



Oglala Sioux Tribe

Office of the President

Pine Ridge Indian Reservation

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February 5, 2014

Haimanot Yilma
Project Manager
FSME/DWMEP/EPPAD/ERB
U.S Nuclear Regulatory Commission
Mail Stop: T8F05
(via email)

RE: Submittal of comments on draft Programmatic Agreement for the proposed Dewey-Burdock ISR uranium mining project

Dear Ms. Yilma,

This is in response to the NRC's request for comment on the draft Programmatic Agreement (PA) for the proposed Powertech Dewey-Burdock in situ leach (ISL) uranium mine. As you know, the Oglala Sioux Tribe has attempted to maintain a high level of involvement in the National Historic Preservation Act (NHPA) Section 106 consultation process through our Tribal Historic Preservation Office (OSTHPO), as well as the preparation of the National Environmental Policy Act (NEPA) environmental impact statement. Unfortunately, these processes have not been conducted in a manner that complies with the letter or spirit of either the NHPA or NEPA, resulting in the effective exclusion of several of the most impacted Tribes to which ascribe this proposed project area as traditional homelands. As such, the Oglala Sioux Tribe, as part of the Great Sioux Nation, continues to have serious unresolved concerns with the proposed project, and cannot concur in the Programmatic Agreement as drafted.

We request that NRC revisit its NEPA and NHPA compliance on this proposed project in order to fulfill its prior commitments, and legal obligations, to provide meaningful opportunities for the OSTHPO participation within both the NHPA consultation and NEPA review. Principal among the Tribe's concerns are those raised previously regarding the lack of a credible cultural resources survey that includes the entire project area of 10,580 acres. As repeatedly communicated in prior correspondence by the Oglala Sioux Tribe and others, while the Tribe remains willing and able to participate in such a process, it must be done in a credible manner, using proper methodologies and expertise. In addition, it states on page 3 of the draft PA indicates that the Tribe has "participated in the preparation of this PA", which is incorrect. On the contrary, representatives of the Tribe were merely on a November 15, 2013 webinar

hosted by NRC for interested parties to review the draft PA prepared by the NRC, not with the OST. This is very misleading to anyone who reads this PA.

To date these cultural resources surveys, as well as the ones completed prior by archaeologists are not complete and the NRC and Powertech efforts to date have not provided sufficient resources nor incorporated sufficient THPO involvement to result in a credible product. The PA's repeated strong reliance on a prior "Class III" cultural survey is misleading at best, as that survey was conducted by Powertech consultants in 2008 and has been repeatedly criticized by the Tribe as incomplete, and even recognized by NRC Staff as insufficient. As the Staff explained when it issued the DSEIS, "it is working to facilitate a field survey of the Dewey-Burdock site in order to obtain additional information on historic properties. When the survey is complete, the Staff will supplement its analysis in the DSEIS and circulate the new analysis for public comment." NRC Staff's Answer to Contentions on Draft Supplemental Environmental Impact Statement, at 13. Indicative of the process thus far, this supplement to the draft SEIS never occurred. Instead, NRC Staff simply published a Final SEIS, with a selection of a proposed action and a purportedly complete cultural resource impact analysis, without providing the promised draft analysis in a NEPA context. It is a poor excuse for NRC to provide the Tribes and public an after-the-fact opportunity to comment on any cultural reviews outside of the NEPA process. NRC should rescind its statements in the PA that all effect determinations are considered "final" until all necessary information is collected and meaningfully reviewed within both the NEPA and NHPA processes.

In addition, the cultural resources survey findings conducted by the seven (7) participating Tribes have not been afforded to our Tribe for review. As we are to understand, only three (3) Tribes (Northern Arapaho Tribe, Northern Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma) submitted their findings; however we have not seen those results for review. Additionally, there is a "Table. 1 Summary of Tribal Cultural Survey Activity and Participation during April-May 2013" received as an attachment that the field survey participating Tribes "examined approximately 95 percent of the entire project area within the license boundary". This brings to question how that claim can be true when only certain days were surveyed by those Tribes, and some for only three (3) days for the entire 10,580 acres.

Further compounding these problems is the PA's reliance on future analysis of the project area for cultural resources impacts and potential mitigation measures. Indeed, even the methodologies to be used for these future surveys and mitigation measure development are left without any specificity or clarification. Unspecified promises for Powertech to "provide funding to tribal representatives" to participate in future surveys is precisely the type of tactic that is partly to blame for the current problems with NRC's NHPA and NEPA processes. While some NHPA processes may be staged under certain circumstances, there is no compelling need to do so here, where proper surveys and analyses could be conducted and completed, albeit probably not on the applicant's preferred accelerated schedule. The applicant's preferred timeline for license approval should not supplant the need to ensure all data collection and analysis at the earliest possible time, as contemplated and required by both NEPA and the NHPA. The PA should not be finalized absent agreement with the Tribe on the methods and practices to be employed, and only those matters that truly cannot be accomplished beforehand should be left for the staged, future study and analysis.

We also remind you that there are two pending applications to the Environmental Protection Agency for underground injection control and plan for disposal of treated ISR processed fluids. Overall, the PA is not a document that the Tribe is comfortable signing at this stage. It fails to take account of the lack of a complete cultural resource survey to date and improperly and needlessly leaves significant data collection and analysis to future unspecified efforts, outside of the NEPA process. We continue to express our interest in fully engaging in the cultural resource analysis and protection processes related to this Project, and ask that NRC Staff abandon its current approach of prematurely finalizing its NEPA and NHPA documents until the proper steps can be taken to ensure a competent cultural resource impact review, as well as consideration for environmental concerns are met.

Sincerely,

A handwritten signature in cursive script that reads "Bryan V. Brewer". The signature is written in black ink and is positioned above the printed name.

Bryan V. Brewer

President, Oglala Sioux Tribe