Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Powertech USA, Inc.: Dewey-Burdock in Situ Uranium Recovery Facility

Docket Number: 40-9075-ML

ASLBP Number: 10-898-02-MLA-BD01

Location: Rapid City, South Dakota

Date: Thursday, August 21, 2014

Work Order No.: NRC-1008 Pages 1171-1328

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

----------x

In the Matter of: : Docket No.

POWERTECH USA, INC. : 40-9075-ML

: ASLBP No.

(Dewey-Burdock In Situ : 10-898-02-MLA-BD01

Uranium Recovery :

Facility) :

----------x

Thursday, August 21, 2014

Hotel Alex Johnson

Ballroom

523 6th Street

Rapid City, South Dakota

BEFORE:

WILLIAM J. FROEHLICH, Chairman

DR. RICHARD F. COLE, Administrative Judge

DR. MARK O. BARNETT, Administrative Judge

APPEARANCES:

On Behalf of Powertech USA, Inc.:

CHRISTOPHER S. PUGSLEY, ESQ.

ANTHONY J. THOMPSON, ESQ.

of: Thompson & Pugsley PLLC

1225 19th Street, N.W.

Suite 300

Washington, DC 20036

(202) 496-0780

contact@athompsonlaw.com

On Behalf of the Consolidated Intervenors:

DAVID FRANKEL, ESQ.

of: Aligning for Responsible Mining (ARM)

P.O. Box 3014

Pine Ridge, South Dakota 57770

(605) 515-0956

arm.legal@gmail.com

and

BRUCE ELLISON, ESQ.

of: Law Offices of Bruce Ellison

P.O. Box 2508

Rapid City, South Dakota 57709

(605) 348-9458

belli4law@aol.com

and

THOMAS J. BALLANCO, ESQ.
945 Taraval Street
Suite 186
San Francisco, California 94116
(650) 296-9782
harmonicengineering1@mac.com

On Behalf of the Oglala Sioux Tribe:

JEFFREY C. PARSONS, ESQ.
of: Western Mining Action Project
P.O. Box 349
Lyons, Colorado 80540
(303) 823-5738
wmap@igc.org

and

TRAVIS E. STILLS, ESQ.
of: Energy & Conservation Law
1911 Main Avenue
Suite 238
Durango, Colorado 81301
(970) 375-9231
stills@frontier.net

On Behalf of the Nuclear Regulatory Commission:

MICHAEL CLARK, ESQ.

PATRICIA JEHLE, ESQ.

of: Office of the General Counsel

Mail Stop - O-15 D21

U.S. Nuclear Regulatory Commission

Washington, D.C. 20555-0001

(301) 415-2011 (Clark)

(301) 415-8366 (Jehle)

michael.clark@nrc.gov

patricia.jehle@nrc.gov

TABLE OF CONTENTS

Opening Remarks, Chairman Froehlich 1176

Procedural Matters 1176

Panel 3

Opening Statements

Mr. Parsons for the Oglala Sioux Tribe 1181

Mr. Ballanco for the

Consolidated Intervenors 1200

Mr. Clark for the NRC Staff 1203

Mr. Pugsley for Powertech 1208

Board Cross-Examination of Panel 3 1212

Adjourn

1

P R O C E E D I N G S

(9:01 a.m.)

CHAIRMAN FROEHLICH: Good morning, all. We'll be on the record. Over the evening hour, I'd asked if the parties would confer to, one, clarify and perhaps come up with a single document which reflects the discussion that was held concerning the circular map and the project boundary area. Have the parties had an opportunity to confer?

MR. PARSONS: Your Honor, Jeff Parsons on behalf of the Tribe. We did confer. And the result, I think -- and, Mr. Pugsley, please jump in anytime -- I think the result was that the parties identified less of a controversy and more just of a misunderstanding, I think.

And so I think we could clarify that for you on the record. The map I think we discussed was at OST-5, Page 14 of that document. That's the Powertech rendition of the Gott map that shows the dissolution line drawn on there.

And so the understanding was that, or the misunderstanding was sort of what people were talking about. Dr. Moran's testimony was that there are markings indicating depressions below that dissolution front line that's drawn on there.

And Powertech's witness was indicating that none of those on this map appear within the permit area box. And so Dr. Moran wasn't trying to say, I think, that there were some in that box just below that line. And --

JUDGE COLE: Which is above the territory.

MR. PARSONS: Well, it is outside of the, that is to say that the map does not show any of those depressions within that box.

JUDGE COLE: Thank you.

JUDGE BARRETT: So let me make sure that I understand. So Dr. Moran would say that there are markings indicating breccia pipes between the red line and the project site but not on the project site. Is that correct?

MR. PARSONS: That's correct. And he was just looking at the map. And that's, I think, what the map shows as well.

MR. PUGSLEY: Your Honor, not breccia pipes, depressions.

JUDGE BARRETT: Okay, thank you.

MR. PUGSLEY: Allow me to respond. And, Mr. Parsons, please tell I'm framing this correctly, that Dr. Moran's -- because I've apparently in this proceeding been qualified as a geologist, hydrologist

and pretty much any other profession that I can take on -- Dr. Moran's testimony is that there are markings of depressions below the line labeled dissolution front, the red line, but not within the permit boundary.

And our testimony is there is not any markings of depressions within the permit boundary. Is that how you see it?

MR. PARSONS: That sounds accurate, thank you.

MR. PUGSLEY: Then we would stipulate to that.

JUDGE BARRETT: Okay, thank you.

CHAIRMAN FROEHLICH: That sounds like a meeting of the minds. Thank you. I'd also asked, at the conclusion of yesterday's session, if the parties would take an opportunity to discuss procedures for the viewing of the additional data that was the subject of OST-19. I wonder if someone could report on the progress, if any?

MR. PUGSLEY: Your honor, we have not met with the other parties regarding this. However, we did state for the record that Powertech would offer you a report on how, a proposal on how we would do this.

Let me say a few things if I may. One is we would like, for the record, to renew our objection to the finding of relevancy. We believe, based on Commission precedent, that the Staff has the legal ability to determine what data is relevant to an initial licensing decision.

We believe they've made that judgment and that, because of that, this data is not relevant to Contention 3 and that contentions in this proceeding are solely based on whether the licensing decision was adequate.

With that said, Powertech has conferred internally and notes the following two items for the record. One, we certainly, as we said yesterday, will make the newly acquired data, whether in paper or digitized form per the Board's ruling, available.

Two, excuse me, Consolidated Intervenors and the Oglala Sioux Tribe under the protective order that is currently in this proceeding, that was put out earlier for SUNSI information.

In addition, we'd like to note for the record that, per Mr. Parsons' August 16th, 2014, motion solely regarding the issue of what he classified as old electronic logs, that we also will stipulate to making that available to Consolidated

Intervenors and the Tribe at the same time.

Upon execution of the protective order, we will make that data, we believe the best way to make this data available for convenience of the parties is to make it available for inspection and review at Powertech's Edgemont office and not in Denver. Because that's totally inconvenient for the parties. We think that that is the most efficient way to do things.

And under the protective order, we would request that the Board say not only do we follow those provisions, but the Intervenors are free to make copies of items if they wish. But any such copies will need to be returned to Powertech, as they are proprietary.

We also note for the record that, upon submission of our response to the remainder of Mr. Parsons' motion next Tuesday, we will also offer you a 10CFR 2.390(a)(4) affidavit as required by Commission regulations noting that this information is commonly held in confidence by ISR companies and that it meets the Commission's requirements for confidential business information.

CHAIRMAN FROEHLICH: Mr. Parsons?

MR. PARSONS: Yes, Your Honor. So this is

the first we've heard of this proposal. Hearing it in oral form and not having a written copy makes it just a bit of a challenge. I don't want to say that I didn't hear what Mr. Pugsley said, but I think it'd be helpful for us to review that, talk with our experts.

Two things, I guess, come to mind. The first is the location. I'm not sure that we would agree with Mr. Pugsley's statement that Denver is utterly inconvenient for all the parties or that Edgemont is the most convenient. We'd have to talk with our experts about how that occurs.

The second is -- or, I guess, three things -- the second is with regard to the copies, my understanding is a lot of this data is in digital form. That would not seem to be too much of a challenge to disseminate.

I do note that the regulations at 10CFR 2.336 do address the issue of copies. And it does give the parties "a right" to request copies of the document. I think to say that we have an opportunity to make our own copies, I'm not sure how that squares exactly. I'd like to --

CHAIRMAN FROEHLICH: I think what Mr. Pugsley was saying is they're not going to duplicate all the materials in their possession. But after your

experts review the materials, if they need to make copies, they'll make copies available. Did I understand you correctly?

MR. PUGSLEY: Let me offer some more information to Mr. Parsons. First of all, and I didn't mean to over-complicate this, the data itself resides in Edgemont at this time. So it is available there.

Secondly, yes, that's what we were saying. If the experts needed copies, they can feel free to make them as long as they return them as proprietary information.

Third, with respect to the digitized data, that is available on a CD, a disk. And that is, yes, that's fine. You can take that. I mean, you can have it as soon as you sign the protective order.

MR. PARSONS: Which gets to my third point with respect to the protective order. We would like an opportunity, based on the affidavit that appears to be forthcoming, to review that. We're not, at this point, willing to stipulate that this falls within the requirements or the conditions for a protective order.

MR. PUGSLEY: I would respectfully disagree with that. Because when the Board issued the Federal Register notice regarding SUNSI information,

I believe a representative of the Tribe signed that protective order. So it was deemed adequate for the sensitive information. I see no difference here.

MR. PARSONS: I wasn't -- I'm sorry.

CHAIRMAN FROEHLICH: Are you suggesting that we need to make any additions or changes to the protective order that we already have in place?

MR. PARSONS: I think we were wishing to further investigate whether this data falls within, that is to say that the protective order is needed for this information.

As we heard testimony, a lot of this data is already submitted to NRC Staff. It's included, the same logs, the same information's included in the testimony. It's included in the FSEIS. So the idea that additional data would be subject to a protective order, I'm just not willing to stipulate at this point that it falls under that category.

MR. PUGSLEY: Your Honor, I find this argument intriguing. Because it seems to me that if Mr. Parsons would like an opportunity to review our affidavit, that's fine. That's not a problem. And the regulations state that the Board will review the affidavit and determine whether or not it's confidential.

But I see no reason why the protective order could not be executed to expedite the disclosure of this data, the availability of this data. And then if Board determines that it does not meet the regulation's definition of confidential information, then the protective order can be rescinded for that.

MR. PARSONS: I'm not sure that that's a strategy we're interested in pursuing, necessarily.

MR. PARSONS: I wasn't aware there was a strategy here. I thought it was about looking at the data.

MR. PARSONS: It is about looking at the data. But it requires our experts to make time to review it. I'm not sure that that can happen in such an expedited fashion as you say.

