

## DeweyBurdPubEm Resource

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**From:** Yilma, Haimanot  
**Sent:** Monday, December 23, 2013 3:11 PM  
**To:** Yilma, Haimanot  
**Cc:** Hsueh, Kevin; Jamerson, Kellee; Luhman, Hope (hluhman@louisberger.com)  
**Subject:** Draft Programmatic Agreement for the Dewey-Burdock Project for Review and Comment  
**Attachments:** Draft PA Dewey-Burdock Project 12-23-13.docx; Schedule for Section 106 process rev 2.docx; NRC NRHP Determinations - Table 1.0 for Draft PA 12-13-13.docx; DRAFT Appendix for the Dewey-Burdock Project PA 12-23-13.docx

All,

On August 30, 2013, the NRC staff distributed a draft Programmatic Agreement (PA) outline to all consulting parties to facilitate a discussion for the development of a PA for the proposed Dewey-Burdock ISR project.

On Friday, November 15, 2013, the NRC staff hosted a webinar to discuss the draft PA outline and solicit feedback from all consulting parties for the development of the draft PA. Participants in the webinar included representatives from Oglala Sioux Tribe, Northern Cheyenne Tribe, South Dakota SHPO, BLM South Dakota and Montana field offices, ACHP, EPA Region 8, and Powertech (USA), Inc. & its consultant.

On Friday, December 13, 2013, the NRC staff hosted a second webinar to discuss the draft PA developed based on feedback received from the November 15, 2013 call. Participants in this webinar included representatives from Northern Cheyenne Tribe, Cheyenne River Sioux Tribe, SD SHPO, BLM South Dakota and Montana field offices, ACHP, EPA Region 8, and Powertech (USA), Inc. & its consultant.

On Tuesday, December 17, 2013, the NRC staff hosted an additional webinar as the consulting parties were not able to go through the entire draft PA on Friday December 13, 2013. Participants in this webinar included representatives from Cheyenne River Sioux Tribe, SD SHPO, BLM South Dakota and Montana field offices, ACHP, EPA Region 8, and Powertech (USA), Inc. & its consultant.

The NRC staff has revised the draft PA based on the feedback received on December 13 and 17, 2013. According to the schedule discussed during the webinars and attached to this email, consulting parties have until **February 5, 2014** to provide comments to the NRC.

The staff encourages other consulting parties to provide feedback on the draft PA even if you were not able to participate in the webinars.

The NRC staff will host another webinar on February 14, 2014 from 9:00 to 11:00 am (MDT) to review comments received and finalize the PA. The NRC staff plans to send out a revised draft PA prior to this webinar and appreciates any feedback prior to that date. Please provide your feedback to me.

For your information, the NRC has invited the following parties to participate in the webinars and the development of the PA:

BLM  
SD SHPO  
ACHP  
Powertech (USA), Inc.  
Consulting Tribes (23)  
EPA R8

The following consulting parties attend the webinar hosted o 11/5/13, 12/13/13, and 12/17/13:

Webinar				
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<b>Participants</b>	<b>Date: 11/15/13</b>	<b>Date: 12/13/13</b>	<b>Date:12/17/13</b>	<b>Date:02/14/14</b>
ACHP	X	X	X	
SD SHPO Project Review Officer	X	X		
BLM Montana office	X	X	X	
BLM SD Field office	X	X	X	
EPA R8	X	X	X	
Oglala Sioux Tribe	X			
Northern Cheyenne	X	X		
Cheyenne River Sioux		X	X	
Powertech and its consultant	X	X	X	
NRC and its consultant	X	X	X	

Sincerely,

Haimanot Yilma  
Project Manager  
FSME/DWMEP/EPPAD/ERB  
U.S Nuclear Regulatory Commission  
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**Hearing Identifier:** Powertech\_Uranium\_Dewey\_Burdock\_LA\_Public  
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**Subject:** Draft Programmatic Agreement for the Dewey-Burdock Project for Review and Comment  
**Sent Date:** 12/23/2013 3:10:58 PM  
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**From:** Yilma, Haimanot

**Created By:** Haimanot.Yilma@nrc.gov

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<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	3288	12/23/2013 3:10:59 PM
Draft PA Dewey-Burdock Project 12-23-13.docx		71982
Schedule for Section 106 process rev 2.docx	21579	
NRC NRHP Determinations - Table 1.0 for Draft PA 12-13-13.docx		78747
DRAFT Appendix for the Dewey-Burdock Project PA 12-23-13.docx		461136

**Options**

**Priority:** Standard  
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**Working DRAFT**

**PROGRAMMATIC AGREEMENT  
AMONG  
U.S. NUCLEAR REGULATORY COMMISSION  
U.S. BUREAU OF LAND MANAGEMENT  
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE  
POWERTECH (USA) INC.  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
DEWEY BURDOCK IN-SITU RECOVERY PROJECT  
LOCATED IN CUSTER AND FALL RIVER COUNTIES  
SOUTH DAKOTA**

**Date 12-23-13**

**WHEREAS**, the U.S. Nuclear Regulatory Commission (NRC) received an application from Powertech Inc. (Powertech or applicant) for a new radioactive source materials license to develop and operate the Dewey-Burdock Project (the Undertaking) located near Edgemont, South Dakota in Fall River and Custer Counties (Project) pursuant to NRC's license authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.*; and

**WHEREAS**, NRC is considering issuance of a license for the Dewey-Burdock In-Situ Recovery [ISR] Project pursuant to its authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* which makes the project an Undertaking requiring compliance by NRC with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*, and its implementing regulations (36 C.F.R. Part 800 (2004)); and

**WHEREAS**, if licensed, the proposed Undertaking will use an ISR methodology to extract uranium and process it into yellowcake at the Dewey-Burdock site. The proposed Undertaking boundary consists of approximately 10,580 acres (4,282 ha) located on both sides of Dewey Road (County Road 6463) and portions of Sections 1-5, 10-12, 14, and 15, in Township 7 South, Range 1 East and portions of Sections 20, 21, 27, 28, 29, and 30-35 in Township 6 South, Range 1 East, Black Hill Meridian, (see Appendix A and Figure 1.0, for fuller description of the Undertaking and map of Project area ); and

**WHEREAS**, under the terms of the General Mining Act of 1872 Powertech has filed Federal Lode mining claims and secured mineral rights on 240 acres [97 ha] of public lands open to mineral entry and administered by the U.S. Department of the Interior, Bureau of Land Management (BLM) , and has the right to develop the mining claims as long as it can be accomplished without causing unnecessary or undue degradation to public lands, and is in accordance with pertinent laws and regulations under 43 CFR Subpart 3809; and

**WHEREAS**, review and approval of a Plan of Operations (POO) for the project that meets the requirements of 43 CFR Subpart 3809 by the BLM-South Dakota Field Office makes the project an Undertaking requiring compliance by BLM with Section 106 of the NHPA, 16 U.S.C. §§ 470 *et. Seq.* and 36 CFR Part 800; and

**WHEREAS**, the BLM, by letter dated April 7, 2011, has designated the NRC as the lead agency for compliance with requirements of Section 106 of the NHPA regarding the Dewey-Burdock Project

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(ADAMS Accession No. ML11116A091) pursuant to 36 C.F.R. § 800.2(a)(2) of the Section 106 regulations; and

**WHEREAS**, under the terms of the Safe Drinking Water Act, Powertech has submitted to the Environmental Protection Agency (EPA) two Underground Injection Control (UIC) Permit Applications for ISR uranium recovery and the disposal of treated ISR process fluids at the Dewey Burdock site; the EPA will issue draft permit decisions that meet the requirements of UIC regulations found at 40 CFR Parts 124, 144, 146 and 147; and the EPA is conducting a separate consultation process in part to fulfill agency requirements for government-to-government consultation in accordance with EPA's Policy on Consultation and Coordination with Indian Tribes; and

**WHEREAS**, the NRC determined a phased process for compliance with Section 106 of the NHPA is appropriate for this Undertaking, as specifically permitted under 36 C.F.R. § 800.4(b)(2), such that completion of the evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Programmatic Agreement (PA); and

**WHEREAS**, the area of potential effects (APE) for the Undertaking is the area at the Dewey-Burdock Project site and its immediate environs, which may be directly or indirectly impacted by construction and operation activities associated with the proposed project, as described in Appendix A; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the NRC, by letter dated April 24, 2013, notified the Advisory Council on Historic Preservation (ACHP) of the potential for adverse effects to historic properties from the Undertaking and invited the ACHP to participate in Section 106 consultation and in the preparation of this PA; and

**WHEREAS**, the ACHP, by letter, dated October 28, 2013, formally entered the consultation; and

**WHEREAS**, the NRC initiated consultation with the South Dakota State Historic Preservation Officer (SD SHPO) on December 2, 2009 during a face to face meeting held in Pierre South Dakota; and

**WHEREAS**, the NRC invited Powertech to participate in Section 106 consultation and preparation of this PA; and

**WHEREAS**, the NRC invited twenty-three (23) Indian tribes who may ascribe religious and cultural significance to historic properties that may be affected by the Undertaking, including the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboine and Sioux Tribes, the Lower Brule Sioux Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, and the Yankton Sioux Tribe (collectively referred to as Tribes), to each be a consulting party in the Section 106 consultation by letters dated March 19, 2010 (ML100331999) and September 8, 2010 (ML102450647); and

**WHEREAS**, the following twenty-three (23) tribes participated in consultation with the NRC and BLM regarding the proposed Dewey-Burdock Project: the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboine and Sioux Tribes, the Lower Brule Sioux

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Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, and the Yankton Sioux Tribe ; and

**WHEREAS**, the NRC offered all twenty-three (23) consulting tribes the opportunity to participate in a tribal field survey to identify properties of religious and cultural significance to them for the proposed Dewey-Burdock project ISR facility by letter dated February 8, 2013; and

**WHEREAS**, the following seven (7) tribes participated in the tribal field survey: the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Cheyenne and Arapaho Tribes of Oklahoma, the Crow Nation, the Santee Sioux Tribe, the Crow Creek Sioux Tribe, and the Turtle Mountain Band of Chippewa Indians as discussed in details in Appendix A; and

**WHEREAS**, surveys to identify historic properties have been completed for the project including Class III archeological Surveys, tribal surveys to identify properties of religious and cultural significance, and a line-of-site analysis as discussed in Appendix B; and

**WHEREAS**, the NRC received tribal survey reports with eligibility recommendations from the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma, as well as field notes from the Crow Nation as discussed in Appendix A; and

**WHEREAS**, the NRC staff has reviewed and evaluated the results of the applicant's Class III archeological surveys, tribal surveys, and the line-of-sight analysis in the development of initial recommendations concerning eligibility of properties identified within the APE for the Undertaking for inclusion on the National Register of Historic Places (NRHP) as presented in Appendix B ; and

**WHEREAS**, the NRC is seeking concurrence from the SD SHPO on these eligibility determinations as discussed in Appendix B; and,

**WHEREAS**, the NRC invited all 23 consulting tribes to be to a party to this PA and to participate in its development; and

**WHEREAS**, the following Tribes participated in the preparation of this PA: Northern Cheyenne, Cheyenne River Sioux and Oglala Sioux; [TBD-include other tribes as necessary]; and

