome. And from the Ogala Sioux Tribe?

13 MR. PARSONS: Jeff Parsons here.

14 MS. GILLIS: And Cindy Gillis.

15 CHAIR FROEHLICH: Thank you. And among
16 the Consolidated Intervenors?

17 MR. ELLISON: Bruce Ellison.

18 MR. FRANKEL: David Frankel here also for
19 the Consolidated Intervenors.

20 CHAIR FROEHLICH: Okay. Are any of the
21 other counsel for any of the other Consolidated
22 Intervenors on the line?

23 (No response.)

24 Okay. Have the parties had the
25 opportunity to discuss the matters in the July 31st

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1 order amongst themselves?

2 MR. CLARK: Judge Froehlich, this is Mike
3 Clark. We have by email. We've circulated a number
4 of emails among counsel for the parties.

5 CHAIR FROEHLICH: I guess what we could do
6 is refer to the July 31st order and maybe go through
7 the numbered items there with the goal of trying to
8 decide if it's possible to conduct the site visit and
9 limited appearance statements next month.

10 I note that the first item that we had on
11 our list, however, was a question sort of focused
12 towards the Intervenors on this and that was the
13 designation of a lead Intervenor to handle contentions
14 1A, 1B, 2 and 3.

15 Have the Intervenors had an opportunity to
16 discuss this among themselves?

17 MR. PARSONS: This is Jeff Parsons, Your
18 Honor. We have had an opportunity. As we've
19 configured it, the Tribe will take the lead on 1A and
20 1B.

21 CHAIR FROEHLICH: Okay.

22 MR. PARSONS: And the Consolidated
23 Intervenors on 2 and 3. There was some question as to
24 4. That's sort of related to 2 and 3.

25 CHAIR FROEHLICH: Let me just --

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1 contention 4 was a contention, I believe, that was
2 submitted by the Tribe, is that correct?

3 MR. PARSONS: I think that's right. So
4 the Tribe would take that one as well as 9, 14A, and
5 14B.

6 CHAIR FROEHLICH: Okay. Thank you. I
7 think that does take care of our Item 1. Were there
8 any other ancillary issues concerning the designation
9 of the lead Intervenor that you care to raise?

10 MR. PARSONS: This is Jeff Parsons again,
11 only to note my understanding, hopefully to confirm it
12 that while one party is the lead on the contentions,
13 the other party reserves the right to be heard while
14 certainly avoiding any duplication.

15 CHAIR FROEHLICH: Right, that's the goal.
16 The goal is to have one party who is the lead on it
17 who will focus. The other parties retain their rights
18 as parties to the case.

19 MR. PARSONS: Thank you.

20 CHAIR FROEHLICH: And to those
21 contentions. The next item, I guess, would be the
22 dates in September that would be convenient to the
23 parties and I guess to the people in the area near the
24 site for holding limited appearance statement
25 sessions. Is September or late September 2013 a good

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1 time for us to be doing this?

2 MR. FRANKEL: This is David Frankel, Your
3 Honor, for the Consolidated Intervenors. And we've
4 identified a huge problem with September and I would
5 like to better understand why, Judge. You said it
6 would be probably best to do that before September
7 30th and the reason being is that in addition to
8 various conflicts among all the difference counsels
9 that make the window a very small one.

10 And we'll go into the specifics. We have
11 on the state level many of the Consolidated
12 Intervenors are also Intervenors at the state level in
13 two state-level hearings that are being staggered with
14 a couple week breaks. And it pretty much takes all of
15 the Consolidated Intervenors' counsels and experts and
16 major participants, all of their energy through
17 September and October. So we wanted to raise this at
18 the outset as to limited appearance statements, we
19 would hope to discuss mid-November, early December,
20 early 2014.

21 As to a site visit, we're not limited that
22 way. We feel that we could adequately get somebody to
23 go along with the site visit without consuming
24 dramatic amounts of time. So if it must be done in
25 September, we're more flexible on that, Your Honor,

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1 but I would like to better understand why you said it
2 would probably be best to do it before September 30th
3 because it comes at a great inconvenience and burden
4 to the consolidated Intervenors and their counsels and
5 experts.

6 CHAIR FROEHLICH: Okay, let me start by
7 saying that the date of September is driven probably
8 by two major factors. One, the weather constraints
9 that the parties have raised earlier, we wanted to do
10 it before the winter months came in. And secondly,
11 and probably more importantly, September 30th marks
12 the end of the fiscal year and budgets being what they
13 are, sequester, and the federal budget being what it
14 is, there are funds available for the Board to travel
15 in this fiscal year. There is less certainty that
16 those funds would be available in the next fiscal
17 year. And that was what was driving our desire to do
18 this if we possibly could in September.