I'll further note that, according to Powertech's testimony and their pleadings, there's substantial additional data that's likely to come in by the end of next month. And so it seems to me that we've got additional data that would be subject to the same relevancy ruling that will be in Powertech's possession in the coming weeks.

And so it's not clear to me why we would be expediting a review of part of it and not all of it when you're to have most of it or some of it no

earlier than next month.

CHAIRMAN FROEHLICH: Mr. Parsons, the Board found that this material is relevant. And Powertech, at this stage, has listed its conditions, its concerns with making it available to you as quickly as possible. This is consistent with the Board's ruling that these are relevant, appear to be relevant to the case and may be helpful to you.

I would like you to consider, and speak with your clients and come up with a way to expedite your review of this material and report to me if there any concerns.

The fact that Powertech has, in their press release, paid substantial sums of money to acquire this data leads me to believe that it may be commercially sensitive and proprietary in nature.

You're welcome, you know, to look at his affidavit. But on its face, it seems like that shouldn't be an impediment to reviewing this material in short order. So I would ask that you confer with your experts and come up with convenient times or sessions where they would be able to review this material.

And you can see whether it supports your position, leads to new contentions, or whatever might

be in there. Let's not worry about forthcoming documents. Powertech is aware that we consider this type of material relevant. However, they can only show it to you once they are in possession and control of it.

MR. PARSONS: I understand that, Your Honor. Thank you. I guess my last question would be with regard to NRC Staff review of this data. It seems to that that's a component of this as well.

CHAIRMAN FROEHLICH: Staff will also have access to this material. This material is now available for the parties to review. And Staff is welcome to have its experts review the data for whatever purpose, for whatever use they might make of it.

MR. CLARK: Judge Froehlich, if I could just clarify one point. The Staff doesn't have existing well log data, except for that which was included in Powertech's application. It doesn't have separate past data, otherwise it would have identified that data and claimed that it's privileged in one of its hearing file updates.

CHAIRMAN FROEHLICH: I'll leave it to you, Mr. Clark, if you want to review these. But the Staff would have access to these as well.

MR. CLARK: Okay. Thank you.

MR. ELLISON: Judge, two questions, if I may.

CHAIRMAN FROEHLICH: Please, Mr. Ellison.

MR. ELLISON: First, I would assume would the Staff then have to come to wherever our experts have to come? I mean, if we're all going to the same place to view the data, or is Powertech planning to provide a copy to --

CHAIRMAN FROEHLICH: If Staff wants to review the digitized data, I guess they can do that wherever they want. If they want to travel to Edgemont and go through the paper documents, they will arrange a time that was convenient for both.

MR. ELLISON: Assuming we deal with the privilege issue and sign any papers that may be required, Mr. Pugsley mentioned CDs. I imagine they could then be sent to all parties once the protective order is --

MR. PUGSLEY: Yes, of course. Of course. And certainly, Mr. Ellison, if there were any issues in terms of getting you digitized copies, you know, location or whatever it may be, please contact me.

MR. ELLISON: Sure, certainly. And thank you for that. The other thing, Judge, was towards the

end of the day one of the discussions that came up was the number of additional drilling logs. And I had made a request that Powertech give us some further information. And I believe Mr. Pugsley had agreed to do that.

MR. PUGSLEY: I can certainly tell you that, I mean, I thought I made clear that any logs that fall within the scope of both the newly acquired as well as anything within the scope of Mr. Parsons' motion will be provided. Basically, just give me a moment --

MR. ELLISON: Sure. Because it was a number. You know, we're trying to understand the volume --

MR. PUGSLEY: Let me just make sure my numbers are correct.

MR. ELLISON: Oh, no, I understand. We're trying to understand the volume. That will help us with planning as well as give us an indication about timing.

MR. PUGSLEY: Got it. I got it, sorry. I keep forgetting these mics are live. All right. Basically, I'm going to give you a bunch of numbers. And if something gets out whack let me know.

The total logs, complete, original, was

4,245. One hundred and eighty-five of those logs were provided to the Nuclear Regulatory Commission in the license application. With respect to the newly acquired data, there were 1,400 logs, approximately 280 of those 1,400 logs are new, not previously known. All of the newly acquired logs, per OST-019, are digitized. And that's the extent of the information I have.

MR. FRANKEL: Follow-up question, Mr. Pugsley, did you say that all the new ones are digitized, the 1,400, or was it just the 280?

MR. PARSONS: Fourteen hundred, right?

MR. PUGSLEY: Okay. All the newly acquired ones are digitized.

MR. FRANKEL: So that would be 1,400?

MR. PUGSLEY: Yes.

MR. FRANKEL: Your Honor, I have a couple of follow-up questions, if I might. David Frankel speaking for Consolidated Intervenors. For one, I'd like a couple of clarifications on Mr. Pugsley's initial statement today.

He was asked a question by the Board, and he started with a renewed objection and some legal argument. And I'm interested to know if that was a motion for reconsideration or not.

MR. PUGSLEY: My discussion on the objection today does not serve as a motion for reconsideration from Powertech.

MR. FRANKEL: Thank you for that clarification, Mr. Pugsley. Secondly, I note that Mr. Pugsley just said something along the lines of all documents that were within the scope of Mr. Parsons' motion would be disclosed?

MR. PUGSLEY: All documents within the scope of his motion regarding electric logs.

MR. FRANKEL: Would it not be more correct to say that all documents that are relevant, as that term is defined in the Board's recent ruling on relevancy, would be disclosed? Because there's an ongoing disclosure obligation.

So whether or not it fell within the scope of Mr. Parsons' motion would actually not be relevant to that analysis. What is relevant are the Board's ruling, its interpretation of the applicable regulation on relevance and reading that together with the discovery obligations and the continuing disclosure obligations.

So I would like, possibly, Mr. Pugsley to clarify his intentions on their standard for deciding what is relevant going forward.

MR. PUGSLEY: I will not possibly clarify it, it will. The Board sets the standard for relevancy. We were told yesterday that Powertech is entitled to respond to the entirety of Mr. Parsons' motion next Tuesday. We have conceded only the point of relevancy on the electric logs that were referenced in his motion. We plan to submit a written motion along with our 2.390 affidavit on Tuesday.

MR. FRANKEL: I'm sorry to be dense on this issue. I'm just not fully understanding. Are you saying that somehow the Board's ruling on relevance is not complete or that it requires an answer?

Because my understanding was is that Mr. Parsons filed either several motions or combined motions. Some of them had to do with remedies and enforcement of the disclosure obligations. And the answers to those are pending.

But I did not understand that there were still any open issues on the legal question of what is relevant concerning the e-logs and their association to support or undermine the contentions.

MR. PUGSLEY: I think the portion of Mr. Parsons' motions that deal with e-logs, we've dispensed with here.

MR. FRANKEL: So are you planning to continue to argue and answer on the legal question of the relevance of this type of information to these contentions? Because it would seem to me that that would be out of order.

MR. PUGSLEY: I'm not in the position to answer that question at this time.

MR. ELLISON: Judge, one additional matter, at least that I see at this point. If I understand Mr. Pugsley's numbers that he has provided us, the total number of drill logs are 4,245. Is that right?

MR. PUGSLEY: Yes.

MR. ELLISON: Okay. Of which 185 were presented to the NRC. And then there was this new batch of 1,400 logs of which all but 280 are new?

MR. PUGSLEY: Yes.

MR. ELLISON: Okay. Where are the other 2,600 logs?

MR. PUGSLEY: They're in Edgemont. As I say, we're going to make them available to you.

MR. ELLISON: Okay. So there's 4,245 electric drill logs --

MR. PUGSLEY: Original.

MR. ELLISON: Okay, thank you.

MR. FRANKEL: As a follow-on to that, these are little slips of paper or are these rolls? Are they heavy and voluminous, or do they fit into a couple of banker's boxes?

I would like to get an idea, because as we go back and talk to our experts and we get an understanding, we might make a counter-proposal that has to do with shipping the logs to a secure location, such as a college facility.

And before we make that proposal, I'd like to know if we're dealing with 300 pounds of documentation or 20 pounds of documentation. What is the size and volume of the material that we're talking about here?

CHAIRMAN FROEHLICH: Apparently the bulk of the material, at least of the new material, is all digitized.

MR. PUGSLEY: As far as I know, the entirety of the new material is digitized.

CHAIRMAN FROEHLICH: And from what I understood from the Witness' testimony, the review of the digitized data is sort of the preferable way to go.

MR. FRANKEL: I'm sorry. I understood the exact opposite, that they liked to slide the papers.

CHAIRMAN FROEHLICH: He wants to slide the papers.

MR. FRANKEL: And so my understanding is that there's going to be an expert looking at the papers, at least at some point. And if we're talking about an amount of material that fits into something that can be shipped without undue expense, then my question is, you know, how many boxes, how many people does it take to carry all this, all the logs? Are we talking about something that one person can carry in a box, or is something that is the size of a refrigerator? I'd like some understanding.

CHAIRMAN FROEHLICH: I don't want to belabor the record with the size. The Intervenors won this one. You have access to these documents. I would request that the parties meet at our first break this morning and figure out the logistics of allowing your experts access and use of this data in the most expeditious way possible.

MR. FRANKEL: Thank you, Your Honor.

CHAIRMAN FROEHLICH: Okay. Are there any other procedural matters that we need to take up at this point in time before we begin with Panel 3 concerning Contentions 6 and 9?

MR. PUGSLEY: Just a very quick one, Your

Honor. I can't recall, and I sincerely apologize. I think I've completely forgotten. Are we permitted to have closing statements?

CHAIRMAN FROEHLICH: If the parties wish closing statements, we can certainly accommodate that today.

MR. PUGSLEY: All right. Well, we would like one if possible. Thank you.

CHAIRMAN FROEHLICH: And all parties will be afforded the opportunity to make closing statements at the conclusion of cross examination.

Okay. No other procedural matters at this point? We'll now take up Contention 6. Let me note, we have one new witness. And I would ask Ms. McKee to rise and raise her right hand, please.

Do you solemnly swear or affirm that the statements you make in this hearing before the ASLBP will be true and correct to the best of your knowledge and belief?

MS. MCKEE: Yes.

CHAIRMAN FROEHLICH: And do you adopt your pre-filed reply testimony as your sworn testimony in this proceeding?

MS. MCKEE: Yes.

CHAIRMAN FROEHLICH: Thank you. Please be

seated. Contention 6, Mr. Parsons, would you care to make an opening statement as to Contentions 6 and 9, the issues before Panel 3?

MR. PARSONS: Thank you, Your Honor. Contention 6 deals with the discussion of mitigation measures in the final supplemental environmental impact statement.

NEPA requires a reasonably complete discussion of mitigation measures in an EIS. Broad generalizations and vague references do not constitute the detail required. An FSEIS must also assess proposed mitigation measures' effectiveness in a NEPA document.