**WHEREAS**, each of the twenty-three (23) consulting tribes will be invited to sign the PA as a Concurring Party; and

**WHEREAS**, the BLM, as a federal agency with a federal action related to this Undertaking has participated in the Section 106 consultation and development of this agreement and will be a signatory; and

**WHEREAS**, the EPA has participated in discussions of this agreement; and

**WHEREAS**, the PA will be entered as a condition on the NRC license, if granted; and

**WHEREAS**, the PA will be entered as a condition of Powertech Inc.'s POO, if approved by the BLM; and

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**NOW, THEREFORE**, the NRC, BLM, South Dakota SHP, and the ACHP agree that the Undertaking will be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

**NRC shall ensure that the following measures are carried out:**

### **STIPULATIONS:**

- 1) The NRC will require that Powertech comply with all applicable stipulations and provisions of this PA as a condition of Powertech's license for the Project.
- 2) The BLM will ensure that a Record of Decision on an acceptable POO will not be signed until this PA has been executed by all required signatories.
- 3) The NRC shall not grant a license to Powertech until all required signatories have executed this PA. Upon receipt of a fully executed PA, the NRC will issue the license provided that all other requirements for the license have been met.
- 4) **Identification of Historic Properties for Installation of Power Transmission Lines in Areas to be determined:**
  - a) Powertech will notify the NRC and BLM in writing when any ground-disturbing activities will be carried out on lands outside the license boundary for the installation of electrical transmission. This written notification will occur three (3) months prior to commencing work so that NRC and BLM can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.
  - b) Powertech, as part of the notification, will provide the NRC and BLM a proposed survey scope including the methods for identifying historic properties within the transmission corridor, reporting requirements, and schedules for the identification effort.
  - c) The NRC will notify other signatories and consulting tribes when additional identification or other studies are proposed and provide all participating parties 30 days to comment.
  - d) Powertech will contract for any required archaeological surveys of the areas of ground disturbance within the transmission corridor and for any necessary testing for evaluations of eligibility for NRC to make NRHP eligibility determinations. Survey and testing will be conducted under the supervision of individuals meeting the Secretary of the Interior's Professional Qualifications Standards in Archaeology.
  - e) The NRC will consult with interested tribes and provide the opportunity to identify and evaluate places of religious and cultural significance to tribes.
  - f) Powertech shall offer to provide funding to tribal representatives for the purpose of completing identification of properties of religious and cultural significance to them.

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- g) The NRC will submit survey reports and other identification and evaluation studies to the BLM, SD SHPO, and Tribes and will request their review and comments to be completed within 45 days.
- h) The NRC may request revisions to reports or additional investigations, as appropriate, based on comments made by BLM, SD SHPO and Tribes. The NRC will provide revised documents to federal agencies, SD SHPO, and Tribes. A second review period with comments to be completed within 30 days may be requested, if necessary.
- i) If no historic properties are identified, then no further work will be required.
- j) The NRC will submit final reports with determinations of eligibility and effect to the SD SHPO for review and concurrence to be completed within 30 days. Other consulting parties will get a copy of the NRC determination for review.
- k) Should any NRHP-eligible properties be found, the assessment of effect and resolution of adverse effect will be addressed following Stipulations 6 and 7.
- l) Objections regarding the NRC determinations of eligibility or effect will be addressed in accordance with 36 CFR Sections 800.4 and 800.5.

### **5) Unevaluated Properties previously identified within the APE for the Undertaking:**

- a) All unevaluated properties will be protected in place by Powertech until an eligibility determination is completed, in accordance with 36 CFR Section 800.4.
- b) If changes in the design or operation of the Project, including changes to the wellfield configurations, will result in ground disturbance that may affect unevaluated properties, Powertech shall sponsor necessary supplemental research and/or field investigations to gather information necessary for the NRC, BLM, consulting tribes, and SD SHPO to evaluate the NRHP eligibility of the affected properties, prior to commencing any ground-disturbance activities.
- c) Powertech will provide in writing proposed investigation methods to the NRC and BLM three (3) months prior to commencing work so that NRC and BLM can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.
- d) The NRC will notify other signatories and consulting tribes when additional studies to evaluate the NRHP eligibility of currently unevaluated properties will be needed and will provide all parties a 30 day opportunity to comment on the scope, methods, and reporting requirements.
- e) The NRC will submit eligibility evaluation studies to BLM, SD SHPO, and Tribes and will request their review and comments within 45 days.
- f) The NRC may request revisions to the reports or additional investigations, as appropriate, based on comments received from BLM, SD SHPO, and Tribes. The NRC will provide revisions to BLM, SD SHPO and Tribes and will request a second review with comments to be completed within 30 days, as necessary.



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- g) The NRC will submit final reports with determinations of eligibility and effect to SD SHPO for review and concurrence to be completed within 30 days.
- h) If the evaluated properties are found to be NRHP eligible, then avoidance will be the preferred option. If avoidance is not possible and an adverse effect will result, resolution of adverse effects will be addressed following Stipulation 7.
- i) Objections regarding NRC determinations of eligibility or effect will be addressed in accordance with 36 CFR Sections (insert section symbol) 800.4 and 800.5.

### **6) Assessing Effects:**

- a) Based on the results of the Class III archaeological and Tribal surveys, over 250 historic properties (including archaeological sites, historic structures, and properties of religious and cultural significance) have been found within the areas of land disturbance.
- b) The NRC also conducted a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within three miles of the tallest buildings on both the Dewey and Burdock facilities.
- c) In accordance with 36 CFR 800.5 and taking into account tribal input, Class III archaeological survey results, and line-of-sight analysis, the NRC has made its initial effects determination and provided a copy to the SD SHPO on December 16, 2013 for a 30 day concurrence period. The effects determination is presented in Appendix B.
- d) The NRC distributed its determination of effect forwarded to the SD SHPO with associated documentations pursuant to 36 CFR 800.6(a)(3) to all consulting parties, as appropriate, for a 30-day review period. The NRC will consult to resolve any comments received in writing within the specified review period.
- e) If the SD SHPO concurs with NRC's determinations of effect, or if no written objections are received within the 30 day review period, the effect determination is final.
- f) The NRC will consult to resolve any written objections received regarding determinations of effect. If a dispute arises, it will be resolved in accordance with Stipulation 15.
- g) Based on its initial determination of effect, the NRC has found that there will be adverse effects to historic properties within the areas of ground disturbance as the result of this Undertaking (see Appendix B). If the SHPO agrees to the initial effects, determination, the NRC will consult with all signatories and consulting tribes to develop proposals to resolve these effects in accordance process set forth in this PA.

### **7) Resolution of Adverse Effects:**

- a) Powertech will draft a written treatment plan, which identify measures to avoid, minimize, or mitigate adverse effects to historic properties, in accordance with 36 CFR § 800.6. These treatment plans may cover a single property, groups of geographically or functionally related properties, or a specific type of effect, e.g., visual. Draft treatment plans will be submitted for NRC review and approval 90 days prior to construction, so the NRC can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in

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the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.

- I. The treatment plan shall contain a description of the effects on each historic property and a description of the proposed treatment for each historic property.
  - II. If monitoring by a qualified archaeologist and/or Tribal monitors is part of the strategy for identifying and resolving adverse effects, the treatment plan shall include a Monitoring Plan. The objective of monitoring is to protect extant sites from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for discoveries per Stipulation 10 are implemented.
  - III. If data recovery is part of the strategy for resolving adverse effects, the treatment plan shall specify all details of the research design, field and laboratory work methodology (including mapping, geomorphological or other specialized studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation as appropriate), and report preparation.
- b) The NRC will consult with all signatories and consulting tribes concerning the draft treatment plans developed by Powertech. A teleconference may be held to develop and review alternative measures to avoid, minimize, or mitigate adverse effects to individual properties or groups of related properties.
  - c) The NRC will submit draft treatment plans to all signatories and consulting tribes for review and comment to be completed within 45 days.
  - d) The NRC may ask Powertech to revise draft treatment plans as appropriate based on timely comments received from the consulting parties. The NRC will forward revisions to draft treatment plans with a request for a second review by all signatories and consulting tribes to be completed within 30 days.
  - e) The NRC shall direct Powertech to implement the treatment plan once the SD SHPO concurs with the plan.
  - f) If, after consultation, the NRC and the SD SHPO cannot agree on appropriate terms for the treatment plan, the NRC will refer the matter to the ACHP for comment pursuant to Stipulation 14 and will consider the ACHP comments in reaching a final decision on measures to resolve the adverse effects.

### **8) Coordination with Other Federal Reviews:**

In the event that the Powertech applies for additional approvals or other assistance from federal agencies for the Undertaking and the Undertaking remains unchanged, the approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with the amendment process in Stipulation 16.

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### 9) Confidentiality:

The NRC and BLM acknowledge the need for confidentiality of certain tribal spiritual and cultural information that has been or may be provided to the NRC and BLM during the consultation process for this Project. Information provided by consulted tribal members, identified as sensitive, and requested to remain confidential will remain confidential to the extent permitted by state and federal laws.

All consulting parties shall restrict disclosure of information concerning the location or other characteristics of historic properties, including properties of religious and cultural significance to tribes, to the fullest extent permitted by law in conformance with Section 304 of the NHPA, South Dakota Codified Laws (SDCL), § 1-20-21.2, Section 9 of the ARPA, and Executive Order on Indian Sacred Sites 13007 (61 FR 26771; May 29, 1996).

### 10) Unanticipated Discoveries:

If previously unknown historic properties or other characteristics are discovered during the implementation of the Dewey-Burdock Project, all ground disturbance activities shall halt within 200 feet of the area of discovery to avoid or minimize impact until the discovery is properly evaluated by qualified personnel. The following steps shall be taken:

- a) All ground disturbance activity within 200 feet of the discovered artifact should cease until the discovery is properly evaluated.
- b) Powertech will notify the NRC, the BLM (if the site is on BLM land), and the SD SHPO of the discovery within 48 hours.
- c) Powertech will have the unanticipated discovery evaluated for NRHP eligibility by a professional who meets the Secretary of the Interior's Professional Qualifications Standards in Archaeology (36 CFR Part 61) and SD state laws, as applicable.
- d) Powertech will provide results of evaluation and initial eligibility recommendation for NRCs and/or BLMs review and consideration within 10 business days of the discovery.
- e) The NRC and/or BLM (as appropriate), in consultation with the consulting tribes, shall evaluate the historic properties to determine if they meet the NRHP criteria and request SD SHPO concurrence.
- f) If the NRC (and BLM, as appropriate) and the SD SHPO agree that a property is eligible for listing on the NRHP, the NRC and/or BLM (as appropriate), in cooperation with the consulting tribes, will evaluate the potential effects to that historic property according to Stipulation 7 above.
- g) Human remains identified during ground disturbance activities will be evaluated in accordance with Stipulation 11.
- h) Work may continue in other areas of the site; however, ground disturbance activities will not resume in the area of discovery unless the NRC and/or BLM has issued a written notice to proceed.

