

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
POWERTECH (USA) INC.,) Docket No. 40-9075-MLA
)
(Dewey-Burdock In Situ Uranium Recovery)
Facility))

Declaration of Wilmer Mesteth

1. My name is Wilmer Mesteth. I am the Tribal Historic Preservation Officer (“THPO”) for the Oglala Sioux Tribe of the Pine Ridge Reservation. In my activities as the THPO, I regularly review cultural resource reports and surveys, including the survey and reporting methods.
2. The Oglala Sioux Tribe is a body politic comprised of approximately 41,000 citizens with territory of over 4,700 square miles in the southwestern portion of South Dakota. The Oglala Sioux Tribe is the freely and democratically-elected government of the Oglala Sioux people, with a governing body duly recognized by the Secretary of Interior. The Oglala Sioux Tribe is the successor in interest to the Oglala Band of the Teton Division of the Sioux Nation, and is a protectorate nation of the United States of America. The Oglala Band reorganized in 1936 as the "Oglala Sioux Tribe of the Pine Ridge Indian Reservation" ("Oglala Sioux Tribe" or "Tribe") under section 16 of the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 987, 25 U.S.C. § 476, and enjoys all of the rights and privileges guaranteed under its existing treaties with the United States in accordance with 25 U.S.C. § 478b. Its address is P.O. Box 2070, Pine Ridge, South Dakota 57770-2070.
3. In 1992 the U.S. Congress adopted amendments to the National Historic Preservation Act (P.L. 102-575) that allow federally recognized Indian tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. Specifically, Section 101(d)(2) allows tribes to assume any or all of the functions of a State Historic Preservation Officer (“SHPO”) with respect to tribal land.
4. I am familiar with the license application recently submitted to the Nuclear Regulatory Commission (NRC) by the Canadian company Powertech Uranium Corp., doing business as Powertech (USA) Inc. (“Powertech” or “Applicant”) for the proposed Dewey-Burdock in-situ leach uranium mine in southwest South Dakota.
5. The lands encompassed by the Powertech proposal are within the Territory of the Great Sioux Nation, which includes the band of the Oglala Lakota (Oglala Sioux Tribe)

aboriginal lands. As a result, the cultural resources, artifacts, sites, etc., belong to the Tribe. By enacting NEPA (42 U.S.C. § 4330 *et seq.*), NAGPRA, (25 U.S.C. 3001 *et seq.*), NHPA (16 U.S.C.S. § 470 *et seq.*) and other statutes, the United States Government has assured that the cultural resources of a tribe will be protected, even when they are not within reservation boundaries. Since there are cultural resources identified in the license application, and there may well be more that only the Tribe can identify and ensure that they are properly protected, the Tribe has a protected interest here. Any harm done to these artifacts, perhaps because the Applicant did not properly judge the significance of certain artifacts or other resources, will be an injury to the Tribe, caused by the actions of the Applicant, and condoned by the NRC, the Tribe's trustee. While only the federal government can actually *consult* with the Tribe, the Tribe maintains that the application's determination of cultural resources in the area may not be fully comprehensive.

6. In any case, the discovery of an Indian camp and prehistoric artifacts in the Tribe's treaty and aboriginal territory at issue in this application implicates important tribal interests such that the Tribe's rights are threatened by the Applicant's mining activity in its aboriginal territory.
7. The Oglala Sioux Tribe is taking the necessary course of action to participate fully as a party in this proceeding in part in order to safeguard its interests in the protection of cultural and historic resources at and in the vicinity of the mine site.
8. Included within the territory the Powertech application contemplates are current or extinct water resources. Such resources are known to be cultural resources itself and been known as favored camping sites of indigenous peoples, both historically and prehistorically, and the likelihood that cultural artifacts and evidence of burial grounds exist in these areas is strong.
9. While the Powertech application includes some evidence of a cultural resource study, the Tribe cannot verify that a comprehensive study identifying all such resources has been adequately conducted. No such study has been conducted by the Tribe.
10. Powertech's Environmental Report accompanying the license application indicates that personnel from the Archaeology Laboratory at Augustana College ("Augustana"), Sioux Falls, South Dakota, conducted on-the-ground field investigations between April 17 and August 3, 2007. To my knowledge, the Tribe was not involved in this study, and has not made a similar study of the proposed mining area.
11. As stated in the Powertech Environmental Report, at 3-179, the Augustana study found that "the sheer volume of sites documented in the area [was] noteworthy," and the area proposed for mining was found to have a "high density" of cultural resources. As also recognized in the environmental report, this indicates that use of the area by indigenous populations was, and has been, extensive.