Our opening statement at Pages 27 to 31 details these legal requirements taken from both NEPA case law or NEPA statute and regulations as well as case law. In this case, the FSEIS fails to include the required analysis of mitigation and their effectiveness for a variety of impacts.

For instance, mitigation for cultural resource impacts was not analyzed in the FSEIS and was simply deferred into a post-FSEIS programmatic agreement phase. The same applies to NRC Staff's reliance on license conditions to mitigate impacts.

For instance, the plugging and abandoning

of old boreholes, although that's a license condition, no discussion as to the effectiveness or process for this was included in a mitigation discussion in the NEPA document.

Groundwater restoration or other groundwater monitoring was also not detailed as to effectiveness in the NEPA document. Wildlife protections where the FSEIS simply states that the Agency "is still in process of working on an avian monitoring and mitigation plan", that does not include the detail necessary to comply with the National Environmental Policy Act.

With regard to this avian monitoring and mitigation plan, we find out in recent submittals to the state that such a plan was submitted to the Fish and Wildlife Service last January, yet not disclosed or discussed in the final supplemental environmental impact statement. That issue, of course, is present in the motion the Tribe filed last Saturday.

And there are more examples detailed on Pages 35 and 36 of our opening statement. NRC Staff and Powertech respond by generically pointing out to Chapters 2 and 4 of the FSEIS but never identifying where the adequate analysis of mitigation occurs.

They also defend by saying that they could

not, in some places, conduct the analysis of mitigation, because Powertech has not submitted their completed permitting with other agencies, including the State, the EPA and the Fish and Wildlife Service.

These arguments fail to demonstrate that the necessary analysis was completed and do not change the fact that the final supplemental environmental impact statement lacks the required discussion of mitigation as required by NEPA.

With respect to Contention 9 which involves NRC Staff inappropriately deferring to EPA and the state of South Dakota to review environmental impacts, these include NEPA's, excuse me, EPA's Class III and Class V UIC permits as well as the State of South Dakota's National Pollution Discharge Elimination System permits under the Clean Water Act.

Instead of evaluating the impacts associated with these permits, the FSEIS simply states with regard to EPA that the EPA will evaluate the, we will evaluate the suitability of the formations for Class V injection disposal. It does not include the required discussion of those impacts within the NEPA document.

Notably, neither the EPA or the state of South Dakota, with respect to these permits, are

subject to NEPA. So the result is there will be no NEPA discussion of those impacts by NRC if not included in this FSEIS. This deprives the parties and the public of any opportunity under NEPA from the NRC to review these impacts.

Lastly, the Tribe stands by and reasserts its objection to testimony in this proceeding that attempts to supplement the Supplemental Environmental Impact Statement with analysis that was improperly excluded from that NEPA document.

This hearing is not a NEPA process. And our position is the FSEIS inadequacies cannot be cured with testimony here today. Thank you.

CHAIRMAN FROEHLICH: Could I just ask one -- it was in your last line. That this proceeding, or the proceedings that have taken place or the actions that have taken place since the issuance of the FSEIS are not a NEPA action?

MR. PARSONS: That's correct, Your Honor. The case law we've cited in our opening statement that, within the confines of a court proceeding, that does not provide the public an opportunity to review and analyze. And the environmental impact analysis in a NEPA document does not constitute a NEPA process.

CHAIRMAN FROEHLICH: Thank you.

JUDGE BARRETT: Can I ask a question?

CHAIRMAN FROEHLICH: Sure.

JUDGE BARRETT: Which testimony are you objecting to?

MR. PARSONS: Well, we filed a motion in limine, a pre-hearing motion in limine in July which objected to testimony within, we pointed to examples, testimony within the pre-filed testimony that attempts to provide detailed additional, essentially, NEPA analysis that was not included in the FSEIS. So that's the testimony that I'm referring to.

For instance, if a witness were to say, well, here's the mitigation plan and here's what we plan to do, our position is that including that in the testimony here in this hearing does not cure those NEPA violations in the FSEIS.

JUDGE BARRETT: Thank you.

CHAIRMAN FROEHLICH: Consolidated Intervenors?

MR. BALLANCO: Thank you, Your Honor. On behalf of the Consolidated Intervenors, Tom Ballanco, attorney for Dayton Hyde.

I want to echo what Mr. Parsons just said about the importance of these mitigation measures and having actual public participation in this process of

crafting strategy.

There are a lot of unknowns about this mining facility, the proposed facility which is not licensed, were it to proceed forward. What happens underground? There are some unknowns we'll certainly agree to.

There is a host of knowns though. We know there will be leaks in the thousands of gallons of injection fluid. We know there will be leaks in the thousands of gallons of production fluid. We know there will be leaks from the ponds. We know there will be excursions.

We know this because every ISR facility licensed by the NRC has had these problems and has these problems. This site will have these problems if it's licensed and goes into operation.

And these problems matter extensively, particularly to Mr. Dayton Hyde, a mere 20 miles down the Cheyenne River. Any surface excursion, any surface spill, while it may be good enough for certain standards, good enough may not work in the sense of Mr. Hyde's facility. He has a tremendous concentration of natural wildlife, wild horses that he maintains, that drink from the Cheyenne River.

At what I think I heard was a conservative

flow rate for the Cheyenne River, we're talking about three miles an hour. So Mr. Hyde's ranch is six hours downstream from a spill at this facility, a spill that can be anticipated.

And mitigation measures that will be worked out in the future are in no way adequate to address the very real concerns that the Wild Horse Sanctuary faces from the opening of this facility, not to mention the other Intervenors in the area.

As far as connected actions go, we consider this all a connected action. It's not without relevance that I note that Mr. Hyde has worked closely with the Oglala Sioux Tribe, because he leases from the Oglala Sioux Tribe 2,000 acres contingent to his ranch. This is acreage replete with historical, cultural artifacts, burial sites, camp sites.

He has worked out an arrangement with the Oglala Sioux Tribe, arms-length agreement, they're both satisfied. Those kinds of agreements are possible. This is not something where it's just impossible to bridge the gulf between something in Oglala's sacred land and the Oglala Sioux Tribe. He's managed to work that out.

In that context, he would like to see the NRC and Powertech work something out with the Oglala

Sioux Tribe. This is a connected action that will likewise affect their concerns in the region.

Again, we know there will be some damage. The mitigation measures have to take into account the reality that there will be impacts and not just some theoretical plan to address them when they occur. Thank you.

CHAIRMAN FROEHLICH: The NRC Staff, please.

MR. CLARK: Okay. Thank you. For Contention 6, the Staff thoroughly considered measures that can be used to reduce or avoid impacts of the Dewey-Burdock project.

The Staff's witnesses are Haimanot Yilma from whom you've already heard, Kellee Jamerson who also testified on Tuesday, and Jim Prikryl, who testified yesterday on groundwater issues.

Key evidence in this hearing include numerous sections of the final EIS, especially Chapter 4 where the Staff explains how the measures it identifies will reduce or avoid impact from the Dewey-Burdock project. The Staff discusses these measures in a level of detail consistent with other NRC environmental statements and also consistent with environmental impact statements from other agencies.

Contrary to the Intervenors' suggestion, the Staff did not need to devote pages to each mitigation measure.

Now, this is primarily a legal issue contention. And actually I'll back track a bit. Before I get to that, Mr. Parsons asked for specific examples of how the Staff considered mitigation measures and their effectiveness.

And the Staff, in fact, provided those examples and lists of bullet points that we included in both our initial statement of position and our rebuttal statement of position. I don't have the specific page numbers, but if the Board looks at the discussion under Contention 6, it'll find a list of nine or ten bullet points. Those are just examples.

There are over 100 mentions of mitigation measures in Chapter 4. Mitigation measures are also discussed in Chapter 2 of the EIS in the context of alternatives to the proposed action in Chapter 7.

One Chapter I haven't mentioned is Chapter 6 which is the Chapter the Tribe focused on. That's a summary of mitigation measures. The Board needs to look elsewhere for the more specific discussion of how those measures will reduce or avoid impacts in specific areas.

Turning back to the legal issue component of this contention, case law from both the NRC and the Federal Court supports the Staff's position. Under the Hydro Resources decision, 64 NRC-417 at 426 and 417, the Commission explained that a mitigation plan need not be legally enforceable, funded or even in final form to comply with NEPA's requirements.

As long as the Staff discloses the potential adverse impacts of the proposed action, it's sufficient to discuss mitigation measures in general terms.

Also, from the Hydro Resources decision, this is again the same case, 64 NRC at 426 and 27, there's no requirement that an agency's discussion of mitigation measures be supported by scientific studies. The Agency can do that, and in this EIS the Staff did so in certain areas. The Staff did not need to do so in every area.

Under Federal Court precedent, the discussion of the effectiveness of mitigation measures does not need to be highly detailed. That's from a recent District Court case. Nor does an agency have to assign an effectiveness rating to mitigation measures.

Some agencies have, but that's typically

when an agency doesn't go into detail, doesn't provide a qualitative description of the effectiveness of mitigation measures. They just provide a table listing the effectiveness rating as low, moderate or high.

Now for cultural resources, Mr. Parsons mentioned that there's a NEPA deficiency because a programmatic agreement was not fully incorporated in the EIS. That's an issue the Board heard Tuesday. The Staff believes the Board has heard enough argument. The Staff's position is that a programmatic agreement was, in fact, included in the record of decision. And that's consistent with NEPA.

In terms of license conditions, contrary to what Mr. Parsons said, the Commission's and Powertech's license very specifically described the procedures that Powertech must follow to mitigate certain actions.

Mr. Prikryl can provide more information to the Board today regarding groundwater restoration and other license conditions that require specific mitigation measures.

In terms of Contention 9, the Staff evaluated the reasonably foreseeable impacts of licensing actions related to the Dewey-Burdock

project. Getting to the difference between connected actions and related actions, I think the issue is whether the Staff considered other actions. And the Staff did so, regardless of whether they're connected or related actions.

The Staff addressed impacts from related actions in Chapter 4 of the EIS, and examples include extensive discussions of Powertech's applications for Class III and Class V injection permits from the EPA. The Staff also discusses in detail Powertech's storm water discharge plan submitted to the state of South Dakota.

Now, the Tribe claims that in many sections the Staff defers to the future analyses of the agencies like the EPA. But that's incorrect. The Staff merely refers to the licensing actions of those other agencies. And it uses these standards in regulations that those agencies will apply in assessing the impacts of the Dewey-Burdock project.

Now, while it's true that Powertech hasn't yet obtained all permits it needs to operate the Dewey-Burdock project, NEPA doesn't require the Staff to postpone a licensing decision. And so every other agency completes its own review processes. If that were the case, it'd be almost impossible for any

agency to finalize an EIS.

In conclusion, the Staff complied with NEPA by considering related actions. And the Staff's witnesses look forward to answering the Board's questions.