19 Mr. Frankel, I would like to note that the
20 limited appearance statements are for the benefit of
21 the public, the general public as opposed to the
22 parties to the case, so I didn't envision that putting
23 a particular strain on counsel or the parties who have
24 already been admitted to this proceeding.

25 MR. FRANKEL: Your Honor, I have a couple

1 of just quick feedback items and then I'd be happy to
2 let our agenda continue.

3 One is that it's sort of unique in the
4 South Dakota state proceeding and Mr. Ellison can
5 speak to this more fully. There are hundreds of
6 Intervenors and it represents the majority of
7 individuals who would be interested in also preparing
8 a limited appearance statement and there will be a
9 variety of information, cross examination, discovery,
10 things like that in the state hearings that could
11 really inform the public that desire to make these
12 limited appearance statements and I am sympathetic and
13 also empathetic to the budgetary issues.

14 And so may I suggest if the Board would be
15 open, since these limited appearance statements
16 admittedly not having evidentiary impact and there's
17 no questioning or cross examination, would the Board
18 be open to doing -- whoever wants to do them when you
19 schedule the site visit can do them and would the
20 Board be open to the possibility of convening a video
21 conference hearing where people could make limited
22 appearance statements by video conference and that
23 those would be considered part of the record?

24 CHAIR FROEHLICH: What the Board envisions
25 for the limited appearance statement involve members

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1 of the public making their statements at an open
2 session along with the opportunities to submit written
3 comments pursuant to our regulations.

4 At the moment, we had not envisioned any
5 sort of expanded video opportunity, although you could
6 certainly move at the appropriate time to have such a
7 session or to arrange such a session, but that was not
8 within the contemplation of the Board going into
9 today's conference.

10 MR. ELLISON: Judge Froehlich. This is
11 Bruce Ellison, if I might also add a few things?

12 CHAIR FROEHLICH: Surely.

13 MR. ELLISON: When we're in front of the
14 State DENR, where some things are being done a little
15 bit differently than they usually have been and one of
16 the things that the DENR respective boards, we're
17 talking about the Board of Minerals Environment and
18 the Water Management Board of DENR, is that they
19 decided that public input was important. It was also
20 statutorily required. It seems like it is here, or at
21 least regulatorily required.

22 What I would like to suggest is something
23 similar to what has been worked out on the state level
24 and that is is that and it might have budget problems
25 and other things, too. If we were to schedule like

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1 has been done at the state proceedings, a day or two
2 at the beginning of what would become our evidentiary
3 hearing, that would then still only involve one trip
4 for all of the parties and staff and what not. It
5 would allow for people who made presentations in
6 September and October at the respective Board hearings
7 to have the time to get all of the additional reports
8 that are still not completed yet.

9 It would also allow for the Board to hear
10 public input while everything is fresh and we could
11 also schedule even the site visit around that time
12 period so that it would actually just become one trip
13 as opposed to two or possibly three trips. But I know
14 from my dealings with the public in the Rapid City
15 area, for example, there's a lot of people who are
16 trying to get ready now already for both the start of
17 the Board of Minerals and Environment hearings which
18 starts the first week on September 23rd and then also
19 the first week, couple to three weeks for the Water
20 Management Board, starting October 7th.

21 And for the Board's edification as well,
22 there is a DENR scheduling conference for this
23 Thursday when the second week of the Board of Minerals
24 and Environment hearing is going to held, likely, some
25 time in November or in December. So it just seems to

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1 me and I want to suggest that we take all of these and
2 try to do it all in one trip, some time in the spring
3 when we're ready for the evidentiary hearing. Thank
4 you.

5 CHAIR FROEHLICH: That's very constructive
6 and thank you, Mr. Ellison.

7 The perspective of Powertech or staff on
8 the timing of a site visit or limited appearance
9 statements?

10 Mr. Pugsley, do you have an opinion, view?

11 MR. PUGSLEY: Your Honor, Chris Pugsley
12 for Powertech. As of right now, I couldn't speak for
13 Powertech as to what their view of this would be. We
14 do concur with you that Mr. Ellison's suggestion is
15 very constructive and innovative in that it just would
16 depend on what our clients would think about that.
17 But we also note that that doesn't change the budget
18 issues for the agency because you would still have to
19 tack on extra days, etcetera, on to the evidentiary
20 hearing in the spring. But it also, on a positive
21 side, it does address the weather concern you raised.
22 So I would respectfully say that we can't
23 quite speak for Powertech on that right now because it
24 was just raised, but we certainly will promptly inform
25 you what their position is.