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### 11) Human Remains:

- a) The NRC, BLM, and Powertech recognize that human remains, funerary objects, sacred objects, and items of cultural patrimony encountered during ground disturbance activities should be treated with dignity and respect.
- b) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on BLM land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR PART10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land.
- c) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law as described in Appendix D– Treatment of Human Remains. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable state law.

### 12) Disposition of Archaeological Collections:

- a) BLM will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on BLM land under its jurisdiction, in accordance with 36 CFR Part 79, “Curation of Federally-Owned and Administered Archaeological Collections.” BLM will consult with Indian tribes as required in 36 CFR Part 79.
- b) Powertech shall ensure that all records and materials (collections) produced during the course of archaeological surveys and/or excavation on federal lands are curated at Billings Curation Center in accordance with the Billings Curation Center Packaging Requirements and provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections".
- c) Where testing or excavation is conducted on private land, any recovered collections remain the property of the landowner. Powertech will return the collections to landowners with the assistance of the SHPO. Powertech will encourage landowners to donate the collection(s) to the SD Archaeological Research Center or a Tribal entity, in coordination with the NRC, SHPO, and/or participating Tribes. Where a property owner declines to accept responsibility for the collection(s) and agrees to transfer ownership of the collection(s) to SD Archaeological Research Center or Tribal entity, Powertech will ensure curation of the collection(s) in accordance with Stipulation 12.

### 13) Qualifications:

All historic property identification, evaluation, and mitigation carried out pursuant to this PA shall be performed by or under the direct supervision of qualified individuals in the appropriate historic preservation discipline meeting, at a minimum, the appropriate standards set forth in 36 CFR Part 61.

In recognition of the special expertise tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR Part 61 will not be applicable to knowledgeable designated tribal representatives carrying out identification and evaluation efforts for properties of religious and cultural significance to them.

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### 14) Compliance Monitoring:

NRC affirms that avoidance of adverse effects to historic properties remains the preferred course of action.

- a) Powertech will ensure employees and/or contractors involved in all phases of the Project are aware of and comply with the requirements of the PA. Compliance with this PA is a condition of the NRC license and a condition of the BLM POO.
- b) Powertech will develop a Monitoring Plan specific to this project that identifies specific areas, activities, and if appropriate, historic properties that will require monitoring during development of the Project to ensure that the requirements of this PA and the treatment plans developed under the provisions of Stipulation 7 are met. The monitoring plan will include provisions for annual reporting of the results of the monitoring program to the signatories and the concurring parties to this PA.
  - i) Powertech will provide the Monitoring Plan to the NRC, which will distribute it to the signatories and consulting tribes to this agreement for a 30 day review and comment period.
  - ii) The NRC will request that Powertech make any necessary revisions to the plan, and the revised Monitoring Plan will remain in effect for all covered ground-disturbing activities during the license period.
- c) Powertech will engage the services of a Monitor with specific responsibilities to coordinate the requirements of the monitoring plan, the treatment plans, and this agreement during project construction.
  - i) The Monitor will meet the Secretary of the Interior's Professional qualifications for Archaeology. Preference will be given to tribal enterprises meeting those qualifications, especially during phases of the monitoring program where sites with religious and cultural significance to the tribes might be affected. In the case of an unanticipated discovery or imminent threat to an avoided historic property, the monitor shall have authority to stop certain construction activities.
  - ii) The Monitor will coordinate with Powertech and its contractors during the construction phases of the Project.
- d) Powertech will provide periodic updates to all consulting parties on the status of the monitoring plan as specified in Appendix C.

### 15) Dispute Resolution:

Should any required signatory to this PA object in writing within 30 days to any actions proposed or the manner in which terms of this PA are implemented, the NRC shall consult with such party to resolve an objection. When the NRC determines an objection cannot be resolved, the NRC will forward all documentation relevant to the dispute, including the NRC proposed resolution, to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- a) Advise the NRC the ACHP concurs in the NRC proposed final decision, whereupon the NRC shall respond accordingly;

## Working DRAFT

- b) Provide the NRC with recommendations, which the NRC will consider in reaching a final decision on the objection; or
- c) Notify the NRC the objection will be referred to the ACHP membership for formal comment and refer the objection to the ACHP membership for comment within thirty (30) days. The NRC will consider comments in accordance with 36 CFR §800.7(c)(4).
- d) Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the NRC may proceed with its proposed response.

Prior to making a final decision on the dispute, the NRC will prepare a written response that addresses timely comments from signatories and concurring parties to the PA. The NRC will provide signatories, concurring parties, and the ACHP with a copy of its written response. The NRC may implement its final decision.

The NRC will consider recommendations and comments made by the ACHP that are related to the objection. NRC responsibilities under this Agreement, which are not the subject of the objection, shall remain unchanged.

### **16) Amendment:**

A signatory to this agreement may request it be amended, whereupon the signatory parties will consult to reach a consensus on the proposed amendment. Concurring parties will be provided an opportunity to consult and comment on the proposed amendment. An amendment will be effective on the date the amended PA is signed by all of the signatories to this PA. The EPA may in the future decide to rely on this agreement in connection with satisfying its section 106 responsibilities, and if so may join the agreement by adding its signature and circulating the amended agreement.

### **17) Termination:**

- a) Any required signatory to this PA may initiate termination by providing written notice to the signatories and concurring parties of their intent. After notification by the initiating signatory, the remaining signatories and concurring parties shall have thirty (30) days to seek agreement on an amendment or other actions and avoid termination. If such consultation fails, the termination will go into effect at the end of the thirty (30) days, unless all the signatories agree to a longer period.
- b) In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.7 for the Undertaking covered by this PA.

### **18) Duration:**

Implementation of the stipulations in this agreement must begin within five (5) years from the date of its execution. During that time, the NRC may consult with the signatories and concurring parties to amend the agreement in accordance with Stipulation 16. The agreement will be in place until the termination of the license.

### **19) Anti-Deficiency Act:**

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The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act ( Pub.L. 97-258, 96 Stat. 923; 31 U.S.C. §1341, Limitations on expending and obligating amounts). If compliance with the Anti-Deficiency Act alters or impairs the ability of the NRC to implement this Agreement, the NRC will consult in accordance with the amendment and termination procedures in this Agreement.

Execution of this PA by the NRC, BLM, SD SHPO, ACHP, and Powertech and the implementation of its terms is evidence the NRC and BLM have taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**Signatories:**

United States Nuclear Regulatory Commission

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Larry W. Camper, Director  
Division of Waste Management and Environmental Protection

United States Bureau of Land Management

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Marian M. Atkins, South Dakota Field Manager

South Dakota State Historic Preservation Office

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Jay Vogt, State Historic Preservation Officer

South Dakota Attorney General's Office Approval as to Form

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Advisory Council on Historic Preservation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: John Fowler, Executive Director

**Invited Signatories:**

**Working DRAFT**

Powertech USA, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**Concurring Parties:**

Cheyenne and Arapaho Tribes

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Cheyenne River Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Apsaalooke (Crow) Nation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Crow Creek Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Eastern Shoshone Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Flandreau-Santee Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Fort Peck Assiniboine/Sioux

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Lower Brule Sioux Tribe



**Working DRAFT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Lower Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Northern Arapaho Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Northern Cheyenne Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Oglala Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Omaha Tribe of Nebraska

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Pawnee Nation of Oklahoma

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Ponca Tribe of Nebraska

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Rosebud Sioux Tribe

**Working DRAFT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Santee Sioux Tribe of Nebraska

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Sisseton-Wahpeton Oyate Tribes

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Spirit Lake Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Standing Rock Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Mandan, Hidatsa & Arikara Nation  
Three Affiliated Tribes

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Turtle Mountain Band of Chippewa

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Yankton Sioux Tribe

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule for completing the Section 106 process for the Proposed Dewey-Burdock Project

	<b>Task</b>	<b>Due Date</b>
1.	Host a teleconference to review the Draft PA outline	11/15/13
2.	Develop Draft PA based on teleconference outcome	11/15/13 - 11/22/13
3.	Circulate Draft PA to all consulting parties for review	11/22/13
4.	Receive comments from all consulting parties	12/6/13
5.	Host a teleconference on the draft PA	12/13/13
6.	Incorporate consulting parties comments on draft PA and develop final <u>draft</u> PA	12/16/13 - 12/19/13
<u>6a*</u>	<u>Host another teleconference</u>	<u>12/17/13</u>
7.	Circulate Final <u>draft</u> PA to all consulting parties	12/20/13
8.	Receive comments on final <u>draft</u> PA from all consulting parties <u>(per the request of some consulting parties, this date was changed from 1/24/14 to 02/05/14)</u>	<u>02/05/14</u>
9.	Host a teleconference to go over final <u>draft</u> PA	02/14/14
10.	Submit final PA for signature	02/21/14

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
CU02500002	Building 1 (Log Barn) at the Richardson Homestead (CU00000052)	Eligible A	No	Yes	Yes	Adverse Effect (LA)/No Adverse Effect (Visual)	Found eligible for listing on NRHP in April 2012 under Criterion A. Site located ~76 m [250 ft] south of land application areas. Site will be fenced off to ensure avoidance.
39CU3602 TS119	Artifact Scatter; Hearth	Eligible A	No	No	Yes	No Effect	Viewshed obstructed by tree cover
39CU3607 TS116-117	Artifact Scatter; Hearth	Eligible A	No	No	Yes	No Effect	Viewshed obstructed by tree cover
39FA0096 TS001, TS004, TS013	Occupation; Artifact Scatter; Nonfarm Ruins; Dump; Burial; 2 Tribal Features	Eligible A	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Recommend Evaluative Testing. Viewshed obstructed by tree cover; other modern intrusions
39FA1881	Artifact Scatter; Cairn	Eligible A	No	No	Yes	No Adverse Effect (Visual)	Partially screened by topography; other modern intrusions. Site will be avoided
39FA1890 TS012	Artifact Scatter; Cairn; 2 Tribal Features	Eligible A	No	No	Yes	No Effect	Facilities not visible from property. Site will be avoided
39FA1927	6 Cairns	Eligible A	No	No	Yes	No Effect	Facilities not visible from property. Site will be avoided
39FA1952	Hearth; Artifact Scatter	Eligible A	No	No	Yes	No Adverse Effect (Visual)	Other modern intrusions. Site will be Avoided
TS002	stone circle	Eligible A	No	No	Yes	No Adverse Effect (Visual)	Other modern intrusions
TS118	hearth	Eligible A	No	No	Yes	No Effect	Viewshed obstructed by tree cover
TS120	hearth	Eligible A	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Site will be avoided; other modern visual intrusions
CU00000050	Bakewell Ranch/ Edna and Ernest Young Ranch Historic District (90000949)	Eligible A C	No	No	Yes	No Adverse Effect (visual)	Listed on the NRHP. Historic property will be avoided
39CU0459 TS108-111	Artifact Scatter; Hearth; 4 Tribal Features	Eligible A C	No	No	Yes	No Adverse Effect (Visual)	Other modern intrusions. Site will be avoided. The boundary for 39CU0459 includes two smaller Artifact Scatters: 39CU0461 and 39CU0528.