CHAIRMAN FROEHLICH: Thank you, Mr. Clark. Mr. Pugsley.

MR. PUGSLEY: Thank you, Your Honor, Members of the Board. May it please the Court, with respect to Contention 6, it is Powertech's position that its NRC license and record of decision more than adequately assesses mitigation measures proposed to be developed and implemented for the Dewey-Burdock project, as well as connected actions.

For purposes of Contention 6, one of the major allegations levied against the FSEIS includes an allegation, a statement that mitigation measures were relegated to nothing more than a simple summary chart at the beginning of Chapter 6 of that document. That is absolutely incorrect.

Each resource area addressed in the FSEIS had its own analysis of potential mitigation measures. And to the extent necessary and practicable, they were evaluated individually.

As Mr. Clark stated and we would, as the

Licensee, incorporate all of Mr. Clark's previous statements by reference for the record, mitigation plans are permitted to be developed after license issuance per the Hydro Resource's case as cited by Mr. Clark.

With respect to groundwater mitigation, it is extensively addressed in the FSEIS. There are multiple references and discussions regarding items such as post-license issuance pump tests and hydrologic wellfield packages, which was discussed comprehensively yesterday, as well as post-operational restoration and stabilization monitoring.

Air emissions as well were addressed specifically in the document, as well as the SER, including the fact that Powertech cannot dispose of 11e(2) byproduct material onsite, per the Commission's policy under 10CFR Part 40, Appendix A, Criterion 2.

With respect to cultural resources, Powertech says we agree with Mr. Clark's assessment of that mitigation and would add that regulations for Section 106 at 36CFR 800.6 entitled resolution of adverse effects, which was the jumping-off point for the Staff to develop a Part 800.14 programmatic agreement, specifically states the purpose of continuing consultation through this is to develop and

evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties. That language, on its face, speaks to the fact that the programmatic agreement is, itself, a mitigation measure.

With respect to Contention 6, our Witnesses will be Mr. Hal Demuth, Mr. Doyl Fritz and Ms. Gwyn McKee.

With respect to Contention 9, again, Powertech's license and record of decision demonstrates that NRC Staff adequately considered connected actions and interacted with federal agencies. As a general matter, connected actions here should be limited to those with federal agencies, as state agencies, per case law, do not apply.

Specific allegations under this contention include a failure to consult with EPA during the development of the NEPA process, specifically with respect to Class III and Class V wells.

This fails to consider several factors, including the fact that NRC Staff interacted with EPA during the development of the draft supplemental EIS. EPA did, indeed, submit comments during the 45-day comment period on the draft supplemental EIS and also,

by process and rule, had a 30-day concurrence period post-FSEIS finalization to which they did not submit any significant comments.

With reference to the Bureau of Land Management, the Board is most likely aware BLM did serve as a cooperating agency with the Nuclear Regulatory Commission Staff on the development of the final SEIS. And they were integral to their development and gave their perspective on a variety of resource areas.

Powertech also believes that there are many, many references in the final SEIS regarding assessment of and the use of other regulatory programs to satisfy NRC requirements under the Atomic Energy Act, including but not limited to well plugging and abandonment pursuant to South Dakota requirements, which was deemed adequate.

EPA's UIC permits for Class III and Class V wells, which most specifically Class III wells are the hallmark of a wellfield so they, just by logic, had to be extensively considered in both the safety and environmental reviews, as well as Class V having their own independent impact analysis in Chapter 4 of the FSEIS as well as South Dakota requirements for NPDES permits as well.

So in conclusion, Powertech's position is that the Board should find that no allegations under Contention 6 or 9 should result in a modification of Powertech's NRC license or record of decision. Thank you.

CHAIRMAN FROEHLICH: Thank you, Mr. Pugsley. All right, well, let's begin. Beginning with the final environmental impact statement, NRC-008A-2, that's where we find Section 4 and 4.1 which defines the standard of significance based on CEQ regulations for proposed actions. And as I understand this, the significance can range from small to large in the analysis in the EIS. Is that correct?

MS. YILMA: That's correct, Your Honor.

CHAIRMAN FROEHLICH: And is it the Staff that makes the determination whether a particular impact will be small, or large or moderate?

MS. YILMA: That's correct. That would be a part of our review process.

CHAIRMAN FROEHLICH: And what are the criteria that the Staff uses to make the overall significance finding?

MS. YILMA: The criteria varies by resource area. So each resource area would have to look at it specifically and come up with impact

assessment. We do have a NUREG 1748 that we follow which gives us guidance on what type of things should be considered in impact assessment. Using those, we come up with our impact analysis and measures.

CHAIRMAN FROEHLICH: I note that at 4.3.1.2 is the section which discusses disposal via land application. And there, as part of the analysis or conclusion, the Staff states that the Applicant has proposed to develop emergency response procedures for yellowcake accidents. Is there a deadline for them to do that? And what review is there of that emergency response plan?

MS. YILMA: The emergency response plan actually is one of the license conditions that the applicant's would have to do as part of the pre-operation inspection. That's one of the things that the safety team looks at. And it is a requirement that they would have to have that in place before they start operating.

CHAIRMAN FROEHLICH: I know that many, many points throughout the FSEIS, it relies upon commitments by the Applicant to mitigate impacts by submitting plans in the future. And that's tied to the license condition. That's sort of the system. That's how you address these future contingencies?

MS. YILMA: In some instances, that's correct.

CHAIRMAN FROEHLICH: Now, these license conditions, how are they enforced by the NRC?

MS. YILMA: Well, again, the safety team goes on inspections. During inspections, one of the things they look at are these license conditions and how they are being satisfied. And if they are not being satisfied, then they will take proper action. And that is something of a legal matter, and that is a little bit outside of my comfort zone to discuss here.

CHAIRMAN FROEHLICH: Okay. Getting away from the legal matters, just the practical matters, could you give me a feel for the number of inspections, how they're done, when they're done? Are they continuing over the life of the project?

MS. YILMA: Yes. So again, this is a safety team inspection. The inspections are typically done on a routine basis, announced and unannounced. So they do both an announced inspections and an unannounced inspection. And on average, I don't know if I can tell you how many inspections are done.

MR. CLARK: Judge Froehlich?

CHAIRMAN FROEHLICH: Yes.

MR. CLARK: Tom Lancaster is a member of the safety team, and he conducts inspections. If you have more detailed questions, I believe he'd be happy to return to the table.

CHAIRMAN FROEHLICH: Lancaster, sure, yes. I would like that.

MR. CLARK: Okay.

CHAIRMAN FROEHLICH: Call him to the stand. Remind him and the other witnesses that they're still under oath.

Pull up a chair.

MR. LANCASTER: Yes. Is it on? Can you hear me? Yes, at a minimum it's once per year throughout the life of the project, at a minimum. We have facilities where they're doing it twice a year.

CHAIRMAN FROEHLICH: Now, at these inspections, does the NRC Staff tell the Applicant or Licensee what would be covered under the NRC inspection? For example, you say we're going to look at all the license conditions. Or could they just assume you're going to look at everything?

MR. LANCASTER: They can assume we're going to look at everything. Anything and everything, all the commitments, license conditions, anything that's been licensed, we do an evaluation based on

facility records and our inspection of the facility itself.

CHAIRMAN FROEHLICH: And you might or might not cover it all, depending upon what the inspection team wants to do?

MR. LANCASTER: Yes. We're limited in the amount of time that we're out there. So we, you know, can't cover everything. But there are areas that throughout the year, in our correspondence, that we may focus on. But there are some key areas we cover. And then there're some areas where we spot check it.

CHAIRMAN FROEHLICH: Thank you. A little bit more, please, Mr. Lancaster, on the once a year approximate inspections that you referred to, how long is the individual or the team out there please?

MR. LANCASTER: Yes. We, of course, with the headquarters Staff, and the regional Staff has the actual inspector. So we go out there and support, provide technical support for that inspector. We go out and do that support for three days, travel on Monday, do the inspection Tuesday, Wednesday, Thursday, and then travel back on Friday.

CHAIRMAN FROEHLICH: Have there been, as part of the program, have there been violations of license conditions?

MR. LANCASTER: Yes, there have been. And I don't know if you want me to try to summarize some of them. I'd have to regroup to summarize some of those. But that's a function of Region 4 to bring forth the results of the inspection and any violations.

And then there's resolution or there's corrective action that's taken by the facility possibly, and they're resolved. I don't know if I can really talk for the inspector, but that's what I'm seeing when I go out and support these inspections.

CHAIRMAN FROEHLICH: Does the NRC have any other ways of finding out if there are violations of the license condition, other than this annual or spot inspections?

MR. LANCASTER: Yes. Also self-reporting. The facility will recognize an issue that is in violation of their license. And they'll resolve it on by themselves. And they'll record this in their documentation, and we'll see it in the inspection.

CHAIRMAN FROEHLICH: Are there any other ways that the NRC Staff learns about alleged or possible violations of a license condition?

MR. LANCASTER: There is documentation that is, by license condition, that must be submitted

to us periodically. And that potentially, well, that's a hard question.

We do get documentation that is required to be submitted by them regularly. We look at that for compliance with the license.

CHAIRMAN FROEHLICH: Mr. Clark?

MR. CLARK: Judge Froehlich, can I add --

MR. LANCASTER: Because there's also one other thing. There's also, you know, if there's an allegation involved, that's another route that we could find out about a violation. Yes, go ahead. I'm sorry.

MR. CLARK: Mr. Lancaster made the point I was going to make. The NRC has a robust allegations program. There's a senior allegations specialist and another allegations specialist, two people in each of the four regions.

The NRC also has an extensive management directive, 8.8, that deals with the allegations. And we take allegations very seriously. And we are required by our internal procedures to follow-up on those allegations.

CHAIRMAN FROEHLICH: Mr. Lancaster, who makes these allegations?

MR. LANCASTER: Well, it could be anybody.

I don't think there are any boundaries for that, from what I understand.

MS. YILMA: And it could be anyone. It could be an operator, for instance, if they deem appropriate that the Licensee is not doing what they're supposed to be doing. It could be a public, anyone could have an allegation. It is NRC's responsibility to inspect all allegations that we receive.

CHAIRMAN FROEHLICH: And does that happen in the supervision of ISR facilities? Do you get allegations from, I guess, members of the public, watchdog groups --

JUDGE COLE: Employees?

MR. LANCASTER: Employees, yes. Does that happen?

CHAIRMAN FROEHLICH: Yes, does that happen?

MR. LANCASTER: Well, I can only talk from my personal experience. I haven't had an allegation come to me yet. But --

MR. ELLISON: I couldn't hear that last part, sir.

MR. LANCASTER: I can only talk from my personal experience. I haven't had an allegation

concerning an ISR facility. And that's just for me. But there may have been.

