

DRAFT Appendix A – Undertaking and Area of Potential Effects

Undertaking

On August 10, 2009, Powertech Inc. submitted an application for an NRC source material license to construct and operate an ISR facility at the proposed Dewey-Burdock ISR Project site and to conduct aquifer restoration, site decommissioning, and reclamation activities. Based on the application, the NRC's federal decision is to either grant or deny the license.

The Atomic Energy Act of 1954, as amended, authorizes the NRC to issue licenses, either as a general or specific license, to qualified applicants for the receipt, possession and use of byproduct and source materials resulting from the removal of uranium ore from its place of deposit in nature. An NRC specific license is issued to a commercial uranium or thorium ISR facility pursuant to the NRC implementing regulations in Title 10 of the Code of Federal Regulations (10 CFR) Part 40.

The BLM manages public lands in accordance with the Federal Land Policy and Management Act of 1976. BLM manages 97 ha [240 ac] of land within the proposed Dewey-Burdock ISR Project area. The applicant controls the locatable mineral rights on this land through Federal Lode Claims and secures access to mineral rights through the terms of the General Mining Act of 1872. Under 43 CFR Subpart 3809, BLM is required to review the environmental impacts of federal actions to assure that there is no "unnecessary or undue degradation of public lands." BLM has requested to be, and is acting as, a cooperating agency with NRC to evaluate the impacts of the Plan of Operations for the proposed Dewey-Burdock ISR Project in accordance with the National Memorandum of Understanding between the two agencies.

Project Location and Proposed Activities

The proposed Dewey-Burdock ISR Project is located within the Great Plains physiographic province on the edge of the Black Hills uplift. The proposed project area covers 4,282 ha [10,580 ac] and is composed of two contiguous areas: the Burdock area and the Dewey area (Figure 1.0). The Burdock area is located in the following townships and ranges: (i) Township 7 South, Range 1 East, Sections 1, 2, 3, 10, 11, 12, and portions of Sections 14 and 15 and (ii) Township 6 South, Range 1 East, Sections 34, 35, and portions of Section 27. The Dewey area is located in the following townships and ranges: (i) Township 7 South, Range 1 East, Section 5 and portions of Section 4 and (ii) Township 6 South, Range 1 East, Sections 29, 30, and 32, and portions of Sections 20, 21, 28, 31, and 33. Approximately 4,185 ha [10,340 ac] of the proposed project area are in the hands of private landowners, while approximately 97 ha [240 ac] are U.S. Government lands managed by U.S. Bureau of Land Management (BLM) (Powertech, 2009a,b).

The applicant's proposed project will include processing facilities and sequentially developed wellfields sited in two contiguous areas: the Burdock area and the Dewey area. As uranium recovery activities cease at a wellfield, the area will be restored and reclaimed while a new wellfield and its supporting infrastructure is developed. Under the applicant's proposal, ISR methods will be used to extract uranium from sandstone-hosted uranium orebodies in the Fall River Formation and the Chilson Member of the Lakota Formation that make up the Inyan Kara Group. The extracted uranium will be loaded onto ion exchange (IX) resin at a central processing plant in the Burdock area and a satellite facility in the Dewey area. All processing of the uranium-loaded IX resin, precipitation, drying, and packaging of the final "yellowcake" product, will take place at the Burdock central processing plant.

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Project Area of Potential Effects

The APE for the review of historic and cultural resources at the proposed Dewey-Burdock ISR Project is the area that may be directly or indirectly impacted by the construction, operation, aquifer restoration, and decommissioning of the proposed project. The APE for the proposed Dewey-Burdock ISR Project coincides with the extent of potential ground disturbance resulting from proposed facility construction and operational activities. The introduction of new visual, auditory, or other sensory elements also has the potential to diminish the integrity of historic properties in the project area.

The extent of the APE for facility construction and operations will depend on the disposal option used at the proposed project to dispose of liquid waste. The applicant plans to dispose of liquid wastes generated during uranium recovery operations through deep injection wells, land application, or a combination of both methods. The APE for facility construction and operations for all the liquid waste disposal options totals 1,067 ha [2,637 ac] (Figure 1.0). This area includes a 969-ha [2,394-ac] buffer zone surrounding 98.3-ha [243-ac] of projected areas for the plant facilities, wellfields, ponds, roads, and pipelines. If land application is used for liquid waste disposal, the APE for facility construction and operations will include an additional maximum area of approximately 506 ha [1,250 ac] surrounding proposed land application areas (Figure 1.0).