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU2000	Railroad	Eligible A C	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Site crosses proposed wellfield areas; site will be avoided. Setting is confined to narrow corridor along railroad.
39CU3600 TS114-115	Artifact Scatter; Stone Alignment	Eligible A C	No	No	Yes	No Adverse Effect (Visual)	Other modern obstructions. Site will be avoided
39CU3604 TS121-122	Artifact Scatter; Hearth; Stone Circle	Eligible A C	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Other modern intrusions.
39CU3620	Artifact Scatter; Hearth; Cairn	Eligible A C	No	No	Yes	No Effect	Viewshed obstructed by tree cover. Site will be Avoided. Partly located on USFS property. ALAC boundary may be expanded to include TS106 and TS107
39FA1922 TS014-017	Artifact Scatter; Stone Circle; 4 Tribal Features	Eligible A C	No	No	Yes	No Effect	Facilities not visible from property. Site will be avoided. Located on BLM Property
39FA1923 TS018, TS142-143	Artifact Scatter; Monument; 3 Tribal Features	Eligible A C	No	No	Yes	No Effect	Facilities not visible from property. Site will be avoided. Located on BLM Property
39FA1926 TS068-073	Artifact Scatter; 6 Tribal Features	Eligible A C	No	No	Yes	No Effect	Facilities not visible from property. Site will be avoided
39FA2000	Railroad	Eligible A C	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Site crosses proposed wellfield areas. Setting is confined to narrow corridor along railroad.
TS040	ceremonial site	Eligible A C	No	No	Yes	No Adverse Effect (Visual)	Partially screened by timber; other modern intrusions. Site will be avoided
TS041-042	ceremonial site	Eligible A C	No	No	Yes	No Adverse Effect (Visual)	Partially screened by timber; other modern intrusions. Site will be avoided
TS047	ceremonial site	Eligible A C	No	No	Yes	No Effect	Site is located more than 3 miles from nearest processing facility

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
TS080-089, TS098	stone feature	Eligible A C	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Mostly screened by topography; other modern intrusions
39CU0584 TS043-046, TS053, TS132-140	Occupation; Burial; 14 Tribal Features	Eligible A C D	No	No	Yes	No Effect	Viewshed obstructed by tree cover. Site will be avoided. Avoid as possible gravesite.
TS006	Cairn	Eligible A C D	No	No	Yes	No Adverse Effect (Visual)	Other modern intrusions. Avoid as gravesite.
39CU3567 TS031-33, TS141	Artifact Scatter; Stone Circle; 4 Tribal Features	Eligible A D	No	Yes	Yes	Adverse Effect (LA)/No Adverse Effect (Visual)	Other modern intrusions. Avoidance
39FA2530	Rockshelter, Rock Art, Artifact Scatter	Eligible A D	No	No	Under Evaluation		Located outside license boundary but within APE for visual effects
39FA2531	Rock Art	Eligible A D	No	No	Under Evaluation		Located outside license boundary but within APE for visual effects
TS007-011	stone circle	Eligible A D	Yes	Yes	Yes	Adverse Effect (DDW and LA)/No Adverse Effect (Visual)	Other modern intrusions. TS007-TS011 may be considered a single site.
39FA1862 TS112-113	Artifact Scatter; Cairn, Stone Circle 2 Tribal Features	Eligible A D (Unevaluated)	No	No	Yes	No Adverse Effect (Visual)	Other modern intrusions. Site will be avoided. Located outside license boundary
FA00000111	Bridge 24-020-020 over Beaver Creek	Eligible C	No	No	No	No Effect	NR Status per CRGRID; Located outside license boundary
39CU0271 TS019 TS035 TS130	Occupation; Hearth; 3 Tribal Features; Possible Gravesite	Eligible D	Yes	Yes	NA	Adverse Effect (DDW and LA)	This site is adjacent to proposed land disturbance. Avoid as possible gravesite. Tribes recorded the site but did not provide eligibility recommendations
39CU0577	Occupation site; artifact scatter	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU0578	Dump; Occupation	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU0586	Occupation	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU0588	Occupation	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU0590	Artifact Scatter	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU0593	Occupation; Artifact Scatter	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU2733	Hearth; Artifact Scatter	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU2735	Occupation	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU2738	Occupation	Eligible D	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU3592	Artifact Scatter	Eligible D	Yes	Yes	NA	Adverse Effect (DDW and LA)	Site located within a proposed wellfield area. Site will be fenced off to ensure avoidance
39FA1941	Artifact Scatter; Hearth	Eligible D	Yes	Yes	NA	Adverse Effect (DDW and LA)	Site located east of the proposed Burdock central processing plant within a proposed wellfield area.
39FA1955	Hearth; Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1958	Hearth; Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1964 TS099-105	Artifact Scatter; Hearth; Cairn	Unevaluated	No	No	NA	No Effect	Site Will be Avoided. Tribes recorded the site but did not provide eligibility recommendations
39FA1965	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
TS061	stone circle	Unevaluated	No	No	NA	No Effect	Located on or near license boundary
TS062	effigy	Unevaluated	No	No	NA	No Effect	Outside license boundary
TS075	cairn	Unevaluated	No	No	NA	No Effect	Located 60 meters outside license boundary
TS079	stone circle	Unevaluated	No	No	NA	No Effect	Located 230 meters outside license boundary
TS106	fasting circle	Unevaluated	No	No	NA	No Effect	Located on USFS Property 40 meters outside license boundary. Possibly associated with 39CU3620
TS107	modern grave and circle	Unevaluated	No	No	NA	No Effect	Avoid as possible gravesite. Located on USFS Property 60 meters outside license boundary. Possibly associated with 39CU3620
TS125	burial	Unevaluated	No	No	NA	No Effect	Avoid as possible gravesite. Located on BLM Property 60 meters outside license boundary
TS126	staff	Unevaluated	No	No	NA	No Effect	Located on BLM Property 180 meters outside license boundary
TS127	fasting site	Unevaluated	No	No	NA	No Effect	Located on BLM Property 200 meters outside

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
							license boundary
TS128	fasting site	Unevaluated	No	No	NA	No Effect	Located on BLM Property 200 meters outside license boundary
TS129	fasting site/ring	Unevaluated	No	No	NA	No Effect	Located on BLM Property 290 meters outside license boundary
TS145	Prayer/offering location	Eligible D	Yes	Yes	No	Adverse Effect (DDW and LA)	Precise location is not known. Located within an 80-acre parcel. Would require relocation to assess potential for site avoidance.
39CU0032A	Artifact Scatter	Unevaluated	No	No	NA	No Effect	
39CU0456	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of proposed land disturbance
39CU0457	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of proposed land disturbance
39CU0460	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	This site is outside of proposed land disturbance
39CU0530	Artifact Scatter; Hearth; Cairn	Unevaluated	No	No	NA	No Effect	This site is outside of proposed land disturbance. Site will be avoided, no impact anticipated.
39CU0554	Artifact Scatter	Unevaluated	Yes	No	NA	Adverse Effect (DDW)	This site is within proposed land disturbance. Recommend evaluative testing
39CU0556	Artifact Scatter	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of proposed land disturbance.
39CU0558	Artifact Scatter	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	This site is within proposed land disturbance. Recommend evaluative testing
39CU0561	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of proposed land disturbance
39CU0653	Artifact Scatter	Unevaluated	No	Yes	NA	Adverse Effect (LA)	Site within proposed land disturbance. Recommend evaluative testing.
39CU3565	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3574 TS021-22	Artifact Scatter; Hearth; 1 Tribal Feature, scraper	Unevaluated	No	No	NA	No Effect	Site will be avoided. Tribes recorded the site but did not provide eligibility recommendations
39CU3584 TS025-027, TS-029	Artifact Scatter; Cairn	Unevaluated	No	Yes	NA	Adverse Effect (LA)	Tribes recorded the site but did not provide eligibility recommendations



**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU3585	Artifact Scatter and Hearth; Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3586	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3587	Artifact Scatter; Burial	Unevaluated	No	No	NA	No Effect	Site will be avoided, no impacts anticipated
39CU3597	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3599	Nonfarm Ruins; Artifact Scatter; Depression. Foundation	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3601	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39CU3603	Artifact Scatter; Hearth	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Evaluative testing recommended
39CU3605	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	Site will be Avoided
39CU3606	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	Site will be avoided
39CU3611	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3612	Artifact Scatter; Hearth	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3615	Artifact Scatter	Unevaluated	No	Yes	NA	Adverse Effect (LA)	Evaluative testing recommended
39CU3623	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3624	Artifact Scatter	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Site located less than 30.5 m [100 ft] from a proposed wellfield area. Site will undergo further evaluative testing. Avoidance recommended until

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
							testing is complete.
39CU3772	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3776	Artifact Scatter; Rock Shelter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3779	Artifact Scatter; Rock Shelter; Hearth	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3813	Hearth; Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3817	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3818	Hearth; Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3819	Depression; Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3821	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39CU3822	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA0110	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA0269	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA0270	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA0274	Artifact Scatter	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Recommend Evaluative Testing
39FA0275	Artifact Scatter	Unevaluated	No	No	NA	No Effect	
39FA0556	Artifact Scatter	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Recommend Evaluative Testing
39FA0740	Artifact Scatter	Unevaluated	No	Yes	NA	Adverse Effect (LA)	Recommend Evaluative Testing
39FA0777	Artifact Scatter	Unevaluated	N	Yes	NA	Adverse Effect (LA)	Recommend Evaluative Testing
39FA0778	Farmstead	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Recommend Evaluative Testing
39FA1859	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1863	Artifact Scatter; Cairn, Stone Circle; Alignment	Unevaluated	No	No	NA	No Effect	Site Will be Avoided. Located outside license boundary