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1 MR. THOMPSON: This is Tony Thompson for
2 Powertech, too. I might add that it affects budgetary
3 issues for all of the parties. One trip is
4 presentably less expensive than two trips.

5 CHAIR FROEHLICH: Duly noted. Thank you.
6 Does the staff have a view or care to be heard on this
7 matter?

8 MR. CLARK: The staff is able to support
9 a limited appearance session, our participation,
10 either in September or at a later date. Likewise with
11 the site visit. There are only a couple of dates in
12 September that where some of the staff personnel would
13 be unavailable. That's the 12th and 13th. Other than
14 that, the staff should be available.

15 CHAIR FROEHLICH: Okay.

16 MR. PUGSLEY: Your Honor, I'm sorry, it's
17 Chris Pugsley again for Powertech. Given that the
18 staff responded to that, we certainly are in a
19 position to say we can support limited appearance
20 statements in September. As we communicated to
21 everyone, really the only two dates that we are out of
22 pocket for are the 26th and 27th of the month.
23 However, that week, the rest of that week, the early
24 part of that week is available. We will be in
25 Cheyenne, Wyoming those two days and it would just be

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1 a quick jump over to South Dakota.

2 CHAIR FROEHLICH: Okay.

3 MS. GILLIS: Your Honor, this is Cindy
4 Gillis, I would be available for the whole week of
5 September 16th. I'm open for that whole week for us
6 to be down there.

7 CHAIR FROEHLICH: Okay.

8 MR. PARSONS: Your Honor, this is Jeff
9 Parsons. I wanted to raise one issue related to the
10 limited appearance statements that the Tribe has
11 identified. Principally, the issue is that the Draft
12 Supplemental Environmental Impact Statement that was
13 released, did not contain a Draft Cultural Resources
14 Impact Analysis.

15 You may remember from the briefing, NRC
16 staff's response, they committed to completing their
17 Draft Cultural Resources Impact Analysis and
18 circulating it for public comment. That has yet to be
19 accomplished.

20 My concern is that many of the members of
21 the Tribe and members of the public have high on their
22 list of concerns impacts to cultural resources. And
23 having the limited appearance statements occur prior
24 to having an opportunity to even see a draft of that
25 Cultural Resources Impact Analysis, I think is

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1 prejudicial to the public to be able to craft comments
2 and actually participate without having seen a full
3 draft impact analysis.

4 I'm not sure what the staff's timing is
5 for releasing that draft analysis, but we definitely
6 think that the public and tribal members included,
7 ought to have access to that draft analysis prior to
8 having their one chance for limited appearance
9 statements.

10 CHAIR FROEHLICH: Okay. Thank you, Mr.
11 Pugsley.

12 MR. CLARK: This is Mike Clark. If I
13 could just respond briefly.

14 CHAIR FROEHLICH: Sure.

15 MR. CLARK: First, the Draft SEIS did
16 include a cultural resource analysis. The staff
17 merely stated that it would supplement it for many
18 field identification efforts. And as all the parties
19 are aware and the Board is aware, there was a field
20 survey that was conducted -- it got postponed several
21 times due to weather, but I believe in April and May.
22 Staff intends to circulate a supplement to that part
23 of the Draft SEIS for public comment. The delay has
24 been -- the staff is still waiting for input from
25 several of the participating Tribes. The staff has

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1 received input from several Tribes awaiting some
2 input.

3 Actually, the staff will have to make a
4 decision about whether to move forward with or without
5 that input. So hopefully, if they can resolve that
6 shortly and they'll get a document out there for
7 comment. And we anticipate that would happen with
8 ample time for the public to receive it in advance of
9 any limited appearance statement session in September,
10 as long as that isn't scheduled too early in
11 September.

12 CHAIR FROEHLICH: Thank you, Mr. Clark.
13 I notice in the monthly report that there was
14 reference to the field survey. Is that a part of the
15 cultural resources survey, is the same thing or is
16 that a different document?

17 MR. CLARK: Well, the cultural resource
18 survey consists of the information that was in the
19 Draft SEIS. I believe it's pages 4138 through 4151
20 with some analysis in other sections. But I think
21 what you're referring to, Your Honor, is the
22 supplemental survey was an attempt to allow, to give
23 Tribes the opportunity to identify traditional
24 cultural properties of interest to each Tribe. And
25 that was the survey that was conducted in April and

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1 May of this year.