The extent of the APE for visual impacts (indirect effects) includes areas within a 4.8-km [3-mi] radius of the central processing plant in the Burdock area and the satellite processing facility in the Dewey area (see Figure 1.0). The central processing plant and satellite processing facility will be the tallest buildings constructed at the proposed Dewey-Burdock ISR Project site. Based on proposed locations of the central processing plant and the satellite processing facility, the APE for visual impacts will extend a maximum of 2.33 km [1.45 mi] from the eastern project boundary in the Burdock area and a maximum of 2.7 km [1.7 mi] from the western project boundary in the Dewey area (see Figure 1.0).

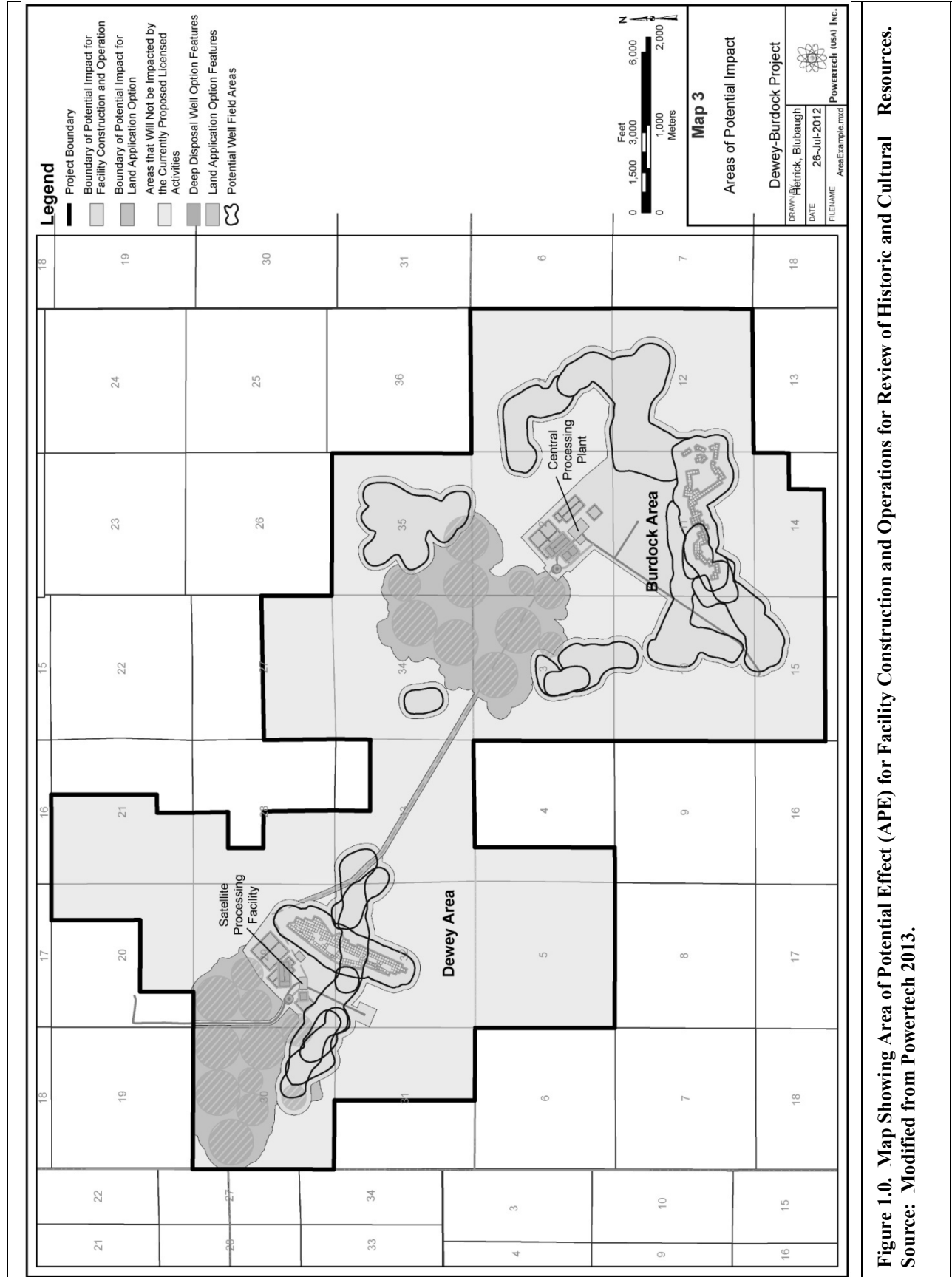


Figure 1.0. Map Showing Area of Potential Effect (APE) for Facility Construction and Operations for Review of Historic and Cultural Resources.
 Source: Modified from Powertech 2013.

DRAFT Appendix B – Cultural Resource Identification and Consultation Efforts

1. Level III Archeological Investigations

The NRC staff reviewed Level III cultural resource investigations and evaluative testing reports prepared by the Archaeology Laboratory, Augustana College (ALAC) on behalf of the applicant for the proposed Dewey-Burdock ISR Project (Kruse, et al., 2008; Palmer and Kruse, 2008; Palmer 2008, 2009, 2012). The investigations included an archival and historic review of available sources, a search of ARC-maintained records and collections, and review of published field reports. A review of available data shows that six surveys have been conducted within the project boundary of the proposed Dewey-Burdock site (Kruse, et al., 2008). A total of 57 archaeological sites were previously recorded within the proposed project area (Kruse, et al., 2008).