MS. YILMA: Maybe we can look into it and get back in touch with you. Unfortunately, the allegation department, of course, is separate from the project managers and the environmental managers. Unless we are given the allegation to investigate, we may not know it. And you heard from Tom Lancaster, he doesn't have any records of it.

MR. LANCASTER: That's correct.

CHAIRMAN FROEHLICH: I was only trying to follow-up, as this is listed as a mitigation method, that the license conditions are one of the elements that influences the analysis of the risks, or whatever or the impacts on it. I wanted to know if it works like that, if it ever happens. I was going to ask then if it ever happens, what the NRC will do about it or does about it. You get an allegation, what happens?

MS. YILMA: If there is an allegation, we have to investigate. There is a time table, a five day, a 30 day time table where we have to investigate the allegation thoroughly. And, as part of the allegation, the individual can say the allegation anonymously without, you know, disclosing her identity

or his identity.

In that situation, we would follow-up with the Licensee to see whether the allegation is accurate. If the individual wishes to discuss or disclose his identity, then we would have, you know, interviews with that individual and also, of course, the Licensee to follow-up if the allegation is accurate and if there are any, you know, enforcement actions, or litigation or corrective action that needs to be followed.

Again, all these are somewhat of a legal matter. If there are truly allegations and have been confirmed to be accurate, then the legal aspect takes place and sees if they can enforce them.

JUDGE BARRETT: Judge, can I follow-up please?

CHAIRMAN FROEHLICH: Sure.

JUDGE BARRETT: You mentioned that there was a separate part of the Staff that handles allegations. Is that correct?

MS. YILMA: Yes.

JUDGE BARRETT: Would they involve the NRC project manager in that?

MS. YILMA: That's correct. If it's deemed appropriate, yes.

JUDGE BARRETT: Okay. Thank you.

JUDGE COLE: When you say project manager, that's not necessarily one of the plant inspectors?

MS. YILMA: That is true. But if an allegation came up of the operation, something that should have been -- Tom, you can correct me -- something that should have identified during the inspections, I'm sure the project manager will be contacting the respective inspector to see, you know, what happened and/or review the last inspections to see if they've been identified before.

JUDGE COLE: Thank you.

CHAIRMAN FROEHLICH: Moving on to a slightly different topic, things like spills during aquifer restoration, those, I believe, are covered primarily in the GEIS. Is that right, or is it a specific analysis in the individual FSEISs?

MS. YILMA: We talk about them in the FSEIS as well.

CHAIRMAN FROEHLICH: Okay. And I guess, in the FSEIS, making reference to the generic, I believe, it says that the impacts from spills during aquifer restoration can range from small to large, as I looked at the intro at Page 30 of the PDF version.

I guess the impact on the aquifers would

depend on the volume that was spilled or of the amount of soil that was affected. Is that how you get in that range, between small and large? Or is it something else that drives that range?

MR. PRIKRYL: I think you're correct. It's the volume of lixiviant that has spilled, possibly the area of the soil that has been contaminated, yes.

CHAIRMAN FROEHLICH: Then how did the Staff conclude that the impact for this project would ultimately be small?

MR. PRIKRYL: Well, what we did in our analysis, we looked at the mitigation measures that the Licensee would implement in order to clean up the spills. So in that case, you know, we take those kinds of mitigation measures into account when we determine whether the impact is either a small amount or large.

CHAIRMAN FROEHLICH: Are the mitigation efforts the same for all ISR projects?

MS. YILMA: No. It wouldn't be the same. It would site-specific, because site-specific conditions would differ from site-to-site.

CHAIRMAN FROEHLICH: Okay.

JUDGE BARRETT: Could I follow-up? If the impact is determined to be small, do you still develop mitigation measures? Or are there still required to be mitigation measures even if the impact is small?

MS. YILMA: That's correct. NEPA requires disclosure of mitigation measures even if the significance of the analysis shows a small impact.

CHAIRMAN FROEHLICH: Mr. Prikryl, you had mentioned that the analysis, I think, was focused on lixiviant spills in your last answer?

MR. PRIKRYL: Oh, yes, yes.

CHAIRMAN FROEHLICH: Are any other spills considered when you were determining the impacts to be small?

MR. PRIKRYL: Well, it would depend on the resource area. For instance, for transportation we would look at possibly spills of yellowcake during transportation. So it's kind of resource specific.

CHAIRMAN FROEHLICH: And as I recall, the yellowcake spills, that was also determined to be small in the FSEIS?

MR. PRIKRYL: Yes, yes.

CHAIRMAN FROEHLICH: Okay. And then when reviewing the spills, the FSEIS concludes that the impacts will be temporary, and long-term impacts will

be small. That's because of the mitigation measures, or because of the size of the spill or what spills? How do you come to the conclusion that all long-term impacts will be small and that the impacts will be temporary?

MR. PRIKRYL: Well, because the Licensee, in this case, is required to clean up the spill and dispose of any soil that has been contaminated.

CHAIRMAN FROEHLICH: But wouldn't the impact depend on what was spilled or how much of it was spilled?

MR. PRIKRYL: Well, remember the Licensee has to clean it up. He's required to clean it up.

CHAIRMAN FROEHLICH: Did you want to add something?

MS. YILMA: Yes. Judge Froehlich, NEPA requires us to look at short term impact and long-term impact.

CHAIRMAN FROEHLICH: Yes.

MS. YILMA: In this situation, we disclosed there might be a short term impact, because the leak might go, for instance, into the soil. But the long-term impact could be small, because the Licensee will be required to clean or remediate that area.

JUDGE COLE: Okay. So your conclusion on the level of impact, small, medium or large, is based upon your knowledge of what has happened at previous plants and your knowledge of what the Applicant says he's going to do if he gets a certain kind of spill?

MS. YILMA: In addition to consultation with other agencies like EPA and state of South Dakota, DENR folks. They also give us insights on what type of things that we need --

JUDGE COLE: And how do they get involved in your evaluation? Do they provide you with detailed information or what?

MS. YILMA: For the Dewey-Burdock project, because EPA had primarily the responsibility for Class III and Class V permitting, which is different in Wyoming versus South Dakota --

JUDGE COLE: For wells.

MS. YILMA: For wells, yes. We had EPA be an informal cooperating agency, if you will. So throughout the development of the NEPA process, we interacted with them extensively on a number of resource areas, groundwater, surface water. Waste treatments were one of them, air.

They reviewed our analysis, gave us feedback on it, disclosed the permitting requirements

that are necessary for Class III and Class V, and any type of mitigation measures for monitoring that would be required. So a lot of that information came firsthand from EPA Region 8.

JUDGE COLE: Could you tell me a little bit about your modus of operation with EPA, and other federal agencies and this plant?

MS. YILMA: I'm sorry --

JUDGE COLE: Did you deal on, how frequently and on what basis do they have representatives that you deal with all the time?

MS. YILMA: For Dewey-Burdock, it's a little bit different in a sense, because EPA had primacy for Class III and Class V. We interacted with them often. Over the last four years, I had constant communication with the NEPA project manager with EPA.

JUDGE COLE: When you say often, what's that mean?

MS. YILMA: You know, as issues arise, for instance when we were developing the air modeling, we were talking, I want to say once every week or once every two weeks. We were having discussions collectively with EPA, BLM, DENR and Powertech folks to come up with, you know, impact assessments or how we want to address a certain issue.

JUDGE COLE: All right, thank you.

MS. YILMA: You're welcome.

CHAIRMAN FROEHLICH: I'd like to take a ten minute break, if that's all right with everyone. And we'll resume with Contention 6 in ten minutes.

(Whereupon, the above-entitled matter went off the record at 10:12 a.m. and resumed at 10:27 a.m.)

CHAIRMAN FROEHLICH: Please take your seats. Gentlemen, please take your seats. I'd like to ask a few questions about the impacts to surface waters and wetlands. I note that in the EIS that's demarcated as small to moderate impacts. Is that not correct? EIS finds that impacts to surface water and wetlands is in the small to medium impact category.

MS. YILMA: That's correct.

CHAIRMAN FROEHLICH: That's correct. And for this project, what is the impacts to the surface water and wetlands?

MS. YILMA: We see small for construction. And it depends on each resource area, but for construction we say small.

CHAIRMAN FROEHLICH: Is it small for, I guess, there are four evaluations. Are they all small?

MS. YILMA: Yes, that's correct.

CHAIRMAN FROEHLICH: Okay. Now, the impacts to surface waters and wetlands you determine are small. Wouldn't the impact be dependent on the size of the spill or what was spilled?

MS. YILMA: You know, could you clarify the question? Are you asking --

CHAIRMAN FROEHLICH: Well, you concluded, after evaluating this site and the mitigation methods proposed, that it would be small for this site. I guess, at other sites other analyses have come up with medium or a large impact. How did you determine that, for this project, it would ultimately be a small impact with the mitigation methods that were proposed and listed in the EIS?

MS. YILMA: That's correct. For surface water, we look at various different things. So you're now specifically asking on spills. Is that correct?

CHAIRMAN FROEHLICH: Right. Accidental spills.

MR. PRIKRYL: Well, if I can just, you know, paraphrase from the SEIS?

CHAIRMAN FROEHLICH: Okay.

MR. PRIKRYL: For construction, the last paragraph of the section 4.5.1.1.1.1, sorry, because

the Applicant has committed to implementing mitigation measures to control erosion, storm water runoff and sedimentation, complying with U.S. Army Corps of Engineers Section 404 permitting requirements for wetlands, complying with NPDES permit requirements for discharge to surface waters and following NRC regulations concerning the construction of settling and holding ponds, NRC finds that impacts to surface water and wetlands during construction to be small. You know, we determined that based on these mitigation measures and commitments.

CHAIRMAN FROEHLICH: And that's the same for like storm water runoff as well?

MR. PRIKRYL: Yes. The NPDES permit requirements, that's for storm water.

JUDGE COLE: And what about operation, impacts during operation?

MR. PRIKRYL: During operations? Well, it's going to be similar.

JUDGE COLE: Impact on surface water and wetlands during operation?

MR. PRIKRYL: Right.

(Pause.)

MR. PRIKRYL: Okay, yes. There's a number of issues that we cover here. I'll just go ahead and

--

JUDGE COLE: Why don't you just emphasize the impacts on spills and on water drawdown, particularly associated with surface waters and wetlands?

MR. PRIKRYL: Right. Okay, I'll paraphrase. The Applicant, you know, is committed to implementing mitigation measures to control erosion, sedimentation as part of their storm water management plan, implement emergency response plan to identify and clean up accidental spills and leaks. And then also pipelines will be buried to avoid freezing, and pipeline pressure will be monitored to detect leaks, just a number of mitigation measures.

And based on these, any conclusions are based on the hydrologic factors and the Applicant's commitment to comply with permit requirements. The NRC concluded that the environmental impacts to surface waters and wetlands would be small for the operations phase.

JUDGE COLE: What about drawdown?

MR. PRIKRYL: Drawdown with regard to surface water?