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39FA1864	Artifact Scatter	Unevaluated	No	No	NA	No Effect	Located outside license boundary
39FA1870	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1874	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1880	Artifact Scatter	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Site will undergo further evaluative testing. Avoid until testing completed
39FA1882	Town Site, Road, School Foundation	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39FA1892	Artifact Scatter	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39FA1896	Artifact Scatter	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39FA1902	Artifact Scatter; Well/Cistern; Burial; Road	Unevaluated	No	No	NA	No Effect	Avoid as possible gravesite
39FA1912	Artifact Scatter	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39FA1920	Artifact Scatter	Unevaluated	Yes	Yes	NA	Adverse Effect (DDW and LA)	Site located ~30.5 m [110 ft] from a proposed wellfield area. Site will undergo further evaluative testing. Avoidance recommended until testing is complete.
39FA1928	Rock Shelter; Artifact Scatter	Unevaluated	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39FA1933	Artifact Scatter	Unevaluated			NA	No Effect	
39FA1935	Artifact Scatter	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1938	Artifact Scatter; Stone Alignment	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1940	Stone Circle	Unevaluated	No	No	NA	No Effect	This site is outside of land disturbance activities
TS024	stone circle	Unevaluated	No	No	NA	No Effect	Outside license boundary. Tribes recorded the site but did not provide eligibility recommendations
CU02500001	Building 4 at the Richardson Homestead (CU00000052)	Not Eligible	No	Yes	Yes	No Effect	
CU02500003	Building 7 at the Richardson Homestead (CU00000052)	Not Eligible	No	Yes	Yes	No Effect	
CU02500004	Building 9 at the Richardson Homestead (CU00000052)	Not Eligible	No	Yes	Yes	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
CU00000052	Richardson Homestead	Not Eligible	No	Yes	Yes	No Effect	
39CU0251 TS096	Artifact Scatter; Hearth; 1 Tribal Feature	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
39CU0451	Artifact Scatter	Not Eligible			NA	No Effect	
39CU0461	Isolated Find	Not Eligible	No	No	NA	No Effect	Site will be avoided; This site is part of 39CU0459
39CU0462	Isolated Find	Not Eligible	No	No	NA	No Effect	Site will be avoided
39CU0463	Artifact Scatter	Not Eligible	Yes	Yes	NA	No Effect	
39CU0464	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible				No Effect	
39CU0528	Isolated Find	Not Eligible	No	No	NA	No Effect	Site will be avoided; This site is part of 39CU0459
39CU0531	Artifact Scatter; Hearth	Not Eligible	No	No	NA	No Effect	Site will be avoided
39CU0532	Artifact Scatter	Not Eligible	No	No	NA	No Effect	Site will be avoided
39CU0557	Artifact Scatter	Not Eligible			NA	No Effect	
39CU0559	Artifact Scatter; Hearth	Not Eligible			NA	No Effect	
39CU0560	Foundation	Not Eligible			NA	No Effect	
39CU0585	Isolated Find	Not Eligible			NA	No Effect	
39CU0648	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3561	Isolated Find	Not Eligible			NA	No Effect	
39CU3562	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3563	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3566	Artifact Scatter	Not Eligible			NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU3568	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3569	Isolated Find	Not Eligible			NA	No Effect	
39CU3570	Isolated Find (originally recorded as a quarry)	Not Eligible			NA	No Effect	
39CU3571	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3572 TS034	Artifact Scatter; Stone Circle; at least 1 Tribal Feature	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
39CU3573	Artifact Scatter; Hearth	Not Eligible			NA	No Effect	
39CU3575	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3576 TS020	Artifact Scatter	Not Eligible	No	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
39CU3577	Isolated Find	Not Eligible			NA	No Effect	
39CU3578	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3579	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3580	Isolated Find	Not Eligible			NA	No Effect	
39CU3581	Isolated Find	Not Eligible			NA	No Effect	
39CU3582	Isolated Find	Not Eligible			NA	No Effect	
39CU3583	Artifact Scatter; Depression	Not Eligible			NA	No Effect	
39CU3588	Quarry	Not Eligible			NA	No Effect	
39CU3589	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU3590	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3591	Isolated Find	Not Eligible			NA	No Effect	
39CU3593 TS055	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
39CU3594	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3595	Isolated Find	Not Eligible			NA	No Effect	
39CU3596 TS054	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
39CU3598	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3608	Artifact Scatter; Hearth	Not Eligible	Yes	Yes	NA	No Effect	
39CU3609	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39CU3610	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39CU3613	Artifact Scatter	Not Eligible	No	No	NA	No Effect	
39CU3614	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3616	Isolated Find	Not Eligible			NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU3617	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3618	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3619	Farmstead; Artifact Scatter	Not Eligible			NA	No Effect	
39CU3621	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3622	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3771	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3773	Isolated Find	Not Eligible			NA	No Effect	
39CU3774	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3775	Isolated Find	Not Eligible			NA	No Effect	
39CU3777	Isolated Find	Not Eligible			NA	No Effect	
39CU3778	Isolated Find	Not Eligible				No Effect	
39CU3780	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3781	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3782	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3783	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	No	No	NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39CU3810	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3811	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39CU3812	Artifact Scatter; Cairn	Not Eligible	No	No	NA	No Effect	Site will be avoided. GPS coordinates for this feature were recorded by the NATHPO only. Feature should probably be considered an extension of 39CU3812. Tribes recorded the site but did not provide eligibility recommendations
39CU3814	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3815	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3816	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3820	Artifact Scatter	Not Eligible			NA	No Effect	
39CU3823	Isolated Find	Not Eligible			NA	No Effect	
39CU3823	Isolated Find	Not Eligible			NA	No Effect	
39FA0097	Artifact Scatter; Farmstead	Not Eligible	Yes	Yes	NA	No Effect	
39FA0174	Artifact Scatter	Not Eligible	No	No	NA	No Effect	
39FA0251	Artifact Scatter; Hearth	Not Eligible			NA	No Effect	
39FA0272	Artifact Scatter	Not Eligible	Yes	Yes	NA	No Effect	
39FA0273	Artifact Scatter	Not Eligible			NA	No Effect	
39FA0557	Farmstead	Not Eligible			NA	No Effect	
39FA0558	Isolated Find	Not Eligible			NA	No Effect	
39FA0578	Isolated Find	Not Eligible			NA	No Effect	
39FA0584	Farmstead; Artifact Scatter	Not Eligible			NA	No Effect	
39FA1860	Artifact Scatter	Not Eligible			NA	No Effect	



**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39FA1861	Isolated Find	Not Eligible			NA	No Effect	
39FA1865	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1868	Isolated Find	Not Eligible			NA	No Effect	
39FA1869	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1871	Isolated Find	Not Eligible			NA	No Effect	
39FA1872	Isolated Find	Not Eligible			NA	No Effect	
39FA1873	Isolated Find	Not Eligible			NA	No Effect	
39FA1875	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1876	Isolated Find	Not Eligible			NA	No Effect	
39FA1877	Isolated Find	Not Eligible			NA	No Effect	
39FA1878	Isolated Find	Not Eligible			NA	No Effect	
39FA1879	Isolated Find	Not Eligible			NA	No Effect	
39FA1883	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39FA1884	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39FA1885	Artifact Scatter	Not Eligible	Yes	Yes	NA	No Effect	
39FA1886	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39FA1887	Artifact Scatter	Not Eligible	Yes	Yes	NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39FA1888	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39FA1889	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39FA1891	Artifact Scatter	Not Eligible	No	No	NA	No Effect	Site will be avoided. This site is outside of land disturbance activities
39FA1893	Isolated Find	Not Eligible	Yes	Yes	NA	No Effect	
39FA1894	Isolated Find	Not Eligible	Yes	Yes	NA	No Effect	
39FA1895	Artifact Scatter; Hearth	Not Eligible	Yes	Yes	NA	No Effect	
39FA1897	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No effect	
39FA1898	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1899	Isolated Find	Not Eligible			NA	No Effect	
39FA1900	Isolated Find	Not Eligible			NA	No Effect	
39FA1901	Artifact Scatter; Well/Cistern	Not Eligible			NA	No Effect	
39FA1903	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1904	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39FA1905	Artifact Scatter; Depression	Not Eligible			NA	No Effect	
39FA1906	Isolated Find	Not Eligible			NA	No Effect	
39FA1907	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1908	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1909	Isolated Find	Not Eligible	Yes	Yes	NA	No Effect	
39FA1910	Isolated Find	Not Eligible	Yes	Yes	NA	No Effect	
39FA1911	Artifact Scatter; Nonfarm Ruins	Not Eligible	No	No	NA	No Effect	
39FA1913	Artifact Scatter	Not Eligible	Yes	Yes	NA	No Effect	
39FA1914	Isolated Find	Not Eligible	Yes	Yes	NA	No Effect	
39FA1915	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	Yes	Yes	NA	No Effect	
39FA1916	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1917	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1918	Isolated Find	Not Eligible			NA	No Effect	
39FA1919	Isolated Find	Not Eligible			NA	No Effect	
39FA1921	Isolated Find	Not Eligible			NA	No Effect	
39FA1924	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1925	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1931	Isolated Find	Not Eligible			NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39FA1934	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1936	Artifact Scatter	Not Eligible			NA	No Effect	
39FA1937	Isolated Find	Not Eligible			NA	No Effect	
39FA1939	Isolated Find	Not Eligible			NA	No Effect	
39FA1944	Artifact Scatter	Not Eligible	Yes	Yes	NA	No Effect	
39FA1953	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1954	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1956	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1957	Isolated Find	Not Eligible				No Effect	
39FA1959	Artifact Scatter	Not Eligible				No Effect	
39FA1960	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible			NA	No Effect	
39FA1961	Hearth; Artifact Scatter	Not Eligible			NA	No Effect	

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
39FA1962	Artifact Scatter; stone circle; cairn	Not Eligible	No	No	NA	No Effect	NATHPO report attributes these identifications to the Cheyenne but they were identified by Alfred Burson – NATHPO. Tribes recorded the site but did not provide eligibility recommendations
39FA1963	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	No	No	NA	No Effect	This site is outside of land disturbance activities
39FA1966	Isolated Find (originally recorded as an Artifact Scatter)	Not Eligible	No	No	NA	No Effect	This site is outside of land disturbance activities
TS005	Isolated find (flake)	Not Eligible	Yes	Yes	NA	No Effect	Site will be avoided
TS023	burial	Not Eligible	No	No	NA	No Effect	Avoid as possible Gravesite. Tribes recorded the site but did not provide eligibility recommendations
TS028	stone circles (3); campsite; ceremonial site	Not Eligible	No	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS030	stone circle	Not Eligible	No	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS036	small cairn or marker	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS037	small cairn	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS048	burial	Not Eligible	No	No	NA	No Effect	Avoid as possible Gravesite. Tribes recorded the site but did not provide eligibility recommendations
TS049	burial	Not Eligible	No	No	NA	No Effect	Avoid as possible Gravesite. Tribes recorded the site but did not provide eligibility recommendations

**Table 1: NRC Determination of Eligibility and Impact Analysis for Previously Recorded Archaeological Sites and Tribal Sites – Dewey-Burdock Project**

Site Number	Type of Site	NRC's NRHP Determination*	Potential Effects			NRC's Effect Determination	Comments
			DDW	LA	Visual		
TS050	burial	Not Eligible	No	No	NA	No Effect	Avoid as possible Gravesite. Tribes recorded the site but did not provide eligibility recommendations
TS051	fasting site	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS052	stone circle	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS063	No identification	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS064	stone circle	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS065	fasting site	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations. This feature is believed to be the site identified by the NATHPO as the "small cairn" in Section 1
TS066	cairn	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS090	cairn	Not Eligible	No	No	NA	No Effect	Located outside but near 39CU3622. Tribes recorded the site but did not provide eligibility recommendations
TS091	ceremonial site	Not Eligible	No	No	NA	No Effect	Located outside but near 39CU3621. Tribes recorded the site but did not provide eligibility recommendations
TS092	cairn	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS093	possible cairn	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS094	cairn	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS095	disturbed cairn (modern survey marker)	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS097	cairn	Not Eligible	No	No	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
TS131	possible graves	Not Eligible	No	No	NA	No Effect	Avoid as possible gravesites. Tribes recorded the site but did not provide eligibility recommendations
TS144	cairn	Not Eligible	Yes	Yes	NA	No Effect	Tribes recorded the site but did not provide eligibility recommendations
39CU3564	Quarry; Cairn	Unevaluated	No	No	NA	No Effect	Site will be avoided, no impacts anticipated

\*Unevaluated archaeological sites are considered eligible for listing in the NRHP under Criterion D pending further evaluative testing.