Recent field investigations were conducted by pedestrian surveys of 4,173 ha [10,311 ac] between April and August 2007 and of an additional 526 ha [1,300 ac] between July and September 2008 of the proposed project area. The 2007 and 2008 field investigations included evaluative testing at 43 sites. In 2011, evaluative testing was conducted at 20 unevaluated sites located within the project boundary to provide data for recommendation on NRHP eligibility (Palmer and Kruse, 2012). The results of the evaluative testing determined that one site, 39FA1941, is recommended eligible for listing in the NRHP and 19 sites were recommended ineligible for listing in the NRHP (Palmer and Kruse, 2012). Results of the Level III cultural resource investigations are presented in the following sections.

Archaeological Sites

NRC reviewed site data on over 200 archaeological sites recorded within the proposed project area. During the field investigation, a number of small, individual sites were combined into larger, single sites. One hundred forty-eight (148) sites were determined ineligible for listing in the NRHP when measured against the evaluative criteria found in 36 CFR 60.4. Seventy-nine (79) of these sites are isolated finds consisting of a single tool or few [n<10] items with no possibility of cultural materials or remains within buried horizons; may be aboriginal or historic; are not eligible by definition [SD ARC, 2006]; or lack physical integrity and context. Approximately 140 of these mostly prehistoric sites are located on highly disturbed and eroded landforms and have little potential to possess intact, significant buried cultural deposits.

Fifteen (15) archaeological sites, including two containing cairns and burials, have been recommended as eligible for listing in the NRHP. SD SHPO has previously concurred with the sites recommended eligible to the NRHP under one or more criteria of eligibility in Table 1-1 (SD SHPO, 2012). The archaeological sites recommended for listing in NRHP are discussed below.

Table 1-1. List of Archaeological Sites Within the Proposed Project Area Recommended Eligible for Listing in the NRHP*