JUDGE COLE: Well, you're operating a mine, and you lower the water level because you're

taking more water out than you're putting in at certain places.

MR. PRIKRYL: Well, with concerns to groundwater, right?

JUDGE COLE: Well, if you've got a wetland, and you're going to drop the water table, that's going to dry out, isn't it?

MR. PRIKRYL: Not necessarily. You know, if it's an artesian well away from the wellfield it wouldn't be affected. No wellfields are going to be constructed within wetlands.

JUDGE COLE: Okay. That backs up your conclusion --

MR. PRIKRYL: Yes, so --

JUDGE COLE: -- of the impacts on --

(Simultaneous speaking.)

MR. PRIKRYL: -- operations wouldn't affect wetlands.

JUDGE COLE: All right, sir. I'll buy that.

MR. PRIKRYL: Thank you.

CHAIRMAN FROEHLICH: Now, are there separate mitigation plans depending on the type of waste that might come from the project?

MS. YILMA: You mean Class V disposal

injection or --

CHAIRMAN FROEHLICH: For example, I saw a large section there on mitigation plans for like radioactive waste. And are other types of waste given analysis to a similar degree?

MS. YILMA: Yes. We do liquid waste, solid waste.

CHAIRMAN FROEHLICH: And which, I'm sorry. I didn't mean to cut you off?

MS. YILMA: That's it.

CHAIRMAN FROEHLICH: Okay. Now, where would I look to find mitigation plans for the disposal or whatever of the heavy metals, and arsenic and things like that? How is the disposal of those things mitigated?

(Pause.)

MR. PRIKRYL: Are you asking specifically about hazardous constituents in the wastewaters?

CHAIRMAN FROEHLICH: There were a number of concerns raised about heavy metals, and arsenic and selenium. And I wanted to know --

MR. PRIKRYL: Selenium.

CHAIRMAN FROEHLICH: Selenium, whatever. And I wanted to focus or see where, in the statement, mitigation efforts are discussed to reduce the

impacts.

MS. YILMA: We talk about those in Section 3, 4.14 which is a waste management section. And we also mention selenium a little bit in the ecology section.

CHAIRMAN FROEHLICH: And what are the mitigation methods as to those elements or chemicals you just mentioned?

MR. PRIKRYL: Well, with wastewaters, they're going to go through ion exchange before they're discharged to either the land application system or the Class V injection wells.

JUDGE COLE: Ion exchange or reverse osmosis?

MS. YILMA: Ion exchange.

MR. PRIKRYL: Ion exchange to --

JUDGE COLE: It's a different ion exchange material than is used to remove the uranium, correct?

MR. PRIKRYL: That's correct, yes.

JUDGE COLE: And so these are ion exchange resins that are specific for the materials you want to remove, or it's some sort of general ion exchange?

MR. PRIKRYL: It's a general, you know, heavy metals hazardous constituents.

JUDGE COLE: All right, sir. Thank you.

MR. DEMUTH: Judge, if I might interject here, just for the purposes of clarity, I'm not aware that there's going to be any hazardous materials or waste generated from this project.

So within the scope of RCRA waste, these would be non-hazardous materials. They might be elevated concentrations, but they are not what we would call RCRA hazardous waste.

Likewise, the material that is regulated by NRC as a Level 2 material would be radioactive. But just for the record, I want to make sure that we don't get hazardous thrown in here that's taken in any way in a RCRA format.

CHAIRMAN FROEHLICH: I didn't mean hazardous in, let's say, a RCRA. Actually I meant chemicals have long and complicated formulas or whatever that a number of people have raised concerns with as to their disposal.

I wanted to know that ion exchange that you mentioned, Mr. Prikryl, what does that remove from the stream? What does it mitigate? Or what concentrations does it reduce or eliminate?

MR. PRIKRYL: Well, specifically I don't know numbers. But I know that the waste has to meet certain standards before it's disposed.

JUDGE COLE: On land or in the well, deep well?

MR. PRIKRYL: That's right, yes. Now, I think that SDDENR will have this. In the land application they have groundwater standards that the waste that's applied to the land has to meet SDDENR groundwater standards before it's applied to the land.

JUDGE COLE: So the state of South Dakota determines what those levels are?

MR. PRIKRYL: Yes. That's in a groundwater discharge plan permit.

JUDGE COLE: No, surface water discharge.

MR. PRIKRYL: That's correct.

JUDGE COLE: You said groundwater.

MR. PRIKRYL: Well, they also have to have a groundwater discharge plan permit for land application, specifically.

JUDGE COLE: A groundwater discharge permit for land application?

MR. PRIKRYL: Yes.

JUDGE COLE: Okay. Yes, it's got to go somewhere.

JUDGE BARRETT: Is there a surface water permit for this site?

MR. PRIKRYL: A surface water permit --

MS. YILMA: They don't plan to, they're not allowed to, I guess, dispose of any waste into surface water. In fact, South Dakota DENR doesn't allow it.

Any release, whether it's from Class V injection permit or being sprayed onto the land application would have to meet both EPA's regulatory requirement and NRC's Part 20, Appendix B requirements.

JUDGE BARRETT: Thank you.

MR. FRITZ: If I could just interject briefly, there's a very detailed monitoring and mitigation plan that's done for the state of South Dakota in association with the land application, the groundwater discharge permit for the land application.

And it is a very comprehensive monitoring program. It's got wells, it's got a perimeter of operational pollution that's defined. And they've got wells to monitor when and if any constituents of concern reach those areas.

It's got, Gwyn can talk better than I can about it, but selenium was a constituent of concern. And it's got monitoring and then mitigation depending on certain levels of selenium that's reached in certain areas, mitigation for ponds to exclude

wildlife.

Again, Gwyn would have to talk more about that. But it's a mitigative action that's discussed in here. But the detail really is in the state groundwater discharge land application permit.

JUDGE COLE: And where is that information located, sir?

MR. FRITZ: In the groundwater discharge permit application that was submitted to the state of South Dakota DENR.

JUDGE COLE: Yes. Well, that's not in the record here.

MS. YILMA: May I interject? Actually it is in Chapter 7 of the FSEIS. We have a section for wildlife monitoring which adopts a lot of what has been said right now from the discharge permit.

We also have a section for land application monitoring and deep well injection monitoring, all adopted either from the discharge permit from DENR or EPA's Class V application.

JUDGE COLE: Thank you.

JUDGE BARRETT: Are those permits in place now?

MS. YILMA: The DENR permit has a conditional approval. But they are in litigation, so

they would have to finish through the litigation before, I guess, it becomes official.

The Class V permit is still in process. And they're not issued just yet. But as I mentioned, because EPA has been often a cooperating agency with us, we have information that they had provided to us that we included the SEIS.

MR. ELLISON: If I may, for the record, there are no South Dakota permits which have been granted yet. Thank you.

MS. YILMA: They've reached conditional approval pending hearing.

CHAIRMAN FROEHLICH: What substances, what compounds, chemicals end up in the evaporation ponds that we have been hearing about? I can take that from any of the panel.

JUDGE COLE: Do they call them evaporation ponds?

MR. PRIKRYL: These are not evaporation ponds. They're radium settling ponds or they're holding ponds.

MALE PARTICIPANT: That's correct.

CHAIRMAN FROEHLICH: And is that different from the evaporative ponds that are on Page 247 of 355 in the EIS? And I don't have that converted into, I

guess, at least on this point. Are evaporative ponds that are discussed here, is that something different than the settling ponds that you're talking about?

MR. PRIKRYL: I think evaporation ponds are discussed in Chapter 2 as an alternative.

CHAIRMAN FROEHLICH: Andy, can you call up NRC-008-2B at around Page 247 of 335? The PDF page is 247, I believe.

MR. THOMPSON: NRC-8-A2?

CHAIRMAN FROEHLICH: I'm not sure now where I read this.

JUDGE BARRETT: Would you like me to ask a question while you're --

CHAIRMAN FROEHLICH: You go ahead, and let me see if I can --

JUDGE BARRETT: Okay. Ms. McKee, I jumped the gun a little bit yesterday. I got interested in something we said about the wildlife and birds. And I asked that out of order. So I will ask that now. You mentioned in your testimony an avian plan that is being developed in concert with state and federal agencies. Is that correct?

MS. MCKEE: Yes, sir. Yes.

JUDGE BARRETT: Could you briefly describe

what some of the mitigation measures are that are going to be implemented to protect avian species?

MS. MCKEE: Yes, sir. Several of the measures that are in the draft plan, it is just a draft plan at this stage, are similar to those that are described in the FSEIS.

For example, regular annual monitoring will occur for all of the avian species identified by the state and federal agencies we've been collaborating with to create the plan.

And prey populations as well are also monitored. Prairie dog colonies, for example, we map every year, rabbits which are, of course, eaten by the eagles and hawks that nest out there.

We also are helping develop approaches for Powertech to take at different stages of operations to help minimize impacts to a variety of avian species. For example, ponds -- and I didn't jump in because I knew that you had a question.

So as far as selenium in ponds, for example, the ponds are all going to be fenced. And we heard yesterday that, you know, it's likely that not every single animal will be kept out.

However, these aren't just going to be barbed wire fences. They'll be very specific fences

that are based on expertise by a variety of publications and experts that are out there throughout the country that do wildlife fencing.

For example, in order to keep animals from burrowing into and under the fence, they will be buried and bent a little bit so they'll be bent out, for example. So, say, a badger or whatever comes up to the edge of the fence, wants to get on the other side, digs down. Well, he's going to hit fencing. The mesh at the bottom of the fence, for example, will be a smaller diameter to keep the smaller mammals out than the higher parts of the fence where they wouldn't be able to access anyway.

And these fences are going to be around all of the ponds. They'll be monitored daily as part of the requirements of Powertech's operations. I believe that will be a state requirement. But I defer to Powertech to clarify that.

But the point is, they have a variety of measures, fencing, netting, flagging. There's balls and deflectors that you can put up to distract animals and cause them to be uncomfortable with the setting and go somewhere else that would be, perhaps, better for them to drink out of.

The ponds, as you heard yesterday, will be

lined. If there's a risk of animals becoming trapped should they somehow get into the enclosure, there will be escape ramps so that animals can get out if they do get in --

JUDGE COLE: A ramp?

MS. MCKEE: Pardon me?

JUDGE COLE: A ramp?

MS. MCKEE: Yes, sir, escape ramps. And these are all standard procedures that are used throughout the country and particularly in our area to help protect animals.

And for example, ramps, if you have a pond, you would just lay the ramp on the side, for example. And typically, they'll have cross bars so that an animal like, say, a deer or fawn gets in there. You would want it to get some traction and not just be trapped on the ramp, just like it would be on the pond lining.

So I would presume that everyone involved would be reading up on the appropriate literature, talking to the appropriate experts and creating the best possible design to protect the wildlife out there. So that kind of measure, that's just one example of the selenium concern, pond construction. Those types of measures are included in the draft

avian plan.