2 CHAIR FROEHLICH: And is that awaiting
3 final report? I saw reference to the field survey
4 being completed and I guess a report being worked on.
5 Has the final report on that field survey been
6 completed?

7 MR. CLARK: The reports were being
8 prepared by each Tribe that participated in the
9 survey. There were seven Tribes. So the staff has,
10 I believe, received reports from four of the seven
11 Tribes and the staff is consolidating those reports
12 and redacting certain information because there are
13 certain highly sensitive information in those reports.
14 So the tribal part where four of the seven Tribes is
15 accomplished and the staff has taken substantial
16 efforts at consolidating that information. It's just
17 mostly right now, frankly, it's a matter of waiting to
18 see if they hear anything from the remaining Tribes.

19 CHAIR FROEHLICH: Thank you, Mr. Clark.
20 Yes?

21 MS. GILLIS: Your Honor, this is Cindy
22 Gillis. It's my understanding and this is from my
23 last visit down in Kyle. I attended the visit with
24 the Commissioner that he had with the Tribes in
25 Standing Rock and Ogala Sioux were the only ones that

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1 were there, but it was my understanding during that
2 meeting that there were only two Tribes that
3 participated. Eleven Tribes were invited or might
4 have been more than 11, but I believe there was only
5 two Tribes that actually attended the site visit. And
6 there was a little bit of a controversy over that
7 because The Ogala Sioux Tribe thought there were going
8 to be more participants and there was not enough
9 financial incentive to complete the survey and the
10 Tribe also wanted 100 percent of the survey of the
11 whole area done and that wasn't done. So I would just
12 like to put that on the record, that I thought it was
13 only two Tribes that participated.

14 CHAIR FROEHLICH: Thank you, Ms. Gillis.
15 I think what we'll do is put aside for the time being
16 the date that a site visit and limited appearance
17 statement session would be held and wondered if there
18 had been any discussion among the parties or if the
19 parties had viewed as to what would be useful for the
20 Board to see at a site visit from each of your varying
21 perspectives?

22 We can start with Powertech.

23 MR. PUGSLEY: Chris Pugsley, Your Honor
24 for Powertech. We have not really discussed the areas
25 to see, but really the most important areas are the

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1 places where the project would be constructed. I
2 would say that would certainly be important. Other
3 than that, we haven't really had much of an
4 opportunity to discuss that subject matter.

5 CHAIR FROEHLICH: So it would be like the
6 well field site where I guess we would be able to
7 observe the topography and the slope of the land,
8 drainage, the proximity to wetlands and roads and
9 things like that. That's what you're referring to,
10 Mr. Pugsley?

11 MR. PUGSLEY: Yes, sir.

12 CHAIR FROEHLICH: Help me with my
13 geography. Is there an operating ISL facility
14 anywhere near the proposed site of the Dewey-Burdock
15 proposal?

16 MR. PUGSLEY: Your Honor, Chris Pugsley
17 again. The closest one to the proposed Dewey-Burdock
18 site that is in operation would probably be the Cameco
19 Resources Crow Butte site.

20 CHAIR FROEHLICH: Crow Butte.

21 MR. PUGSLEY: In Nebraska.

22 CHAIR FROEHLICH: How far away would that
23 be?

24 MR. PUGSLEY: From where?

25 CHAIR FROEHLICH: From Dewey-Burdock site?

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1 MR. THOMPSON: An hour and a half maybe.

2 CHAIR FROEHLICH: Okay.

3 MR. ELLISON: Maybe two hours. Judge
4 Froehlich, this is Bruce Ellison, Consolidated
5 Intervenors. I would also like to suggest, in
6 addition to the well fields, that the site visit
7 include where the two respective mills are going to
8 be, where the holding ponds are going to be, that the
9 Board look at the Beaver and Pass Creek drainage areas
10 and understand its interrelationship with the Cheyenne
11 River, that we look at the old mine, existing open pit
12 mines that are there which are causing a lot of
13 problems, their relationship to this area, things that
14 Powertech wants to construct; as well as where the
15 observation wells are.

16 And it also might be helpful for the Board
17 to look at both the areas where the 4,000 to 5,000
18 abandoned bore holes are. A lot of them are in the
19 mining project area, but as well as where the pump
20 test wells were -- pump tests were conducted both by
21 the TVA back in 1979 and 1982, Knight Piesold on
22 behalf of Powertech in 2008, and any other site areas
23 for any -- that any reports that Powertech intends to
24 use or any other tests were conducted.