**APPENDICES**

**RELATED TO THE**

**PROGRAMMATIC AGREEMENT**

**AMONG**

**U.S. NUCLEAR REGULATORY COMMISSION**

**U.S. BUREAU OF LAND MANAGEMENT**

**SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE**

**POWERTECH (USA), INC.**

**AND**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**REGARDING THE**

**DEWEY BURDOCK IN-SITU RECOVERY PROJECT**

**LOCATED IN CUSTER AND FALL RIVER COUNTIES**

**SOUTH DAKOTA**

## **DRAFT Appendix A – Federal Actions, Undertaking, and Area of Potential Effects**

### **Federal Actions**

On August 10, 2009, Powertech (USA), Inc. (Powertech) submitted an application for an U.S. Nuclear Regulatory Commission (NRC) source material license to construct and operate an In-Situ Recovery (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 U.S. Bureau of Land Management (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.

### **Undertaking: 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 the 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.

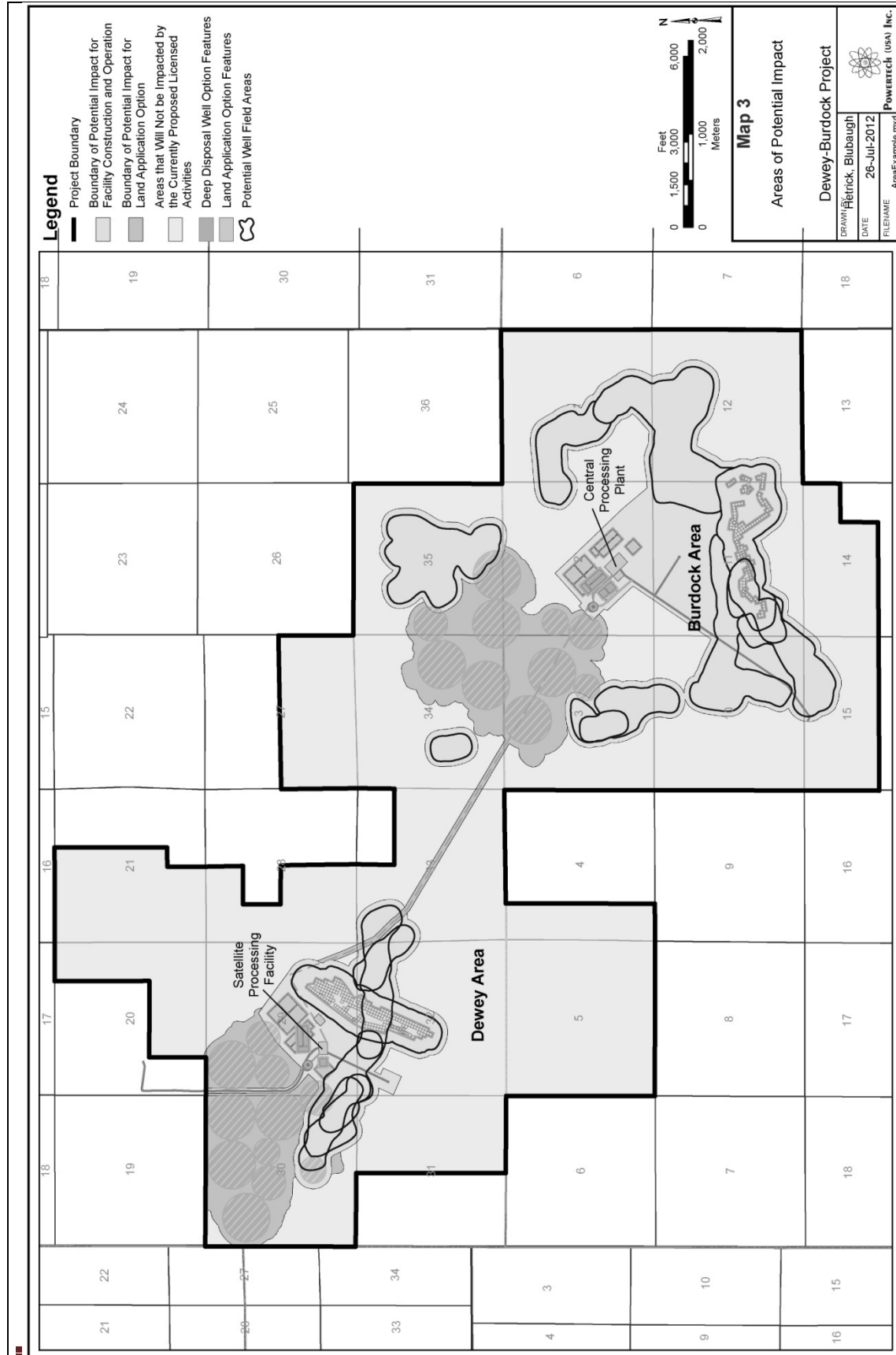


### **Project Area of Potential Effects**

The area of potential effect (APE) for the review of effects on historic properties 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 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 National Register of Historic Places (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-nine (149) 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. South Dakota State Historic Preservation Office (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\***

<b>Historic Property (Site Number, Structure Identification, or Historic District)</b>	<b>Description</b>	<b>NRHP Determination</b>
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 Dewey-Burdock site would be open for interested tribes to conduct on-the-ground surveys in the spring of 2013.<sup>1</sup>

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, 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

<sup>1</sup> Letter to Tribal Leaders Responding to Comments Received regarding Tribal Survey, Dewey-Burdock ISR project. (December 14, 2013) (ADAMS Accession No. ML12335A175)

Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma). The Crow Nation provided the 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 47 other locations representing as many as 71 tribal sites. A number of the 47 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 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 81 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 47 new discoveries were recorded as a result of the tribal cultural survey. Forty-four (44) of the 47 new discoveries are individual tribal sites or cultural features and were assigned individual survey numbers. Three tribal sites represent cultural features within a single site. For example, 11 GPS readings were taken to record the location of individual stones that make up a single stone feature (TS080-TS089, TS098). Five associated tribal features (TS007-TS011) make up another tribal site. Another cultural feature assigned duplicate survey numbers (TS041 and TS042).

Twelve (12) of the 47 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 discoveries on U.S. Forest Service (USFS) property (TS106, TS107). Sites TS107 and TS125 were identified as possible gravesites. TS106 and TS107 were recommended eligible for listing in the NRHP under criteria A and C. No eligibility recommendations were provided for the other 10 cultural features or sites. Thirty-five (35) of the 47 new discoveries were identified within the project's license boundary. Ten (10) of these tribal sites were recommended as NRHP- eligible under one or more eligibility criteria. TS002, TS118, and TS120 were recommended as eligible under Criterion A. TS145 is recommended as eligible under Criterion D. TS007-011 is recommended as eligible under Criteria A and D. TS040, TS041-TS042, TS047, and TS080-T089, 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 35 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, and 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. The NRC recommends avoidance of these sites because these sites may contain human remains, even though tribes may not consider these locations eligible for listing in the NRHP.

### **3. Visual Effects Assessment (indirect effects)**

In consultation with the South Dakota State Historic Preservation Officer (SD SHPO) and other consulting parties, the 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, the 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, the NRC staff compiled a list of 31 historic properties that are either listed on the NRHP or considered eligible for listing on the NHRP 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 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 line-of-sight (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 C.F.R. §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."

The NRC staff formally initiated the Section 106 consultation process for the proposed Dewey-Burdock ISR Project by contacting tribal governments by letter dated March 19, 2010.

The SD SHPO identified 20 Native American tribes that might attach historic, cultural, and religious significance to historic properties within the proposed Dewey-Burdock ISR Project area. The NRC staff contacted the 20 tribal governments by letters dated March 19, 2010; September 10, 2010; and March 4, 2011. The NRC staff invited the tribes to participate as consulting parties in the NHPA Section 106 process and requested assistance in identifying tribal historic sites or cultural resources that may be affected by the proposed action. Specifically, the NRC staff solicited information regarding properties of religious and cultural significance to tribes. The tribes contacted initially were:

- Cheyenne River Sioux Tribe—South Dakota
- Crow Creek Sioux Tribe—South Dakota
- Flandreau Santee Sioux Tribe—South Dakota

- Lower Brule Sioux Tribe—South Dakota
- Oglala Sioux Tribe—South Dakota
- Rosebud Sioux Tribe—South Dakota
- Sisseton Wahpeton Sioux Tribe—South Dakota
- Standing Rock Sioux Tribe—South Dakota
- Yankton Sioux—South Dakota
- 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
- Santee Sioux Tribe—Nebraska
- Ponca Tribe—Nebraska
- Crow Tribe—Montana

The NRC staff contacted the Cheyenne and Arapaho, Pawnee, and Omaha tribes in February 2013, after it was brought to the attention of the NRC that these tribes also had historical and cultural links to the proposed project area.

By letter dated April 7, 2010, the Turtle Mountain Band of Chippewa–North Dakota responded to NRC and stated that the proposed project would not have an effect on historic properties of importance to the Turtle Mountain Band of Chippewa Indians. The Tribal Historic Preservation Officer (THPO) also stated that “determination of No Historic Properties Affected is granted for the project to proceed”.

The NRC staff continued its efforts to engage in consultation with tribes that might be affected by the proposed action with follow-up telephone calls and by sending emails to further gather information related to identification efforts and coordinate meetings.

On September 10, 2010, the NRC staff sent another letter inviting the tribes to participate in consultation to help facilitate the identification of areas on the proposed Dewey-Burdock site that the tribes believe have traditional religious or cultural significance. The NRC staff also followed up with phone calls and emails to ensure tribal officials received this correspondence.

By letter dated September 20, 2010, Mr. Perry “No Tears” Brady of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara Nations–North Dakota) responded that the tribe had determined there would be no adverse effects on historic or cultural resources important to the Mandan, Hidasta, and Arikara Nations within the proposed project area.

The Sisseton Wahpeton Oyate, Rosebud Sioux Tribe, Lower Brule Sioux Tribe, and Yankton Sioux Tribe, responded by letters dated November 2, 2010; November 7, 2010; November 15, 2010; and December 3, 2010, respectively, expressing interest in becoming consulting parties to the proposed project (Sisseton Wahpeton Oyate, 2010; Rosebud Sioux Tribe, 2010; Lower Brule Sioux Tribe, 2010; Yankton Sioux Tribe, 2010). The Sisseton Wahpeton Oyate and Rosebud Sioux THPOs recommended that NRC undertake group consulting, whereby a number of tribal representatives would participate in a meeting, possibly hosted by the Oglala Sioux Tribe. The Yankton Sioux Tribe THPO requested



face-to-face consultation and expressed concerns regarding protection of traditional cultural properties (TCPs) within the project area. While the term TCP does not appear in the NHPA or its implementing regulations, the tribes apply this term to historic properties of religious and cultural significance to Indian tribes that may be affected by an undertaking. The NRC uses the term in this context.

By letter dated January 31, 2011, the Oglala Sioux Tribe THPO accepted the invitation to participate as a consulting party and stated that the proposed Dewey-Burdock Project represents a substantial potential threat to the preservation of cultural and historic resources of the Oglala Sioux Tribe. The THPO also stated that the proposed project site is located within an area of which Sioux Tribes, along with the Cheyenne, Arapahoe, Crow, and Arikara Tribes, possess intimate cultural knowledge. The THPO stated that impacts resulting from the proposed project include not only site-specific physical impacts, but intangible impacts to the integrity of the area from cultural, historical, spiritual, and religious perspectives. The letter also requested NRC's assistance in facilitating a site visit and regional meeting to provide all affected tribes an opportunity to review and identify the cultural and historic resources at stake.