JUDGE BARNETT: The kinds of things you're describing there sound thorough and comprehensive to me. Would you agree with that?

MS. MCKEE: Yes, sir.

JUDGE BARNETT: Are those things in the FSEIS now?

MS. MCKEE: Several of them are in there. For example, timing restrictions to protect nesting raptors, that is identified in numerous locations in the FSEIS. I believe I provided some examples of that in my written testimony. I don't have that memorized.

Other examples would be consolidating disturbance corridors, for example, if there's already a power line out there, which power lines are out there, and a new road needed to be constructed.

Ideally all these new disturbances would be consolidated into common corridors to minimize habitat fragmentation. That, I believe, is listed in the FSEIS.

As I say, numerous examples are in the FSEIS in multiple locations, not just the summary table but also in the text throughout the document, very specifically giving examples of mitigation measures that would be implemented as needed to

protect the wildlife resources.

JUDGE BARNETT: Would you call the mitigation measures in the FSEIS thorough and comprehensive?

MS. MCKEE: I would with the combination of those that are specifically listed, the references to very specific organizations like the Sage-Grouse National Technical Team, the U.S. Fish and Wildlife Service's Sage-Grouse Conservation Team, referencing the need for Powertech to access those resources as well, accessing and abiding by state permitting requirements.

It isn't just the specific measures in the document itself, in my opinion, that makes it so strong. It's the acknowledgment that other experts are out there that should be utilized and other resources are out there that should be utilized and other permitting requirements at the state level are out there that will be followed. So, in my opinion, yes, sir. It is a comprehensive analysis.

JUDGE BARNETT: Okay, thank you. Now to the question that I was asking yesterday which I got excited about, how do you keep the birds out of these ponds?

MS. MCKEE: Right. There's a few

different ways depending on the pond and the size of it. You could put netting across the entire top of it. If it's a large pond, sometimes that doesn't become feasible. It'll start sagging in the middle and it won't really accomplish the process.

In that case a lot of folks will string flagging across in parallel lines. Again, it's a visual distraction and deterrent for the birds. There's a variety of deflectors out there. Authorized use by the Fish and Wildlife Service to use hazing to keep birds out of there, either --

JUDGE BARNETT: What?

MS. MCKEE: Hazing.

JUDGE BARNETT: Oh, hazing.

MS. MCKEE: Either manually going and flushing the birds out of there or with sound. There's whole companies that have, you know, there's a whole company that makes sound hazing devices. Another whole company that makes visual hazing devices. There are many, many resources out there to help keep the birds out of the ponds.

JUDGE COLE: Are they being utilized? Are they proposed on this project?

MS. MCKEE: Yes, sir. So Powertech will be monitoring the ponds daily, the fencing and all

that. Let's say they have a problem. Then they will immediately, if they haven't already proactively done so, implement any one of these measures, whichever one is determined to be the most effective at that site, to address it right away and keep the birds out.

And that's all in this document. Netting is specifically listed. Fencing is specifically listed in the FSEIS in multiple locations and I believe references to other, you know, methods, deterrents or whatever.

So that's the plan to keep the birds out and, as I say, as a professional I would have to acknowledge that it's entirely possible that not every single bird, much like our highway fences. As we all know, not every single deer is kept off those highways as we see by the carnage as we drive along.

But the population as a whole, which is where your viability comes in and maintaining the long-term resources of the site, I have no doubt in my mind that that will be maintained through these diligent efforts.

And I realize that sounds like a commercial. I am a professional, however, and I have been working with ISR off and on for ten years and I've been --

JUDGE COLE: ISR?

MS. MCKEE: In situ recovery, sorry. And, you know, I mean, I've been a professional biologist for almost 30 years so I'd like to think I have some level of integrity.

JUDGE BARNETT: Yes, I would agree. I thought your answer sounded professional, not like a commercial.

MS. MCKEE: Thank you very much.

JUDGE BARNETT: There's eagles out there?

MS. MCKEE: Yes, sir.

JUDGE BARNETT: Okay, and what's going to be the impact? First, how many eagles or eagle nests are out there?

MS. MCKEE: Originally we had one bald eagle nest in the permit area during the baseline work that we did in 2007/2008. Since then the pair has built a second nest, also in the permit area, so those two nests are in one territory. So we have one pair of bald eagles actively nesting within the permit area which is the same as the NRC license area. It's the boundary you all have been seeing on your maps.

Just outside of the monitoring area for the project, and for my purposes I use the permit area and a one-mile perimeter because wildlife don't just

live in a tiny little spot, and just outside of that one-mile perimeter is a second bald eagle nest near the Cheyenne River.

And in addition to that, we have red-tailed hawks, great horned owls. Golden eagles nested this year. We've had merlins, a long-eared owl, so a variety of species.

But for the bald eagles, as part of this draft plan that is still being developed, we're out there every two to three weeks from mid-January through end of July monitoring that territory to identify where are the birds hunting? Where are they perching? Where are they spending a lot of time? When do they start nesting? How many eggs do they have, do we think because we don't climb the tree. How many youngsters have hatched?

So there's an extensive monitoring system already voluntarily in place. As you know, they have no license. They have no permits and yet they've been doing this. Since December of 2012, we started this monitoring. We watch for wintering bald eagles. How many come into the area during winter in addition to the resident nesting pair?

JUDGE BARNETT: So what is, very briefly, the mitigation plan to mitigate effects on the bald

eagles?

MS. MCKEE: Thank you for the reminder to be brief. The first step is monitoring. In order to properly develop mitigation plans, you have to know where the birds hunt, where they perch, where is their home range.

Based on that and based on 30 years of similar type of work that is being done right across the border at the coal mines in Wyoming, which have significantly greater disturbance, a number of things are possible to do.

You can limit the time of day that activities occur within certain distances. You can limit the distance that those activities occur relative to the nest location.

You can modify how you collect information. Let's say, for example, you can remotely monitor wells. I don't even know if that's possible but let's say it is. And it's more appropriate to do that during the breeding season, for example, and it's not as important to do it in September, for example.

So by modifying the types of activities you do, where they occur relative to the nest, what time of year it is, what time of day it is, how you construct your facilities, how you conduct your

operations and the value you place on protecting resources with the understanding that unless it's an emergency situation, for example, and unless it's required by state or federal regulations, one of the options is to voluntarily restrict all activity, you know, within a certain distance.

Pedestrian traffic is typically more disruptive than vehicular traffic, so you might restrict foot traffic in the area in a certain time.

So as brief as you would like me to be, there are a lot of different things and honestly the situation dictates which is the most appropriate approach to take.

And eventually, if it's anything like what has happened with the coal mines, the eagles are very likely to acclimate. It's not a pristine setting out there now. Rangers are out there. Hunters, it's a walk-in area. A walk-in hunting area is right at the base of this nest. Railroads, you know, ranch traffic.

So they already have some comfort level with some level of regular activities and over time I have no reason to believe they won't acclimate to those. They do it all over the country, bald eagles do, and golden eagles do it at the coal mines, nesting

within feet of blasting and haul trucks.

So once they start having their youngsters -- there's a paper out. It's a generational acclimation. You're an adult eagle. You have youngsters. They grow up amidst these activities. That's normal to them and it just perpetuates itself.

JUDGE BARNETT: Okay. The mitigation plans that you just described there for the eagles, are they in the FSEIS now?

MS. MCKEE: Reference to the plans are in numerous locations in the FSEIS. The plan is not finalized. It is a draft plan at this time. It is still being collaboratively developed with the state and federal agencies and it's being tweaked. The format and content of the draft plan has been changed just over the course of the last few months.

But the plan will be finalized and approved by the South Dakota Department of Environment and Natural Resources and Game and Fish as a permit condition before any construction begins.

JUDGE BARNETT: Okay, but the plan that exists in FSEIS for the mitigation plans for the eagles, would you call that thorough and comprehensive?

MS. MCKEE: I would, based on the

understanding that there are specific measures in place in that document, examples of measures to be taken, and it references the other documents that are developed by professional biologists with the expertise to develop them, just like they referenced sage-grouse mitigation specifically and through reference to the national sage-grouse teams, for example.

So it seems appropriate to me to rely on the experts for the different resources, just like I would rely on the experts for resources I'm not familiar with, like water resources, for example.

JUDGE BARNETT: Okay, thank you. Ms. Yilma, would you say that the plan for mitigating the effects on the bald eagles that is in FSEIS right now is thorough and comprehensive?

MS. YILMA: I do.

JUDGE BARNETT: Thank you.

CHAIRMAN FROEHLICH: First, I want to apologize, Mr. Prikryl. I have confused myself between the land application sections of the EIS and alternatives to the land application and deep wells.

I guess the evaporative ponds that are talked about as an alternative to the deep wells or the land application, these are different from the

ponds that Ms. McKee just discussed?

MR. PRIKRYL: Yes, that's correct.

CHAIRMAN FROEHLICH: Okay. Ms. McKee, could you address, and I hope you're the right one to ask, the food chain arguments that we heard a little bit about yesterday, especially as I guess it relates to selenium or perhaps other substances and where small creatures would somehow get through the fencing or the nets or whatever, be eaten by larger creatures and so on.

MS. MCKEE: Your Honor, I will do my best. I am not a selenium expert and I'm not a bioaccumulation expert. I am familiar with the food chain, however, and as I mentioned, the ponds are going to be inspected daily by Powertech as part of one of their permit requirements. I believe it's a permit requirement.

And through that process, they will be monitoring the selenium levels in a variety of forms, the effluent, soils, vegetation. And my understanding is there are various threshold levels or trigger levels so if selenium in any of those resources reaches that certain level, that will trigger automatic implementation of very specialized mitigation measures which I am not familiar with

because I'm not a selenium expert.

But so through a series of diligent monitoring and the use of threshold trigger levels and then the immediate action taken by that, those are the measures that I'm familiar with to try to minimize the potential for exposure in the food chain for selenium.

CHAIRMAN FROEHLICH: Mr. Fritz, are you the expert? Can you speak to bioaccumulation, especially as to selenium?

MR. FRITZ: No, I'm not an expert on that.

CHAIRMAN FROEHLICH: How about the, I guess the processes within the facility to monitor levels of selenium and other such things and to, I guess, alert and trigger the reactions that Ms. McKee just discussed?

MR. FRITZ: I've read the monitoring and mitigation plan and the different action levels for different levels of selenium. They sample tissue in animals periodically. They sample vegetation and watch as it accumulates and there are action levels that are required in that plan that they take at certain levels. But beyond that, I can't testify to the health effects of it or the --

JUDGE BARNETT: You said you read the monitoring and mitigation plan. Which plan are you

referring to?

MR. FRITZ: That particular plan is in the groundwater discharge plan for land application but it was also referenced in the SEIS.