25 So the Board could really have a firm

1 grasp as to the geology that is shown of the
2 hydrology. For example, when you look at the old
3 abandoned mine site, you can see how irregular the
4 strata is and how it blows up and down and twists and
5 what not.

6 It really -- I think the whole site and it
7 may take a while, but I think it will really give us
8 a greater appreciation of exactly the area that we're
9 dealing with.

10 MR. THOMPSON: This is Tony Thopmson for
11 Powertech. I think that's what Mr. Pugsley was
12 saying. The project area which includes obviously
13 where you're going to put your central processing
14 plant, holding ponds, and the areas in and around that
15 have been evaluated in the SEIS and that have been
16 discussed in the application.

17 CHAIR FROEHLICH: I think that makes sense
18 and I'm glad there is kind of a meeting of the minds
19 as to the scope of the area of the proposed project.
20 That is helpful. Thank you.

21 MR. FRANKEL: Your Honor, I'm sorry to
22 interrupt. David Frankel here for Consolidated
23 Intervenors. I just wanted to add one small comment
24 before we hop off this topic.

25 One of the items Mr. Ellis had mentioned

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1 was the existing open pit mines and together with that
2 there's areas not necessarily within the project area
3 that might include tailings, piles, and we just want
4 the Board to have a complete understanding of the
5 uranium mining legacy issues that our community faces
6 currently so that to the extent that it's within the
7 Board's budget and schedule to visit, go through
8 places like Edgemont which have had a lot of
9 experience with the legacy issues of uranium mining
10 and maybe meet with some people there. It may be
11 beneficial, so we're not insisting on it. We're just
12 respectfully suggesting that the Board make an effort
13 to have a complete understanding of these legacy
14 issues that already exist in the area so that you'll
15 understand how the people feel about this new kind of
16 uranium mining.

17 MR. ELLISON: This is Bruce Ellis again.
18 One other thing I forgot to mention, I think it would
19 also be very helpful while we're out at the site if
20 there were perhaps the one or more of the Tribal
21 Historic Preservation Officers who could help us to
22 also understand the interrelationship between the
23 proposed respective areas of the project and where
24 there are cultural resources. I think it would give
25 us a much more dramatic understanding than if we just

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1 look at a map.

2 MS. GILLIS: This is Cindy Gillis. I
3 would that that would definitely be a positive thing.
4 We did get to show the Commissioner where most of the
5 sacred sites and cultural sites are at and they did
6 actually go out there the next day and visit some of
7 those sites including a burial site and some other
8 sacred sites out there, so it was very eye opening for
9 him to see that and his staff that he brought to go in
10 that area. But I think that's important.

11 I also think it would be good to see the
12 horse sanctuaries, the wild horse sanctuaries because
13 there's some land that is protected and is set aside
14 of the Tribes, too, and that's going to be an affected
15 area.

16 CHAIR FROEHLICH: Thank you, Ms. Gillis.
17 Anyone else care to be heard as to their views as to
18 the scope of a site visit and things that should be
19 included?

20 MR. CLARK: Your Honor, this is Mike
21 Clark. If there's a need for any expert support in
22 the area of cultural resources or any other area, the
23 staff would just ask that we be given advanced notice
24 of that.

25 CHAIR FROEHLICH: Absolutely. If or when

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1 we go forward with the site visit in this case, it
2 will be a structured visit and in advance we will list
3 the itinerary and where we will go when and what will
4 be seen at each of the different stops along the way.
5 So yes, that definitely will be stated in advance.

6 Moving on to item 4, have the parties had
7 an opportunity to come up with a schedule, I guess,
8 working from the dates of the environmental impact
9 statement forward so we could get a feel for when the
10 hearing in this case would likely take place? That
11 was item 4 on our July 31st order.

12 MR. CLARK: Judge Froehlich, this is Mike
13 Clark again. We have circulated a draft schedule
14 that's based on issuance of the final SEIS and it
15 follows kind of the normal progression for NRC
16 hearings including all of the dates the Board asked
17 about in your order and also other potential filings.
18 Given the sheer number of potential pleadings, I'm not
19 sure that counsel for all the parties, if we've all
20 had time to -- we certainly aren't in a position to
21 agree on a schedule right now. We have been in
22 discussion over it.

23 CHAIR FROEHLICH: Okay, if I could inquire
24 and I know this hasn't been confirmed with all the
25 other parties, Mr. Clark. When do you have as the

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1 hearing start date just so we can sort of get our
2 schedules together here at the Board?