Historic Property (Site Number, Structure Identification, or Historic District)	Description	NRHP Determination
39CU0271	Native American and Archaic artifact scatter and occupation site on a ridge slope with a cairn feature	Eligible, Criterion D
39CU0577	Native American/Euroamerican Occupation site; artifact scatter	Eligible, Criterion D
39CU0584	Native American occupation site and burial on a ridge slope	Eligible, Criterion D
39CU2735	Archaic- Prehistoric occupation site	Eligible, Criterion D
39CU0578	Native American/Euroamerican Dump and occupation site on a ridge slope	Eligible, Criterion D
39CU0586	Native American and Late Archaic occupation site on a ridge crest	Eligible, Criterion D
39CU0588	Native American occupation site on a ridge crest	Eligible, Criterion D
39CU2733	Native American hearth and artifact scatter on a ridge slope	Eligible, Criterion D
39CU2738	Native American occupation site on a ridge crest	Eligible, Criterion D
39CU0590	Native American artifact scatter on a ridge saddle	Eligible, Criterion D
39CU0593	Native American and Euroamerican occupation and artifact scatter on a hill slope	Eligible, Criterion D
39CU3592	Native American artifact scatter and hearth site	Eligible, Criterion D
39FA1941	Native American artifact scatter and hearth site	Eligible, Criterion D
39CU2000	Historic Railroad	Eligible, Criteria A and C
39FA2000	Historic Railroad	Eligible, Criteria A and C
Sources: Kruse, et al. (2008); Palmer and Kruse (2008, 2012); Palmer (2009)		
*Recommended eligible by ALAC and NRC. SD SHPO has concurred with these recommendations (SD SHPO, 2012).		

2. Tribal Cultural Survey Results

In December 2012, the NRC staff advised all consulting tribes that the the Dewey-Burdock site would be open for interested tribes to conduct on-the-ground surveys in the spring of 2013.¹

On February 8, 2013, the NRC staff contacted 23 tribes interested in the proposed Dewey-Burdock ISR Project and invited the 23 tribes to participate in a field survey of the project area for the purpose of identifying properties of religious and cultural significance to tribes. 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. The NRC invited interested tribes to investigate any areas within the 4,282-ha [10,580-ac] Dewey Burdock license area during the month of April 2013. Financial support was offered for as many as three representatives from each tribe and each tribe was invited to develop and implement its own survey methodology. Tribes were asked to respond to NRC no later than March 12, 2013.

Seven tribes participated in the field survey at the proposed Dewey-Burdock site. These tribes included the Northern Arapaho Tribe, Northern Cheyenne Tribe, Turtle Mountain Band of Chippewa Indians,

¹ Letter to Tribal Leaders Responding to Comments Received regarding Tribal Survey, Dewey-Burdock ISR project. (December 14, 2013) (ADAMS Accession No. ML12335A175) <https://adamsxt.nrc.gov/WorkplaceXT/IBMgetContent?vsId={389C91E7-8786-4A5A-81D1-3CB65331519D}&objectType=document&id={2EE3F8FC-01CC-4C19-9A45-DAB53D64C77E}&objectStoreName=Main...Library>

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Crow Creek Sioux Tribe, Cheyenne and Arapaho Tribes of Oklahoma, Crow Nation, and Santee Sioux Tribe. The NRC staff received detailed written reports with NRHP eligibility recommendations from three of the seven tribes who participated in the tribal cultural survey (Northern Arapaho Tribe, Northern Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma). The Crow Nation provided NRC staff with a copy of field notes identifying several sites of interest to that tribe. A detailed list of sites identified during the tribal cultural survey with management recommendations is included below in Table 1.0. The survey reports prepared by tribes along with maps recording the location of the discoveries identified during the tribal cultural survey are on file at NRC and at each of the respective tribal offices.

The tribal survey teams identified new artifact discoveries or cultural features of interest to tribes at 24 previously reported archaeological sites as well as 56 other locations representing as many as 80 tribal sites. A number of the 56 new discoveries identified by tribes are situated near the boundaries of known archaeological sites and could reasonably be considered part of those sites if the current archaeological site boundaries were expanded to include them. Other new discoveries occur in close proximity to one another and may be culturally related.

Most of the new discoveries identified in the tribal cultural surveys are summarized here as individual tribal sites. When tribes indicated cultural relationships exist between new discovered features and known archaeological sites or between groups of individual tribal cultural features, this information is provided in the summary Table 1.0.

Tribal Review of Previously Reported Archaeological Sites

Tribal survey teams recorded 76 cultural features within the boundaries of 24 known archaeological sites. Some of the cultural features recorded by tribal survey teams correspond to features identified in the archaeological surveys, however, many represent new discoveries. Tribes provided specific recommendations for four (4) archaeological sites that were investigated without identifying new cultural features.