12. The Powertech Environmental Report also states, at 3-178, Augustana documented 161 previously unrecorded archaeological sites and revisited 29 previously recorded sites during the current investigation. Among these were some 200 hearths within 24 separate sites. Significantly, however, twenty-eight previously recorded sites were not relocated during the current investigation.
13. Powertech asserts in its Environmental Report, at page 2-9, Table 2.11-1, that impacts to cultural resources will be “none.” However, the Memorandum of Agreement (with amendments) entered into between Powertech and the Archaeological Research Center (ARC), a program of the South Dakota State Historical Society, reproduced in the Environmental Report at Appendix 4.10-B, specifically recognizes that “Powertech has determined that the Project may have an affect on archaeological or historic sites that contain or are likely to contain information significant to the state or local history or prehistory....”
14. Significantly, Powertech has not entered into any such Memorandum of Agreement with the Tribe, or sought the Tribe’s participation in the development of any stipulations purported to result in the diminishment of impacts to the Tribe’s cultural and historic resources at the site. Nor has Powertech sought to include the Tribe in any of the “Dispute Resolution” procedures through which it purports to remedy disagreements regarding the significance of cultural resources on the site, or the impact of any mining operations on these cultural resources. As a result, Powertech has failed to adequately include the Tribe in this process, and leaves the Tribe’s cultural resources at risk.
15. I have also reviewed the official Transcript of Proceedings In the Matter of Consideration of Petitions to Place Proposed Powertech (USA), Inc., In Situ Leach Mining Area On The Preliminary List of Special, Exceptional, Critical, and Unique Lands, held Thursday, February 19, 2009 before the State of South Dakota Department of Environment and Natural Resources, Board of Minerals and Environment where substantial issues related to the cultural significance of the historic resources in the area of the proposed mining operations were discussed through testimony given by witnesses first being duly sworn. (Attached). Also discussed in detail at the hearing were the April 17 and August 3, 2007 Augustana studies, relied upon by Powertech in its Environmental Report as the exclusive evidence of the impact of the proposed project on cultural resources.
16. At the February 19, 2009 hearing, Oglala Sioux Tribe member Garvard Good Plume testified after being duly sworn that he and his familial relations, including his great grandfather, his mother and father had used, dwelled, and camped on the lands subject to the Powertech mining proposal. Transcript at p. 86 and following. Significantly, he also testified that his grandparents and their relatives were buried in those areas.
17. Also at the February 19, 2009 hearing, trained archaeologist Mr. Ben Rhodd identified significant defects in the process employed by Augustana in its cultural survey, including the failure to conduct an inquiry into or an evaluation of the ethnographic information available for the site. This information includes consultation with members of the

indigenous community, the elders who have been in the area, medicine people, oral historians, and others who are familiar with the area. Transcript at p. 108-109.

18. Appearing at the hearing, and testifying after being duly sworn, was the Assistant State Archaeologist, Mr. Michael Fosha, employed by the State of South Dakota, State Historical Society, Archaeological Research Center (ARC). Mr. Fosha asserts in his testimony that he contracted Augustana to conduct its study in 2007, and asserts that additional studies were conducted in 2008. Transcript at 173. There are no references in Powertech's Environmental Report to any studies or any information collected in 2008. Mr. Fosha admits in his testimony that no Native American Tribes, including the Oglala Sioux Tribe, were contacted or consulted with regarding the Augustana survey.
19. As part of the Augustana study, Mr. Fosha indicates that there were some 217 sites identified, and that some 81 had not been fully evaluated during the 2007 or 2008 Augustana evaluation. Powertech's Environmental Report does not refer to 217 sites, but rather some 190 sites (see Environmental Report at 3-178). This discrepancy and the failure of a full evaluation of some 81 sites within the proposed mining area evidence a potentially serious failure to conduct a proper cultural resources study.
20. Overall, the numbers and density of cultural resources at the site proposed for mining demonstrate that the mining activity is likely to adversely impact the cultural resources of the Oglala Sioux Tribe. The failure to involve the Tribe in the analysis of these sites, or to conduct any ethnographic studies in concert with a field study further exacerbate the impacts on the Tribe's interests as a procedural matter in negatively affecting the Tribe's ability to protect its cultural resources. If the project were to not go forward as planned, the interests of the Oglala Sioux Tribe would be protected as the potential for impact to the Tribe's cultural resources would be diminished or outright eliminated.

This Affidavit is submitted in accordance with 10 C.F.R. Section 2.304(d) and 28 U.S.C. Section 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 1, 2010 at Pine Ridge Indian Reservation.


Wilmer Mesteth