

From: [Defenders of the Black Hills](#)
To: [Dewey-Burdock SEIS Comments Resource](#)
Subject: Dewey-Burdock Programmatic Agreement
Date: Saturday, February 15, 2014 1:02:05 AM

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Feb. 14, 2014

U. S. Nuclear Regulatory Commission
Office of Federal and State Materials and
Environmental Management Programs
(Sent via email)

RE: Dewey-Burdock Project in Custer and Fall River Counties, South Dakota

Dear Sir:

Please consider these to be our comments regarding the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota by Powertech USA Inc, and the proposed Programmatic Agreement.

A Programmatic Agreement must comply with the SEIS. After reviewing the SEIS for this Project, even though noticing our comments are not listed in the Appendix in Section E when we sent them on Jan. 4, 2013, and having the right to include our comments on the SEIS as it relates to a Programmatic Agreement as many of us are members of the Tribes in this Region, we are submitting the following statements. We are strongly against any signing of the Programmatic Agreement as there are still too many misunderstandings of what a burial site, funerary objects, and a sacred site means to Native Americans.

As per our comments on the SEIS, this site is a traditional Native American burial site used for centuries and contains sacred sites. Without a full cultural survey conducted by authentic Native American traditional cultural practitioners, many of the "stone cairns" will be overlooked, or not recognized for what they are, as sometimes a 'tipi circle' is really a prayer site. Without protection for all burial and sacred sites, there will exist many

violations of federal and international laws.

Page 1-26 in the SEIS, Section 1.7.3.5 states:

“The Section 106 consultation process is ongoing. NRC informed the tribes by letter dated November 6, 2013 and the ACHP by letter dated November 13, 2013, that it has separated its Section 106 activities from its NEPA review (NRC, 2013e,f). 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 staff will also consult with ACHP as necessary.”

Furthermore, Page 6-10 in Powertech’s proposed mitigation measures state:

“Conduct appropriate historic and cultural resource surveys as part of prelicensing application activities and eligibility evaluation of cultural resources for listing on the NRHP under criteria in 36 CFR 60.4(a)–(d).”

“Prelicensing” is the word in the proposed mitigation measures. However, as NRC is issuing a license before the cultural and resources surveys are completed, what impact does this have on this mitigation measure? Is it moot? Does Powertech need to develop a new mitigation measure?

To issue a source material license to Powertech USA Inc. at this time with this inadequate Programmatic Agreement is premature, and a direct violation of the National Environmental Policy Act process as the provisions of Section 106 of the National Historic Preservation Act, the Native American Graves Protection Act, and the Archaeological Resource Protection Act have not been completed.

In our comments to the SEIS, we strongly urged the completion of the Cultural Surveys as the area is a known ancient burial ground for the Great Sioux Nation. Without completing all of the provisions of the above named federal laws, this SEIS is incomplete and is putting the cart before the horse. The Programmatic Agreement needed to be completed before the Final SEIS was issued.

We strongly object to the granting of any license to Powertech Uranium Mining Company for the Dewey Burdock Project until all of the provisions of the following federal laws: the National Historic Preservation Act, the Native American Graves Protection Act, the Archaeological Resource Protection Act are completely enforced.

Furthermore, the destruction of sacred, cultural resources is not only a violation of the American Indian Religious Freedom Act, but also the United Nations Declaration on the Rights of Indigenous Peoples. None of these considerations have been included in the

Programmatic Agreement.

Page xli of the SEIS states:

“Prior to construction, an agreement between NRC, South Dakota State Historic Preservation Office (SD SHPO), BLM, interested Native American tribes, the applicant, and other interested parties will be established outlining the mitigation process for each affected resource. By NRC license condition, the applicant is required to stop any work if historical or cultural resources are encountered during construction activities. All newly discovered artifacts will be inventoried and evaluated in accordance with 36 CFR Part 800. Work will not restart without authorization from the NRC, SD SHPO, and BLM to proceed.”

Also see Table 9-1. Summary of Environmental Impacts of the Proposed Action (Cont’d)
Page 9-9

To make an agreement after the license is given is a violation of the NEPA process. Secondly, how do you mitigate a sacred site, or a burial site? This area contains immeasurable cultural resources valuable to Native American tribes. Yet, this paragraph states that an agreement will be made with “interested Native American tribes,” **however**, if any cultural resources are found, **none of the tribes are included** in authorizing work to proceed. This is an injustice to the nth degree. None of the agencies allowed to authorize the work to proceed; the NRC, the SD SHPO, or the BLM, have a vested interest in the protection of these cultural resources. This total segregation of the tribes from being allowed to protect these cultural resources is a gross injustice and a violation of Civil and Human Rights. How will the Programmatic Agreement correct this gross oversight?

Page xliv of the SEIS states:

“Environmental justice impacts to Native American tribes living in the vicinity of the proposed project are not expected to differ from those experienced by other populations. The proposed action has the potential to affect certain sites of religious and cultural significance to Native American tribes; however, the impacts to such sites are expected to be reduced through mitigation strategies developed through the National Historic Preservation Act Section 106 consultation process.”

Again, to reiterate, this area contains sacred sites and burial places very important to many Native American nations. Just because we are not allowed in this area does not mean it is not important. How do you mitigate a sacred site or a burial site? What is acceptable to one culture (i.e. the American culture) is not necessarily acceptable to another culture (i.e. the culture of the Great Sioux Nation). So the Environmental justice impacts to Native American tribes living in the vicinity of the proposed project **DO differ exceedingly** than to

other populations. To even make such a statement is evidence that the Nuclear Regulatory Commission does not understand the meaning of Environmental Justice. How will a Programmatic Agreement settle this injustice?

We are in support of the position of the Oglala Sioux Tribe, and strongly disagree with the arguments given by the Nuclear Regulatory Agency that Section 106 of NHPA has been, or will be met. There are many other considerations regarding these sacred sites and burial grounds that still need to be addressed including other federal and international laws.

The statements in the SEIS as shown above, and trying to justify the issuance of a license by a Programmatic Agreement after the fact, is chicanery to the highest and very unworthy of a federal agency.

Sincerely,

Charmaine White Face, Coordinator