Tribal Sites: New Discoveries

A total of 56 new discoveries were recorded as a result of the tribal cultural survey. These new discoveries are summarized in Table 1.0. Fifty-three (53) of the 56 new discoveries are individual tribal sites or cultural features and were assigned individual survey numbers. Three tribal sites represent multiple cultural features within a single site. For example, ten GPS readings were taken to record the location of individual stones that make up a single stone feature (TS080-TS089 and TS098). Five associated tribal features (TS007-TS011) make up another tribal site. And another tribal cultural feature assigned duplicate survey numbers (TS041 and TS042).

Twelve (12) of the 56 newly discovered cultural features were identified outside the license boundary. These features include five (5) discoveries on private land (TS024, TS061, TS062, TS075, TS079), five (5) discoveries on BLM property (TS125, TS126, TS127, TS128, TS129), and two (2) discoveries on U.S. Forest Service property (TS106, TS107). Sites TS107 and TS125 were identified as a possible gravesites. TS106 and TS107 were recommended as eligible for listing in the NRHP under criteria A and C. No eligibility recommendations were provided for the other 10 cultural features or sites.

Forty-four (44) of the 56 new discoveries were identified within the project's license boundary. Nineteen (19) of these tribal sites were recommended as NRHP-eligible under one or more eligibility criteria. TS002, TS007, TS008, TS010, TS011, TS118, TS120 were recommended as eligible under Criterion A. (); TS145 is recommended as eligible under Criterion D (). TS009 is recommended as eligible under

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criteria A and D. TS040, TS041-TS042, TS047, TS067, TS074, TS076, TS077, TS078, TS080-T089 and TS098) are recommended as eligible under criteria A and C. TS006, a gravesite, is recommended as eligible under criteria A, C, and D.

NRHP recommendations were not provided for 25 of the 44 new discoveries recorded within the project license boundary (TS003, TS005, TS023, TS028, TS030, TS036, TS037, TS048, TS049, TS050, TS051, TS052, TS063, TS064, TS065, TS066, TS090, TS091, TS092, TS093, TS094, TS095, TS097, TS131, TS144). These features include isolated artifact finds, animal bone concentrations, stone circles, cairns, and possible fasting sites. TS023, TS048, TS049, TS050, and TS131 were identified during the field survey as possible gravesites. NRC assumes these sites are recommended for avoidance due to the potential for human remains to be present even though tribes may not consider these locations eligible for listing in the NRHP.

3. Visual Effects Assessment (indirect effects)

In consultation with the SD SHPO and other consulting parties, NRC staff completed an assessment of the project's potential to have visual impacts on historic properties (i.e., properties of any type listed in or considered eligible for listing in the NRHP). This assessment considered whether the construction of the central processing plant and satellite facility would create a visual effect on historic properties. The purpose of the study was to assess whether the introduction of new visual changes in the form of new processing facilities could have potential to diminish those aspects of integrity that qualify historic properties for inclusion in the NRHP. NRC's assessment considered potential visual effects on the integrity of each property's location, design, setting, materials, workmanship, feeling, or association in accordance with the Section 106 regulations at 36 CFR 800.5(a)(1). Setting, feeling, and association are generally those aspects of integrity considered most sensitive to visual intrusions and these aspects of integrity are most likely to contribute to the historic significance of historic properties considered eligible under criteria A, B, or C. Integrity of setting is not often considered a contributing characteristic for properties considered eligible only on the basis of their historic information content (i.e., Criterion D).

NRC's assessment of visual effects included historic properties situated within a 4.8 km [3-mi] radius of the tallest or most prominent building within each processing facility. This assessment therefore includes historic properties located within the license boundary as well as those near and outside the license boundary. The 4.8 km [3-mi] radius was selected based on i) consultation with the SD SHPO, ii) consultation with BLM, and iii) a previous assessment done for the Dakota, Minnesota, and Eastern Railroad's (DM&E) Powder River Basin Expansion project (HDR Inc., 2009). Due to the proposed project's close proximity to the state of Wyoming, NRC staff also consulted with the Wyoming State Historic Preservation Office (WY SHPO) to determine whether reviewing properties located within a 4.8 km [3-mi] radius of the processing facilities would be acceptable for purposes of reviewing potential impacts to significant cultural and historical properties in this portion of the state of Wyoming. The WY SHPO staff agreed with NRC's proposed research approach (WY SHPO, 2013).