3 MR. CLARK: Well, and again, Your Honor,
4 I'd like to emphasize I'm working off of a draft that
5 the staff sent around and we received comments on. So
6 I don't want to phrase anything as what this vast
7 proposal --

8 PARTICIPANT: It's not locked in concrete,
9 you know.

10 MR. CLARK: Thank you. I haven't added up
11 the dates, but all the dates follow from the Final
12 SEIS and I'd have to do some quick addition here.
13 Looks like it may be three to four months after
14 issuance of the final SEIS.

15 CHAIR FROEHLICH: The FSEIS is still
16 scheduled for the end of -- or October of this year?

17 MR. CLARK: It is, although that may go
18 into early November because as the Board is probably
19 aware, there's a lot of administrative demands. Any
20 time the staff is getting out a large document like
21 that it has to go to Office of Management and Budget
22 for review. There's printing time involved. So the
23 date may be October/November.

24 CHAIR FROEHLICH: Mr. Clark, I took the
25 model milestones from the Commission's Appendix B and

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1 applied them to the FSEIS. The October 31st date is
2 the date that I have been working from and that
3 brought me, if I did my calculations correctly, to the
4 end of July or August of 2014. Is that about what you
5 had or is that what the parties contemplate for the
6 hearing in this matter?

7 MR. CLARK: The proposed schedule again
8 that the staff circulated would be, I guess, a little
9 more ambitious than that.

10 CHAIR FROEHLICH: Okay. Actually, I
11 misspoke. It would make the hearing at the end of
12 April, beginning of May, I'm sorry.

13 MR. CLARK: That sounds about right.

14 CHAIR FROEHLICH: Okay. And if we were
15 going to take the suggestion earlier, we would try to
16 schedule that site visit and limited appearance
17 statement just before the beginning of that hearing be
18 it end of April, early May.

19 MR. CLARK: Yes.

20 CHAIR FROEHLICH: Okay, all right. This
21 may be well in advance of when we need this
22 information, but has there been some discussion, I
23 guess, since the last time we spoke about venues for
24 the limited appearance statement sessions and also for
25 the evidentiary hearing next spring. I know that the

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1 parties had suggested a number of places in the past.

2 Has there been any further discussion or
3 is there a venue that the Board should look towards to
4 scheduling both our limited appearance sessions and
5 the evidentiary hearing?

6 MR. PUGSLEY: This is Chris Pugsley for
7 Powertech. Powertech's view of this hasn't changed,
8 Your Honor. We still think Custer or Hot Springs or
9 locations previously mentioned are still acceptable.

10 MR. THOMPSON: Or Rapid City.

11 MR. PUGSLEY: Or Rapid City. Thank you.

12 MR. PARSONS: Your Honor, this is Jeff
13 Parsons. We discussed it a little bit and my
14 understanding of at least among the Intervenors, the
15 general consensus is that Rapid City would be
16 convenient for both -- for the parties, for the
17 public, and as well out of town folks.

18 CHAIR FROEHLICH: Okay, the Board has been
19 considering courthouses in Custer County and also the
20 District Court and Fall River County Courthouses. And
21 also, it was suggested I guess at one of the previous
22 sessions at the Mueller Civic Center in Hot Springs.
23 Does anyone have any familiarity with any of these
24 venues?

25 MR. ELLISON: This is Bruce Ellison, Your

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1 Honor. I know that Custer County just finished a new
2 courthouse, but I don't know other than a courtroom of
3 any really large rooms that might be available. I
4 haven't actually been there since the construction was
5 finished within the last few months, so I don't know
6 the exact size.

7 MR. FRANKEL: I've been there. I can
8 describe it if you want. Your Honor, sorry to
9 interrupt, Bruce, but I can speak to both Hot Springs
10 and to Custer.

11 The Custer Courthouse building now is
12 extraordinary. It's LEED certified, all
13 environmental. It's super high tech. It's just
14 really nice and completely redone. I'm sure that the
15 people of Custer would be happy to have it there.
16 Coming in just before tourist season, you can probably
17 take advantage of good rates on different
18 accommodations and you know, Consolidated Intervenors
19 can certainly be there.

20 As far as Hot Springs goes and the Mueller
21 Civic Center, it's a really nice public auditorium.
22 They have Miss South Dakota contests there, you know,
23 for the whole state. It has great parking. There's
24 nearby accommodations. It's easy to get to, just
25 south of Rapid City. And of course, the problem with

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1 Custer it's a farther way for the Tribes so the Tribe
2 might want to speak to that.

3 And of course, Rapid City is convenient to
4 Consolidated Intervenors, as well as it seems like all
5 other parties. So we would have no objection to that
6 either if you find a location that you like.