Mr. Hubert B. Two Leggins (Crow Tribal Cultural Resource Director/Renewable Resource Supervisor) of the Crow Tribe of Montana responded by email dated March 9, 2011, indicating that the Dewey-Burdock Project area has religious and cultural significance to the Crow Tribe. Mr. Two Leggins accepted the invitation for formal consultation and stated that the Crow Tribe wanted to be a consulting party.

By letter dated May 12, 2011, the NRC staff invited THPOs and/or Cultural Resources Officers to an informal information gathering meeting on June 8, 2011, at the Prairie Winds Casino and Hotel on the Pine Ridge Reservation in South Dakota. The purpose of the meeting was to help NRC identify tribal historic sites and cultural resources that may be affected by actions associated with the proposed Dewey-Burdock ISR Project and with the Crow Butte North Trend and Crow Butte license renewal ISR projects in Nebraska. Representatives of six tribes (Oglala Sioux, Standing Rock Sioux, Flandreau-Santee Sioux, Sisseton-Wahpeton Oyate, Cheyenne River Sioux, and Rosebud Sioux) attended. BLM and SD SHPO staff also attended.

During the June 8, 2011, meeting, tribal officials expressed concerns about the identification and preservation of historic properties of traditional religious and cultural importance to tribes at the proposed Dewey-Burdock and Crow Butte sites. Tribal officials stated that historic and cultural resource studies of the sites should be conducted with tribal involvement. The SD SHPO stated that Tribal representatives would need access to the Dewey-Burdock site to assist in identification of historic properties. A transcript of this meeting is available through the NRC Agencywide Documents Access and Management System database on the NRC website (<http://www.nrc.gov/reading-rm/adams.html>).

In conjunction with the June 8, 2011, information gathering meeting, the applicant hosted a visit to the Dewey-Burdock ISR Project site on June 9, 2011. Tribal officials, the NRC staff, BLM, SD SHPO, and South Dakota Historical Society Archaeological Research Center (ARC) staff interacted with the applicant's personnel and archaeologists from Archaeology Laboratory of Augustana College during the site visit. The Level III cultural resource evaluations at the site were conducted by the Archaeology Laboratory of Augustana College. The Dewey-Burdock site visits included a presentation of the proposed project identifying the location of facilities and wellfields. Augustana College staff provided an overview of the results of archaeological and cultural evaluations. At the conclusion of the presentations, participants toured the proposed Dewey-Burdock ISR Project site stopping at several locations to view and investigate cultural and historic features identified during the Level III cultural resource evaluations, including stone circles and rock alignments.

To facilitate the identification of possible historic properties of importance to Native American tribes within the APE, the NRC began efforts to open the Dewey-Burdock site to tribal representatives for a survey. On August 12, 2011, the NRC staff sent a letter requesting the applicant submit a written plan for acquiring information on historic properties within the APE.

On October 28, 2011, the NRC staff sent a letter to the tribes stating that the staff had requested the applicant undertake studies and surveys to provide information on properties of traditional religious and cultural importance to tribes at the proposed Dewey-Burdock site, as is permissible under 36 CFR 800.2(c)(4). The letter informed the tribes that the applicant had engaged the services of SRI Foundation (SRI) of Rio Rancho, New Mexico, to collect information concerning historic properties that may be located in the proposed project area. The letter also informed the tribes that NRC had authorized SRI, acting on behalf of the applicant, to contact tribes to obtain information. The letter stated further that NRC would remain legally responsible for all findings and determinations and for maintaining government-to-government relationships with the involved tribes.

By letter dated January 19, 2012, the NRC staff invited the THPOs to a tribal consultation on February 14–15, 2012, at the Ramkota Best Western Hotel in Rapid City, South Dakota. The purpose of the meeting was to hear the views of interested tribes about the general types and descriptions of historic properties of religious and cultural significance that may be affected by the proposed project and how these properties can be identified and evaluated as part of the ongoing consultations under Section 106 of NHPA. The meeting was attended by officials from 13 tribes (Cheyenne River Sioux, Crow Creek Sioux, Crow Tribe of Montana, Eastern Shoshone, Fort Peak Assiniboine Sioux, Northern Arapaho, Northern Cheyenne, Oglala Sioux, Rosebud Sioux, Yankton Sioux, Sisseton-Wahpeton Sioux, Santee Sioux Nation, and Standing Rock Sioux). In addition to applicant, SRI, and NRC staffs, BLM and U.S. Environmental Protection Agency (EPA) Region 8 staffs were also in attendance.

During the February 14–15, 2012 meeting, the tribes provided the following information to the NRC and BLM staffs: (i) the tribes expressed an interest in developing a confidentiality agreement before submitting any traditional cultural studies to NRC; (ii) tribal representatives stated that the purpose of any future meetings be made clearer to ensure that tribal participants have appropriate levels of decision-making authority; (iii) tribal representatives volunteered to develop project-specific statements of work (SOWs) to conduct traditional religious and cultural properties studies for the proposed Dewey-Burdock Project; and (iv) tribal representatives requested another meeting during March 14–15, 2012 to review draft SOWs the tribes and the applicants prepared for each of the three projects.

Scheduling conflicts of many tribal representatives, led to the cancellation of the March 14–15, 2012 meeting. The NRC staff transmitted the applicant's SOW for the Dewey-Burdock project to the THPOs for review and consideration by letter dated March 9, 2012. The NRC staff proposed to host a conference call to discuss the proposed SOW in April 2012. On April 5, 2012, the NRC staff sent a letter inviting the tribes to participate in a teleconference on April 24, 2012, to discuss the applicant's SOW to identify historic properties.

On April 24, 2012, the NRC staff held a teleconference with staff from Powertech, Cameco, SRI, SD SHPO, EPA Region 8, BLM, and the Northern Cheyenne, Oglala Sioux, Rosebud Sioux, Northern Arapaho, Sisseton-Wahpeton, Standing Rock Sioux, Yankton Sioux, and Cheyenne and Arapaho tribes. The consulting parties discussed the following aspects of the applicant's SOW: (i) adequacy of compensation for tribal officials conducting the field work, (ii) confidentiality of information gathered by the tribes, (iii) amount of acreage to be covered during fieldwork, and (iv) tribal involvement in making eligibility determinations.

A plan for accomplishing the tribal survey was discussed at the April 24, 2012, teleconference: (i) tribal representatives would continue to develop a draft tribal SOW; (ii) tribes would hold an intertribal teleconference to discuss a draft tribal SOW; (iii) tribes would provide a copy of a draft SOW to the NRC, once it was approved by all tribal officials; (iv) NRC would distribute a draft tribal SOW to consulting parties (applicant, BLM, EPA, SD SHPO); (v) NRC would arrange another meeting with consulting parties to finalize an SOW, agreeable to the parties, for the identification of potential historic properties; (vi) the applicant would schedule fieldwork for a historic property survey at the proposed Dewey-Burdock site; (vii) tribes would write preliminary and final reports for submission to the NRC to provide tribal views on effects of the undertaking on such properties; and (viii) NRC would assess effects on properties under NHPA and develop an impact determination pursuant to NEPA based on information provided by the tribes. The tribes also requested that two tribal representatives be provided access to conduct a reconnaissance visit to the Dewey-Burdock license area, for the purpose of securing information that would enable the tribes to complete a detailed proposed SOW for the project area. The applicant agreed to the request, and the Dewey-Burdock Project tribal reconnaissance visit took place on Saturday, May 26, 2012.

On June 19, 2012, the tribes provided the NRC staff with a preliminary tribal SOW for identifying properties of religious and cultural significance at the Dewey-Burdock ISR Project site. Subsequently, NRC staff held teleconferences on August 9, 2012, and August 21, 2012, to solicit additional details on the SOWs prepared by the applicant and tribes. Representatives of the tribes and staff from the NRC, Powertech, SRI, SD SHPO, EPA Region 8, and BLM attended these teleconferences. Discussions centered on: (i) defining the areas of potential effects (direct and indirect) that would be included in the proposed surveys, (ii) the need to provide survey cost estimates, and (iii) the need to provide a survey schedule that met the NRC licensing review schedule and completion of its scheduled NEPA review. The participating tribes requested an opportunity to revise the applicant's proposed SOW for completing a tribal survey for the Dewey-Burdock ISR Project. During the August 21, 2012, teleconference, the NRC staff agreed to meet with tribal representatives in Bismarck, North Dakota on September 5, 2012 to develop a revised SOW for completion of a field survey in the fall of 2012.

The applicant informed the NRC by letter dated August 29, 2012, that it was unable to reach an agreement with the tribes on a SOW and it would be unable to provide information to the NRC on properties of religious and cultural significance to the tribes that may be affected by the proposed Dewey-Burdock ISR Project. The applicant indicated that additional efforts on its part to negotiate a mutually acceptable SOW are unlikely to be productive. The applicant, however, committed to support efforts to complete identification of historic properties by offering financial assistance to tribal representatives to carry out fieldwork and reporting activities. The applicant committed to working with NRC and BLM to provide access for tribal representatives to the project area to carry out work agreed to by the tribes.

On September 5, 2012, the NRC staff met with representatives of the Yankton Sioux, Sisseton-Wahpeton Oyate Sioux, Rosebud Sioux, Standing Rock Sioux, Northern Cheyenne, Oglala Sioux, and Crow Nation tribes at the Kelly Inn in Bismarck, North Dakota. During this meeting, participants discussed how to proceed with development of a SOW to identify religious and cultural properties within the APE. The APE is the area in which properties of cultural significance may be affected by the undertaking, including direct effects (such as destruction, damage, or alteration of all or part of a property) and indirect effects (such as visual, audible, and atmospheric changes that affect the character or setting of a property). All parties agreed a survey was necessary for historic property identification. All parties also agreed further consultation was needed to develop a SOW that focused survey efforts on the identification of properties directly and indirectly affected by the proposed project. The area of potential indirect effect could include properties that are well beyond the proposed license area. In addition, the parties acknowledged the need

for a Programmatic Agreement (PA) for any future disturbances outside of areas directly affected by the proposed project.

By letter dated September 18, 2012, the NRC staff asked participants in the September 5, 2012, meeting in Bismarck, North Dakota to designate a preferred contractor to submit a proposal for a survey on their behalf. The NRC staff requested that a cost estimate based on the area of direct effect that may be disturbed during the initial phase of the Dewey-Burdock ISR Project be included in the proposal. The letter included the NRC staff response to four NHPA-related concerns the tribes raised at the September 5, 2012, meeting in Bismarck, North Dakota. The letter stated: (i) the NRC agrees that a PA will need to be developed to address the phased identification and evaluation of historic properties; (ii) the NRC will continue to consult with BLM, SD SHPO, and the tribes on all issues arising under Section 106 of the NHPA, including potential indirect effects; and (iii) the NRC intends to keep survey information confidential to the fullest extent allowed by law.