For the evaluation of potential visual effects to historic properties in South Dakota, NRC staff compiled a list of 31 historic properties that are either listed on the NRHP or considered eligible for listing on the NRHP under criteria A and/or C. No historic properties within the project area appear to qualify as significant under Criterion B, and historic properties considered eligible for the NRHP solely under Criterion D were not evaluated for potential visual effects because aspects of integrity most likely to be affected by visual changes, i.e., setting, feeling, and association, are not necessary to convey the significance of those property types as sources of important historic information. This group of 31 historic properties includes one NRHP-listed historic district, the Edna and Ernest Young Ranch (90000949) also known as the Bakewell Ranch (CU00000050). The Young Ranch historic district includes several contributing ranch buildings including the principal residence. A nearby homestead district, known as

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the, Richardson Homestead (CU00000052) is considered not eligible but includes one individually eligible log barn (CU02500002). Other NRHP-eligible properties include one historic bridge (Beaver Creek Bridge, FA00000111), and 28 sites that include 19 archaeological sites and 9 tribal sites.

Only one historic property located outside the license boundary was included in this review. The Beaver Creek Bridge (Structure FA00000111) is located southwest of the project boundary but falls within the 4.8-km [3-mi] radius for the central processing plant. Two rock art sites in Fall River County (39FA2530, 39FA2531) fell just outside the 4.8-km [3-mi] range for the central processing plant. No other NRHP-listed or eligible properties were identified outside the license boundary. **Table 1.0** summarized identified sites impact determination.

A review of NRHP listings for the State of Wyoming and state inventory records on file at the Wyoming Cultural Records Office at the University of Wyoming, Laramie, Wyoming revealed that one NRHP-eligible property was located within a 4.8-km [3-mi] radius of the proposed satellite facility in Wyoming. However, because the environmental setting of this property is not considered to be among the characteristics that contribute to its cultural and historical significance, this property was not included in the LOS study and NRC has determined that no further consultation with the Wyoming SHPO is warranted for this project.

4. Tribal Consultation

The federal government and the State of South Dakota recognize the sovereignty of federally recognized Native American tribes. Pursuant to NHPA Section 106, federal agencies are required to undertake consultation and coordination with each tribal government that may have an interest in a proposed federal action. Consultation with the tribes that have heritage interest in the proposed Dewey-Burdock ISR Project is ongoing. Executive Order 13175 (November 2000), *“Consultation and Coordination with Indian Tribal Governments,”* excludes from the requirements of the order, “independent regulatory agencies, as defined in 44 U.S.C. §3502(5).” However, according to Section 8, “Independent regulatory agencies are encouraged to comply with the provisions of this order.” Although the NRC is explicitly exempt from the Order, the Commission remains committed to its spirit. The agency has demonstrated a commitment to achieving the Order’s objectives by implementing a case-by-case approach to interactions with Native American tribes. NRC’s case-by-case approach allows both NRC and the tribes to initiate outreach and communication with one another.

As part of its obligations under Section 106 of the NHPA and the regulations at 36 CFR 800.2(c)(2)(B)(ii)(A), NRC must provide Indian tribes “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties and evaluation of historic properties, including those of religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.”

NRC staff formally initiated the Section 106 consultation process for the proposed Dewey-Burdock ISR Project by contacting tribal governments by letters dated March 19, 2010. Additional invitations to consult with the NRC concerning the proposed project were sent to tribes on September 10, 2010 and March 4, 2011 (NRC 2010b, NRC 2011).