7 CHAIR FROEHLICH: Do you have any
8 familiarity in Rapid City either the U.S. District
9 Court or the Pennington County Courthouse?

10 MR. ELLISON: I do. This is Bruce
11 Ellison, Your Honor. I do. We have a new courthouse,
12 essentially, in the Circuit Court. We have, I think,
13 eight Circuit Court Judges now. Some of the
14 courtrooms are larger than the others. In the older
15 part of the building, tend to be the larger
16 courtrooms. Availability would have to be worked out
17 with administrative folks.

18 In terms of the Federal Courthouse, we
19 have a -- we've got a pretty busy District Court,
20 although we do have a state-of-the-art Federal
21 Courthouse which includes computer access at all
22 tables, screens, etcetera, for exhibits.

23 Another area, and I believe that the Board
24 and the NRC staff and really all of us are familiar
25 with the availability of say the Ramkota where there

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1 have been some hearings that have been held in front
2 of the NRC or meetings at least held. It's where the
3 DNER is going to be conducting its hearing.

4 CHAIR FROEHLICH: I'm sorry, what was the
5 last place that you mentioned?

6 MR. ELLISON: I believe it's the Ramkota.

7 MS. GILLIS: It's the Best Western Hotel.

8 CHAIR FROEHLICH: It's the Best Western
9 Hotel --

10 MR. ELLISON: Best Western? Okay. Thank
11 you.

12 CHAIR FROEHLICH: Thank you. At this
13 point, I guess the Board will have to confer among
14 ourselves as to whether we'll be able to do anything
15 in September or whether it looks like it will be
16 limited appearance statements and site visit in the
17 spring preceding the evidentiary phase of this case
18 which is where I personally think it's going to end
19 up, rather than having -- putting in for two trips out
20 there, it will be just one trip that's slightly
21 longer, I believe.

22 Were there any other procedural matters
23 that any of the parties would like to raise with the
24 Board at this juncture or as we go forward towards the
25 evidentiary hearing?

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1 MR. PARSONS: Your Honor, this is Jeff
2 Parsons. Maybe some guidance from you would be
3 helpful in terms of the parties' efforts to come to an
4 agreement on a schedule. I suppose we ought to
5 continue trying to communicate and work out the
6 sequence of timing, timing and sequence for the
7 hearing. Would that be helpful to the Board?

8 CHAIR FROEHLICH: It would be helpful. I
9 would ask the parties to try to stay as true as
10 possible to the Appendix B milestones. And as I go
11 through my notes and I believe as Mr. Clark had
12 indicated, I think that brings us to a hearing at the
13 end of April of early May, assuming the FSEIS comes
14 out at the end of October or early November. So
15 within that general framework, it would be helpful if
16 the parties could come to an agreement as to a
17 schedule which is true to the model milestones and get
18 to a hearing by May.

19 JUDGE COLE: Or earlier.

20 CHAIR FROEHLICH: Or earlier. Thank you,
21 Judge Cole.

22 Is there anything else, staff? I know I
23 can't hold you to this, but are we talking perhaps
24 early November for the FSEIS?

25 MR. PARSONS: Based on information we have

1 right now, I think that's a fair estimate. Again, I
2 caution that there could be a lot of reasons for
3 slight delays which together can add up, too.

4 I did have one question, Judge Froehlich,
5 about the schedule where the parties are working on,
6 is this just for the environmental hearing or are we
7 talking about a safety hearing as well?

8 CHAIR FROEHLICH: Well, that is actually
9 a loose end that we had left over from one of our
10 earlier prehearing conferences. As it stands now, we
11 have a list of contentions that have been admitted and
12 will go forward to hearing. I'm not sure if any of
13 these are, or if any of the parties are advocating
14 that any of these are safety contentions. And I guess
15 that would be dependent. As I have looked at it and
16 since we hadn't really come to closure on it, the
17 admitted contentions appear to me to be environmental.
18 Does anyone care to be heard on that?

19 MR. FRANKEL: Your Honor, this is David
20 Frankel for Consolidated Intervenors. And I believe
21 that when you admitted and consolidated a few of the
22 earlier contentions that now I think are mostly
23 contentions 2 and 3, the ones related to adequate
24 containment, that they were mixed, safety, and
25 environmental. And we've never let go. We filed them

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1 as safety contentions and also as environmental and we
2 don't mind them merging, but we don't want to lose
3 track that the containment -- the contentions related
4 to failure to describe adequate containment are, in
5 our view, environmental and safety.

