

November 6, 2013

Mr. Darrin Old Coyote, Chairman
Apsaalooke (Crow) Nation
Baacheeitché Avenue
P.O. Box 159
Crow Agency, MT 59022

SUBJECT: NOTIFICATION OF INTENTION TO SEPARATE THE NATIONAL HISTORIC PRESERVATION ACT SECTION 106 PROCESS FROM THE NATIONAL ENVIRONMENTAL POLICY ACT REVIEW FOR THE POWERTECH, INC. PROPOSED DEWEY-BURDOCK IN-SITU RECOVERY (ISR) FACILITY NEAR EDMONT, SOUTH DAKOTA (DOCKET 040-09075)

Dear Chairman Coyote:

Since 2010, the U.S. Nuclear Regulatory Commission (NRC) staff has been consulting under the National Historic Preservation Act (NHPA) with your Tribe and other American Indian Tribes regarding historic sites that may be affected by the proposed Powertech Inc. Dewey-Burdock In-Situ Recovery (ISR) Project.¹ The NRC staff has had three face-to-face meetings and three teleconferences with Tribal representatives, and we have exchanged many emails, letters, and telephone calls.

In the spring of 2013, the Dewey-Burdock project site was made available for each consulting Tribe to conduct a field identification survey for any historic properties that may have traditional, religious or cultural significance to the Tribe. Seven Tribes elected to participate in these surveys: the Northern Arapaho, Northern Cheyenne, Turtle Mountain, Crow Creek Sioux, Cheyenne and Arapaho, Crow Nation, and Santee Sioux. Tribal representatives conducted the field surveys between April 2013 and May 2013.

When the NRC staff began consulting with the Tribes, it planned to coordinate its NHPA review with its review under the National Environmental Policy Act (NEPA).² The staff's extensive Section 106 consultation activities have, however, caused delays in the issuance of its NEPA documents. Other factors have also caused delays, and this year alone the staff has had to revise its estimate for release of its final NEPA document from May 2013 (estimate as of January 2, 2013) to December 2013 - January 2014 (estimate as of November 1, 2013). If the

¹ Letter to Tribal Leaders Requesting Additional Information Regarding Tribal Historic and Cultural Resources Potentially Affected by the Powertech Inc. Proposed Dewey-Burdock In-Situ Recovery Facility (March 19, 2010) (ADAMS Accession No. ML100331999)
<http://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber='ML100331999'>.

²Letter to Tribal Leaders and Tribal Historic Preservation Officers re Invitation for Informal Information Gathering Meeting Pertaining to Dewey Burdock, Crow Butte North Trend and Crow Butte License Renewal In Situ Uranium Recovery Projects (May 12, 2011) (ADAMS Accession Nos. ML111320251 and ML111320256)
<http://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber='ML111320251'> and
<http://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber='ML111320256'>.

staff continues to coordinate its NHPA and NEPA reviews, this will further delay a document the staff had expected to issue months ago.

Because the staff's review under Section 106 is still in progress, while its NEPA review is near completion, the staff is now separating its Section 106 activities from its NEPA review. This will allow the staff to issue its final NEPA document, the vast majority of which concerns environmental impacts unrelated to cultural resources, while continuing to consult with interested Tribes on impacts to historic properties.

Separating the Section 106 review from the NEPA review will afford the NRC and other consulting parties ample time to prepare a Programmatic Agreement (PA) for the Dewey-Burdock Project. The PA will establish a methodology or process to resolve adverse effects on identified historic properties within the Dewey-Burdock ISR Project area. The PA will also address how properties identified in the future will be evaluated.

Although the staff is separating its reviews under Section 106 and NEPA, it will ensure the consulting parties have the opportunity to comment on the full range of impacts to cultural resources. Within the next few weeks, the staff intends to provide all consulting parties a summary of the results of the April–May 2013 field surveys conducted by Tribal representatives under the Section 106 process. The staff will also provide its analysis of impacts to identified sites and its preliminary determinations as to whether sites are eligible for inclusion on the National Register of Historic Places.

The NRC staff intends to issue its final NEPA document for the Dewey-Burdock Project between December 2013 – January 2014 timeframe. If consulting parties have comments related to the April–May 2013 field surveys that cannot be incorporated in the final NEPA document, the staff will ensure that they are considered under both Section 106 and NEPA. Depending on the information provided in the comments from the consulting parties, the staff will not only address the comments through the Section 106 process, but it may decide to supplement the final NEPA document. In any event, because the staff will not take any licensing action until it completes its review under Section 106, the staff will consider Tribal comments before making its licensing decision.

To move the Section 106 process forward, the NRC staff has provided all consulting parties, including the Tribes, a draft PA outline to begin development of the PA. The staff plans to host several teleconferences/webinars over the next several weeks to further discuss the PA. During the first teleconference with all consulting parties, a comprehensive schedule of the steps needed to complete the Section 106 process will be discussed.

D. Old Coyote

3

If you have any questions or comments, or need any additional information, please contact Ms. Haimanot Yilma of my staff by telephone at 301-415-8029 or by email at Haimanot.Yilma@nrc.gov.

Sincerely,

/RA/

Kevin Hsueh, Chief
Environmental Review Branch
Environmental Protection
and Performance Assessment Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 040-09075

cc: Emerson Bullchief, THPO

D. Old Coyote

3

If you have any questions or comments, or need any additional information, please contact Ms. Haimanot Yilma of my staff by telephone at 301-415-8029 or email at Haimanot.Yilma@nrc.gov.

Sincerely,

Kevin Hsueh, Chief
Environmental Review Branch
Environmental Protection
and Performance Assessment Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 040-09075

cc: Emerson Bullchief, THPO

DISTRIBUTION: MClark/OGC BVonTill/DWMEP RBurrows/DWMEP

ML13308A613

| OFC | DWMEP | DWMEP | DWMEP | OGC | DWMEP |
|------|---------|---------------|--------------------|------------------|---------|
| NAME | HYilma | AWalker-Smith | Via email JFringer | PJehle, M. Clark | KHsueh |
| DATE | 9/12/13 | 9/13/13 | 9/13/13 | 10/31/13 | 11/6/13 |

OFFICIAL RECORD COPY