On September 27, 2012, NRC received a proposal and cost estimate from the tribes for a traditional cultural properties survey for the proposed Dewey-Burdock Project. The proposal and cost estimate were prepared by Makoche Wowapi/Mentz-Wilson Consultants, LLP, the contractor selected by tribes to complete the cultural resources survey of the proposed project. By letter dated October 4, 2012, NRC transmitted the tribe's proposal and cost estimate to the applicant for review and comment.

The NRC informed the tribes by letter dated October 12, 2012 of the significant differences between the Makoche Wowapi/Mentz-Wilson Consultants, LLP proposal and the applicant's proposal set out in its letter dated August 29, 2012. The NRC indicated that resolving these differences would not support completion of a field survey at the Dewey-Burdock site in the fall 2012. The NRC requested that the tribes provide their ideas on alternative methods for identifying potential properties of traditional religious and cultural importance to the tribes. The NRC suggested that alternative methods might include opening the site to interested tribal specialists over a period of several weeks with payment for survey costs made to individual tribes or seeking ethnohistoric and ethnographic information from tribal specialists in interviews at tribal headquarters.

From October 15 to October 20, 2012, the NRC staff received letters and email from the Standing Rock Sioux Tribe, the Sisseton-Wahpeton Oyate, the Rosebud Sioux Tribe, and the Yankton Sioux Tribe opposing the NRC's request for alternative survey approaches. These tribes maintained that the only level of effort sufficient for identifying historic properties would be an on-the-ground, 100 percent survey of the entire license boundary by tribal personnel from participating tribes.

On October 19, 2012, the NRC received a response from the Three Affiliated Tribes and the Turtle Mountain Band of Chippawa Indians Tribe who in collaboration with Kadramas, Lee, & Jackson (KLJ), a private consulting firm from North Dakota, proposed to complete an alternative field survey of the project's 1,067 ha [2,637 ac] APE for ground disturbance. The proposal included investigation of previously recorded archaeological sites, use of light detection and ranging mapping technology to locate potential rock alignments, cairns, and other stone features, and systematic pedestrian survey of the project area. The level of effort presented in the KLJ proposal was reasonable and appropriate to the project area and estimated costs were in line with the range of survey costs obtained for other tribal surveys identified by the staff for other projects.

The NRC staff confirmed that the proposed KLJ survey effort would be led by two THPOs and one former THPO employed by KLJ. In addition, the KLJ survey effort welcomed participation of other tribes. For these reasons, the NRC endorsed the level of effort represented by the KLJ proposal and recommended that the applicant consider contracting with KLJ to lead the survey effort at the Dewey-

Burdock site. To ensure all interested tribes would have the opportunity to participate in the survey, the NRC staff requested that the applicant provide additional financial support for representatives from other tribes. The applicant agreed to provide financial support for one representative for each interested tribe. Additional tribal representatives would also be allowed to participate, but without compensation.

On October 31, 2012, the NRC sent a letter to the THPOs endorsing the KLJ survey approach. The letter invited all consulting tribes to participate in the survey with paid compensation for one representative per tribe. The KLJ survey proposal provided each participating tribe an independent opportunity to identify historic properties, to gather relevant information, and to provide independent recommendations regarding the NRHP eligibility of properties of traditional religious and cultural importance to the tribes.

The NRC staff received written responses from the Standing Rock Sioux Tribe, Rosebud Sioux Tribe, Oglala Sioux Tribe, Sisseton-Wahpeton Oyate, and Yankton Sioux Tribe objecting to the proposed survey. The tribes stated that the NRC's endorsement of the KLJ proposal ignored information previously provided by the tribes. Specifically, the tribes argued that: (i) the field survey must include the entire project area, not just the area directly affected by the proposed project; (ii) the field survey must be conducted by qualified tribal representatives, not archaeologists; and (iii) survey approaches based on predictive modeling are not appropriate for identifying tribal sites. The tribes further asserted that the NRC was not consulting in good faith because it was ignoring information provided by consulting tribes, and because the Three Affiliated Tribes and the Turtle Mountain Band of Chippewa Indians had advised the NRC the project was unlikely to affect places of significance to them.

On December 6, 2012, the KLJ withdrew its survey proposal by telephone. On December 17, 2012, KLJ withdrew its TCP survey proposal in writing.

On December 14, 2012, the NRC staff responded to the objections raised by the tribes to the KLJ survey proposal in a letter. The letter informed all consulting parties that KLJ would not conduct the survey and that the NRC intended to move forward with an alternative field survey approach. The NRC postponed further efforts to undertake a field survey until Spring 2013. The NRC reiterated its intention to develop a PA and invited all interested consulting parties to provide information relevant to the development of a PA.

On February 8, 2013, the NRC staff invited 23 tribes, including the Cheyenne and Arapaho, Pawnee, and Omaha, to participate in a field survey in the Spring of 2013. The letter proposed April 1 to May 1, 2013, as dates for the survey, described procedures for site access, and identified the compensation for survey participation. Tribal representatives were encouraged to focus survey efforts on portions of the proposed license area that would be physically disturbed by the project; participants were permitted access to the entire project boundary within the allowable time. The applicant would provide compensation for per diem and mileage expenses for a maximum of three tribal representatives from each participating tribe. In addition, an unconditional grant of \$10,000 for each participating tribe was to be provided. At the completion of the field survey a field survey report would be submitted to the NRC. The report would include: (i) a discussion of the areas examined; (ii) a description of each individual property examined; (iii) a NRHP evaluation of each individual property examined; (iv) any recommendation concerning criteria of eligibility for previously reported archaeological site within the license area visited during the field survey; and (v) recommendations for appropriate avoidance buffers or possible mitigation measures should any of the properties recommended as eligible be adversely affected by the proposed project. Tribes interested in participating in the survey were advised to respond by March 12, 2013.

On February 20, 2013, the NRC staff received a letter from the Standing Rock Sioux Tribe in response to the NRC letter of February 8, 2013. The Standing Rock Sioux Tribe objected to the survey approach and



asserted that the NRC was not consulting in good faith because it was ignoring information provided by consulting tribes. In its letter, the tribe offered comments regarding the Section 106 process being conducted for the proposed Dewey-Burdock ISR Project.

On March 22, 2013, the Oglala Sioux Tribe responded by letter to the NRC letter dated February 8, 2013. The Oglala Sioux Tribe objected to the terms of the survey proposal and indicated the proposed April 1, 2013 date for the start of the field survey did not allow sufficient time for formal authorization from its Tribal Council and constituents. The tribe expressed its concerns over the scope of the work methodology, its view that the funds allocated for the survey were insufficient, that the NRC lacked cultural sensitivity on these issues, and that the NRC was not addressing fully the direct and indirect effects on cultural resources and burial grounds, and the protection of intellectual property generated during the survey. The Oglala Sioux tribe also demanded that formal government-to-government consultation be conducted rather than the existing NHPA Section 106 consultation.

On April 1, 2013, survey work to identify traditional properties of religious and cultural significance to the tribes at the Dewey-Burdock site began. Seven tribes participated in the field survey; these were the Northern Cheyenne, Northern Arapaho, Crow Nation, Crow Creek Sioux, Cheyenne and Arapaho of Oklahoma, Santee Sioux, and Turtle Mountain Band of Chippawa Indians. Survey work was suspended on April 9, 2013, due to inclement weather. Survey work resumed on April 29, 2013, and was extended through May 24, 2013, for a total survey period spanning 36 calendar days.

On April 24, 2013, the NRC staff formally invited the ACHP to become an active consulting party in the Section 106 process for the proposed Dewey-Burdock ISR Project. The NRC provided ACHP with a summary and chronology of the Section 106 consultation efforts for the proposed project.

On May 23, 2013, the NRC staff hosted a government-to-government meeting concerning licensing actions associated with proposed uranium recovery projects under NRC licensing review. The NRC invited over 30 tribes currently in consultation on uranium recovery projects to this meeting with NRC management. The government-to-government meeting sought the input of tribal leaders, or a designee on issues of mutual interest concerning uranium recovery projects. The NRC organized the meeting in response to the requests for a formal government-to-government meeting made by many THPOs. THPO's from the Cheyenne River Sioux, Northern Cheyenne, Yankton Sioux, Standing Rock Sioux, and Sisseton Wahpeton tribes attending this meeting. The meeting was held at the Ramkota Hotel and Conference Center in Rapid City, South Dakota.

Between June 24 and July 25, 2013, the Cheyenne and Arapaho, Northern Arapaho, and Northern Cheyenne tribes submitted survey reports to the NRC. The NRC staff also received field notes from the Crow Tribe, although the reports did not contain eligibility recommendations for identified sites. The Cheyenne and Arapaho Tribes survey report, dated June 24, 2013, documented sites of religious and cultural significance identified during site surveys conducted by tribal representatives on April 23 to 25, 2013, and April 30 to May 2, 2013. The report included NRHP eligibility recommendations and recommended mitigation measures for each identified site. The Northern Arapaho survey report documented sites identified during surveys conducted on April 29 to May 9, 2013. The report included NRHP eligibility recommendations and recommended mitigation including area of importance, no surface activity, areas to remain accessible to the Northern Arapaho Tribe, and areas to be avoided by equipment disturbance and pedestrian traffic. The Northern Cheyenne Tribe report, dated July 25, 2013, summarized survey methods and provided survey results and NHPA-eligibility recommendations. Tribal Cultural Heritage Forms for ten cultural properties identified or investigated during the survey were included. The forms provide specific NHPA-eligibility recommendations and identify the eligibility criteria on which the Tribe relies.

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 as summarized above.

The NRC staff will continue to consult with BLM, SD SHPO, and the tribes on all issues arising under Section 106 of the NHPA. The NRC staff will also consult with ACHP as necessary.

The NRC staff has invited the above twenty three (23) tribes to participate actively in the development of this Programmatic Agreement and has provided opportunities for the tribes to review and comment on the successive drafts of the PA.

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

### **DRAFT Appendix C – Reporting Criteria for the Monitoring Plan**

- a) On or before January 1 of each year, unless the consulting parties agree in writing that the terms of this PA have been fulfilled, Powertech shall prepare and provide a 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 all consulting 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 with all consulting 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

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 (protection zone) and implement measures to protect the discovery from looting and vandalism. Construction activities may continue outside this protection zone. No digging, collecting or moving human remains or other items shall occur in the protection zone 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 **U.S. Nuclear Regulatory Commission (NRC) or U.S. Bureau of Land Management (BLM) (on BLM land)**, and the South Dakota State Archaeologist (State Archaeologist) within forty-eight (48) hours of notification by the On-site manager / Contractor.

c) The **NRC or BLM** 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 **NRC or BLM (on BLM land)** shall determine if it is prudent and feasible to avoid disturbing the remains. If the **NRC or BLM** in consultation with the **Powertech** determines that disturbance cannot be avoided, the **NRC or BLM** 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 **NRC or BLM** shall ensure that the **Powertech** implements the plan for removal, treatment and disposition of the burial or remains as authorized by the South Dakota State Archaeologist.

e) The **NRC or BLM (on BLM land)** shall notify the **Powertech** that they may resume construction activities in the protection zone upon completion of the plan authorized by the State Archaeologist.

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