6 CHAIR FROEHLICH: And the containment
7 contention is contention 3? Is that what you're
8 referring to?

9 MR. FRANKEL: I believe so, Your Honor.
10 Let me check that.

11 JUDGE COLE: It is contention 3.

12 CHAIR FROEHLICH: Is there any other
13 contention that anyone is arguing would be other than
14 an environmental contention?

15 MR. ELLISON: Well, possibly -- this is
16 Bruce Ellison. Possibly contention 6. If we have
17 issues related to groundwater or surface water
18 contamination outside of the proposed project area, at
19 post-reclamation or mitigation, it would seem to me
20 that that would fall into safety issues as well.

21 CHAIR FROEHLICH: Okay, in answer to the
22 question I guess pending is that we will have to come
23 to a determination on whether these are safety or
24 environmental as it affects the burden and the
25 standards that would be applied in the case.

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1 MR. ELLISON: And Judge Froehlich, I'm
2 sorry, I hasten to interrupt. This is Bruce Ellison
3 again. I would also have to say that probably 4 fits
4 in there as well, because we're talking about
5 groundwater quality impacts and therefore there are
6 potential safety issues that would be involved, that
7 go beyond just the environmental.

8 CHAIR FROEHLICH: All right. We may need
9 to have briefing on that question. I will discuss
10 this with the other members of the Board and we will
11 have to put in place, I believe, a procedure to brief
12 these issues on whether they're going to be handled as
13 environmental or as safety contentions.

14 JUDGE COLE: Or as both.

15 CHAIR FROEHLICH: Or as both. Or as both,
16 going forward. Agreement shy of that.

17 Did someone care to be heard on the
18 question of whether these are safety or environmental?

19 MR. ELLISON: Yes, Judge. I'm sorry,
20 Bruce Ellison. I agree. I wanted to make sure my
21 position was clear that on behalf of Consolidated
22 Intervenors that those are identified as both, rather
23 than one versus the other. I just wanted to make that
24 clear.

25 CHAIR FROEHLICH: Okay.

1 MR. CLARK: Your Honor, this is Mike Clark
2 for the staff. I think the Board could resolve this
3 issue by focusing on the arguments raised in the
4 contentions themselves. For example, contention 6 was
5 not filed as a contention on a safety document. It
6 was filed as a contention on the Draft SEIS. I'm not
7 aware of any precedent for admitting a safety
8 contention based on an environmental document, but you
9 may need briefing on it, but --

10 CHAIR FROEHLICH: If that's the genesis of
11 6, that would take it out of the realm as a safety
12 contention, if it was a contention that was filed in
13 response to the environmental document.

14 MR. CLARK: Obviously, I'm not speaking
15 for anyone else, but I think 2 and 3 might have been
16 safety contentions; 4, I thought was environmental
17 contention as originally admitted. And the remainder
18 were environmental contentions. But we did discuss
19 this, I believe, about a year ago in a conference
20 call. And I think the counsel for the Intervenors at
21 that time stated their position, so maybe simply
22 revisiting the transcript of that call will give
23 answers.

24 CHAIR FROEHLICH: Thank you. We will do
25 that. We will resolve this issue before we get to

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1 hearing certainly.

2 Was there anything else that we need to
3 discuss at this point in time?

4 Judge Cole, anything?

5 JUDGE COLE: No, I don't think so.

6 CHAIR FROEHLICH: Judge Barnett?

7 JUDGE BARNETT: No, nothing else.

8 CHAIR FROEHLICH: Do any of the parties
9 have any last matters they wish to raise as we go
10 forward from here?

11 MR. PUGSLEY: Your Honor, Chris Pugsley
12 for Powertech. Nothing from the Applicant.

13 CHAIR FROEHLICH: Okay, thank you. And
14 from the Intervenors?

15 MR. ELLISON: No, thank you.

16 MR. FRANKEL: David Frankel, no.

17 CHAIR FROEHLICH: Thank you. And from
18 staff, any points at this juncture?

19 MR. CLARK: Nothing else. Thank you.

20 CHAIR FROEHLICH: I thank all the parties
21 for their attention. We'll follow up this conference
22 with an order, hopefully, and that order will be able
23 to address the issues as to the timing of a site visit
24 and limited appearance statements after I've had a
25 chance to discuss this with other members of the Board

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1 and with our budget folks, along with what next steps
2 will be in categorizing the contentions between
3 safety, environmental or mixed going forward.

4 I thank you all. And this conference is
5 adjourned.

6 (Whereupon, at 1:54 p.m., the pre-hearing
7 teleconference was concluded.)

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