The NRC identified 23 Native American tribes that attach historical, cultural, and religious significance to sites within the Dewey-Burdock ISR Project area. The NRC continues consultation on historic properties with the following tribes:

- Cheyenne River Sioux Tribe

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- Crow Creek Sioux Tribe
- Flandreau Santee Sioux Tribe
- Lower Brule Sioux Tribe
- Oglala Sioux Tribe
- Rosebud Sioux Tribe
- Sisseton-Wahpeton Sioux Tribe
- Standing Rock Sioux Tribe
- Yankton Sioux Tribe
- Three Affiliated Tribes (Mandan, Hidasta, and Arikara Nation)—North Dakota
- Turtle Mountain Band of Chippewa—North Dakota
- Spirit Lake Tribe—North Dakota
- Lower Sioux Indian Community—Minnesota
- Fort Peck Assiniboine and Sioux—Montana
- Northern Cheyenne Tribe—Montana
- Northern Arapaho Tribe—Wyoming
- Eastern Shoshone Tribe—Wyoming
- Ponca Tribe—Nebraska
- Crow Tribe—Montana
- Santee Sioux Tribe—Nebraska
- Omaha Tribe—Nebraska
- Cheyenne and Arapaho Tribes—Oklahoma
- Pawnee Tribe—Oklahoma

NRC staff invited the tribes to participate as consulting parties in the NHPA Section 106 process and sought their assistance in identifying places of religious and cultural significance and any other cultural resources that may be affected by the proposed action.

Since 2010, 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.

The NRC staff plans to continue to invite the above tribes to participate in the development of this Programmatic Agreement.

Table 1.0: NRHP determination has been attached as a separate document due to its size.

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DRAFT Appendix C – Reporting Criteria for the Monitoring Plan

- a) On or before January 1 of each year, unless the Parties agree in writing that the terms of this PA have been fulfilled, Powertech shall prepare and provide a letter report to the NRC detailing how the applicable terms of the PA are being implemented.
- b) Upon acceptance, Powertech shall provide this annual report to the Parties.
- c) The Parties may provide comments on the report to Powertech within **30 days** of receipt, and Powertech will distribute all comments to the Parties.
- d) Powertech shall coordinate a meeting or conference call of the Parties within **60 days** after providing the annual report for the first five (5) years, and every third year thereafter, if the PA remains in effect, unless the Parties agree to another timeframe. The purpose is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed.

DRAFT Appendix D – Treatment of Human Remains

From SD SHPO

In the event of an inadvertent discovery of human remains or funerary objects the following steps shall be taken pursuant to South Dakota Codified Law Chapter 34-27-25, 34-27-28, 34-27-31:

a) The **On-site manager/ Contractor** shall immediately halt construction activities within a 150 foot radius from the point of discovery and implement measures to protect the discovery from looting and vandalism. No digging, collecting or moving human remains or other items shall occur after the initial discovery. Protection measures may include the following.

- 1) Flag the buffer zone around the find spot.
- 2) Keep workers, press, and curiosity seekers, away from the find spot.
- 3) Tarp the find spot.
- 4) Prohibit photography of the find unless requested by an agency official.
- 5) Have an individual stay at the location to prevent further disturbance until a law enforcement officer arrives.

b) The **On-site manager/ Contractor** shall notify local law enforcement, the **Federal/ State Agency** responsible for the project, and the South Dakota State Archaeologist (State Archaeologist) within forty-eight (48) hours of the discovery.

c) The **Federal/ State Agency** responsible for the project shall notify the South Dakota State Historic Preservation Office (SHPO), Indian tribes, and other consulting parties within forty-eight (48) hours of the discovery.

d) If local law enforcement determines that the remains are not associated with a crime, the **Federal/ State Agency** responsible for the project shall determine if it is prudent and feasible to avoid disturbing the remains. If the **Federal/ State Agency** in consultation with the **Project Proponent/Applicant/Contractor** determine that disturbance cannot be avoided, the **Federal/ State Agency** shall consult with the State Archaeologist, SHPO, Indian tribes and other consulting parties to determine acceptable procedures for the removal, treatment and disposition of the burial or remains. The **Federal/ State Agency** shall ensure that the **Project Proponent/Applicant/Contractor** implements the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota State Archaeologist.

e) The **Federal/ State Agency** shall notify the **Project Proponent/Applicant/Contractor** that they may resume construction activities in the area of the discovery upon completion of the plan authorize by the State Archaeologist.

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