

From: [David Frankel](#)
To: [Dewey-Burdock SEIS Comments Resource](#)
Subject: Powertech Dewey-Burdock Programmatic Agreement Public Comments
Date: Thursday, February 13, 2014 12:01:15 PM

Comments due February 14, 2014

To: NRC Staff
Re: Powertech Dewey-Burdock Section 106 Cultural Resources Issues
From: David Frankel
Date: February 13, 2014

There are many problems with both the process and content of the NRC Staff's actions concerning cultural resources:

I) Problems with the Process and the Exclusion or Non-Participation of Tribes With Most Interest in the Area as detailed in the Letter dated February 5, 2014 from OST President Brewer to the NRC's Haimanot Yilma objecting to the process and content of the PA:

"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."

"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."

"The cultural resources findings conducted by the seven (7) participating Tribes have not been afforded to the Oglala Sioux Tribe for review. As we understand, only three (3) Tribes (Northern Arapaho Tribe, Northern Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma) submitted their findings but those were not provided to OST for review."

"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."

"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 NHPA."

"Overall the PA is not a document that the Tribe is comfortable signing at this state. 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."

Too bad the PA does not require the Tribes' signatures. They are not required signatures and the PA appears to be imposed on the Tribes by the US and state

government officials signatures and, therefore, is a violation of the Trust Responsibility owed by the government to the Tribe and its members.

II) Problems with the PA itself:

1) The NRC Staff is insisting on ignoring testing the majority of the unevaluated sites which is supposed to be done under South Dakota archeology standards; in addition to what is required by 36CFR 60.4. The SD State SHPO office directives say that an isolate needs to be subsurface tested to determine if there are any other materials there. It can't be evaluated by looking at it from the surface unless it is sitting on bedrock and the NRC Staff by accepting the surface only survey proposed by Applicant, has in effect foreclosed evaluation of subsurface areas.

2) The NRHP portion of the agreement was taken out of the Programmatic annex because of its length. Will these provisions or the protections afforded therein be restored?

3) Any materials encountered within the project area are destined to be curated at the Billings curation center in Billings, Montana. Why are South Dakota materials being curated so far away from South Dakota? The South Dakota tribes do not appear to understand that.

4) There are still sites that are listed as "to be evaluated" that have not been evaluated as of this date and the Programmatic is apparently getting ready to go forward for signature. If the PA gets signed, those sites will never get evaluated. The NRC Staff will have failed in its duties and responsibilities to the Tribes.

5) There seems to be an awful lot of graves or suspected graves that are just being shunted to the side as if they don't mean anything. Also there are a number of "prayer/ceremonial" sites that "will just have to be moved outside of the project area"!!! These actions would violate the legal, treaty, and religious rights of native people of the Sioux Tribes, including the Oglala Sioux Tribe at Pine Ridge Indian Reservation. Graves are further protected by federal law outside of Section 106.

For the reasons stated above, the Programmatic Agreement should not be signed or

have been signed.

Sincerely,

/s/

David Frankel
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