CHAIRMAN FROEHLICH: Is the bioaccumulation argument, is that addressed in any way or in any place in the FSEIS and could you point me to it?

MS. YILMA: Yes, Your Honor, it is. It is in ecology section. If you refer to Section 4.6.1.2.3, I'm sorry, 4.6.1.2.2, we do talk about it. In fact, we acknowledge that that could be an issue and for that section our impact is moderate, not strong.

And we also, I want to follow up with the gentleman who said that the monitoring plan in Chapter 7, there is a list of constituents that the Applicant would have to monitor and selenium is one of them.

JUDGE BARNETT: Ms. Yilma, the first page that you cited, could you give me a page number from the FSEIS?

MS. YILMA: It is Page Number 4-111.

JUDGE BARNETT: Thank you.

MS. YILMA: And the monitoring table is on Page 7-9.

MS. MCKEE: Your Honor, I believe PDF Page 111 is the section that is being referred to.

MR. ELLISON: Judge Froehlich, I guess I have a procedural question. We have Peggy Detmers here who is our expert and we have noticed her for Contention 6 and one thing she can talk about is this particular issue.

And we've been instructed by the clerk that since this was OST's pleading, that we cannot present evidence in that regard. So I just wanted the Board to know I object if that ruling is going to be upheld or if that is a ruling and that Ms. Detmers is here, could answer those questions.

CHAIRMAN FROEHLICH: And that was because that contention was proposed by the Sioux Tribe and had not been adopted or formally incorporated into the positions of the Consolidated Intervenors. So, no, we will not be hearing from Ms. Detmers.

MS. MCKEE: Your Honor, if I may, one statement that might be what you're looking for on PDF Page 111 is -- if you don't mind if I just read this real quickly, please?

CHAIRMAN FROEHLICH: That's fine.

MS. MCKEE: "NRC Staff concluded the overall impacts on vegetation, small- to medium-size

mammals, upland game birds, raptors, waterfowl and shorebirds, non-game and migratory birds and reptiles from operations for the land application liquid waste disposal option will be moderate because of the potential for some wildlife exposures to harmful constituents in the planned operation period," which I'll skip the rest.

"Based on the foregoing analysis, the impacts are expected to noticeably alter important attributes of the terrestrial environment. However, Staff do not expect these impacts to threaten the continued existence of any species."

And that reiterates the point that I made earlier, that impacts may occur to individuals but species viability as a whole in the region is not anticipated to be harmed. Is that a fair assessment of the --

MS. YILMA: That is exactly what I was referring to when I mentioned impacts are, considering the constituent impacts we determined the impacts would be moderate.

CHAIRMAN FROEHLICH: I just want to, I guess, want to go back one more time to the two processes I guess that were mentioned for reducing or eliminating chemicals and other such things.

There was one referred to as the reverse osmosis process and another, the ion exchange process. Which one works on what problems? What do you use? I need the scientific sort of --

MR. FRITZ: I'll take a stab at it. I'm not a process expert. The ion exchange is for removal of uranium. That's the process to remove uranium from the pregnant source.

JUDGE COLE: That's a specific ion exchange that's designed to just remove uranium?

MR. FRITZ: Yes. There may be other models that come out with it. I don't know that but it's designed -- that's the mining process. That's how you get the uranium extracted from the source.

JUDGE COLE: But there was testimony here today that they have other ion exchanges other than the one that's designed just to remove uranium, to remove other materials, and I believe they can use them or they've been discussed somewhere.

MR. FRITZ: I'm not familiar with that. The other water treatment process is an RO unit to be used. If a deep disposal well is an option, it'll be used during restoration to restore wellfields, so to produce clean water to go through the wellfields with the brine going to a disposal pond. That removes

everything. That's not selective.

JUDGE COLE: Right. Now, for land application of wastewater, somewhere in the record here it mentions the possible use or the use of ion exchange to prepare the water to meet the requirements of the state of South Dakota for land application.

And I also have a recollection today that someone was discussing with me today that other uses of ion exchange other than the ion exchange that's specific for uranium and they might also use that, and was that one of the NRC witnesses discussed that earlier?

MS. YILMA: In Page 2.51 where we talk about liquid waste disposal option we actually go through how waste is filtered to remove constituents before it either is injected into the deep well disposal or sprayed over the land application if the land application option would be required.

And there we mentioned that the ion exchange is going to be used to remove the uranium and then it would go through the settling ponds to settle the radium. Then it gets injected into the deep well disposal. A similar process is used for the land application process.

For aquifer restoration, in addition to

the ion exchange to remove the uranium in settling ponds, they also go through the reverse osmosis to clean it up even more.

JUDGE COLE: Through what process to clean it up even more?

MS. YILMA: The reverse osmosis.

JUDGE COLE: Right, okay. Just a general question, the Tribe argues that the Staff has not adequately addressed or analyzed mitigation measures.

Now, earlier today Mr. Clark talked about that list of bullets related to mitigation measures discussed at various parts of Staff documents, the FSEIS, the SER and other Staff documents.

In the Tribe's allegation, they principally talked about a certain chapter that just list mitigation items without any discussion of it and I believe both the Applicant and the Staff took that statement and said filling out the details for all this is in other chapters, particularly Chapter 4 of the SEIS, certain parts of the SER and other different chapters. And I believe the Applicant had prepared lists of different items that are directly related to satisfying the Tribe's considerations or problems.

Now, my question is do your answers satisfy the Tribe's argument that they did not do

enough on the mitigation measures? Maybe the Staff can answer first.

MS. YILMA: If I understood you correctly, you want us to validate that we have adequately analyzed impacts in our SEIS.

JUDGE COLE: Yes, based upon your answers and with the content of the Staff documents.

MS. YILMA: Right. So in Chapter 4 for every resource area we do have mitigations listed. In some instances those mitigations are taken into account when we come up with impact assessment of small, moderate and large.

In Chapter 6 of our SEIS, for ease of reference we list all those mitigation measures separately. I believe that is what the Tribes were referring to, Chapter 6 where we list in the table for each resource area what mitigation measures were taken into account when we were analyzing the impacts.

But you can't just look at the table as a mitigation measure because if you're looking at that it would just list for land application the Applicant plans to do this, for deep well disposal the Applicant plans to do that and that's it. It doesn't have any context to it.

JUDGE COLE: It doesn't have the details

necessary.

MS. YILMA: It doesn't have any details to it. You would have to go to Chapter 4, each resource area, to read through what the Applicant plans to do based on what the Applicant committed to do and what other regulatory agencies are required or are reviewing per their permit applications. We take into all those factors as a mitigation measure to assess impacts for that resource area.

JUDGE COLE: Thank you.

MS. YILMA: And in addition to that, we also have Chapter 7 for some of those mitigation measures, like the land application and the Class V injection well where we specify monitoring activities that will need to occur going forward to validate those impacts, those mitigation measures that we use into account to reduce the impact and so on and so forth.

JUDGE COLE: Thank you. I don't know whether Mr. Fritz or Mr. Demuth, both of you addressed this question so you can decide how you want to respond.

MR. FRITZ: Okay, I'll begin. My written testimony beginning on Page 11 addresses that contention, that those tables were all that was

provided and what the next several pages, this written testimony provides specific references throughout the document, the FSEIS, the SER and the RAIs, on where the detail behind those two summary tables comes from. I go into all kinds of detail about these. It's all listed here in my written testimony.

JUDGE COLE: All right, sir. Thank you. Mr. Demuth, did you want to add something to that? You filed on this issue too.

MR. DEMUTH: No, I think Mr. Fritz and NRC Staff have covered that question.

JUDGE COLE: Thank you.

CHAIRMAN FROEHLICH: I'd like to move on, then, to Contention 9, cumulative impacts.

MR. PUGSLEY: Your Honor, is it connected actions?

CHAIRMAN FROEHLICH: I'm sorry, connected actions. Right, sorry. One moment please.

Okay, connected actions. It seems that there is one very, very large connected action that is critical to this project and that's the deep well storage permits required from EPA.

Can anyone tell me the schedule, to the extent we're talking about another government agency doing its job, what the schedule is or when the

company expects a final decision from the EPA on that deep well application?

MR. PUGSLEY: Your Honor, I'll do the best I can here. The EPA Class V application is currently under review at EPA Region 8. We are awaiting, which we hope is imminent, the issuance of a draft permit.

And per EPA underground injection control regulations, that draft permit -- one moment. That draft permit comes out in draft form, is made publicly available and then after the remainder of the process concludes it would be finalized, not too dissimilar from a draft SEIS to a final, FSEIS.

CHAIRMAN FROEHLICH: Is there a public comment period on that?

MR. PUGSLEY: Your Honor, I can't say for sure on that but I know it is made publicly available and in my experience even if there isn't a public comment period noted per se, there is no -- and I will, now that I've just been told there is a public comment period associated with it. Thank you. And so, yes. The answer's yes.

CHAIRMAN FROEHLICH: And does the NRC coordinate or consult or comment on this decision of the EPA?

MS. YILMA: We can, Your Honor.

CHAIRMAN FROEHLICH: You can on the draft deep well permit?

MS. YILMA: Right. Correct.

CHAIRMAN FROEHLICH: I guess, and maybe you covered this a little earlier, what is the extent of the coordination between NRC and EPA on the deep well permit?

MS. YILMA: Extensive. When we first started developing this section and this SEIS, we recognized that we needed to coordinate extensively with EPA.

And as I mentioned, we had informal cooperations with them where we shared the affected environment, the impact assessments, the process monitoring plans of various sections, waste management and groundwater, hydrology, air, HP.

All those sections were reviewed and EPA gave us, you know, feedback, comments that we incorporated into our SEIS. This was before the draft was issued.

During the draft public comment period, EPA also, you know, had additional comments that we considered in the final stage. Between the draft and the final issuance, EPA continued to be a cooperating agency with us and again provided us additional

information of what they know of already.

You know, all this time they've been reviewing the Class III and Class V applications and so they've been providing us information that they know of that needed to be included in this NEPA document.

CHAIRMAN FROEHLICH: Does it work the other way? Is there information from the NRC or from studies and worked on by the NRC Staff on the FSEIS that goes to EPA to inform them or to assist them in their decision-making process on the Class V wells?

MS. YILMA: I have been in direct communication with the NEPA compliance and been sharing information with the EPA all along, so yes.

CHAIRMAN FROEHLICH: And the connected actions are discussed in, which part of the FSEIS addresses connected actions?

MS. YILMA: As you mentioned, the Class V injection is actually part of our proposed action and so it's been throughout the SEIS. We've discussed it in great length.

CHAIRMAN FROEHLICH: Are there other I guess connected actions that were addressed in the FSEIS?

MS. YILMA: Well, we have similar actions

that we included in FSEIS, like the groundwater discharge permit application process and what --

CHAIRMAN FROEHLICH: That's with the South Dakota state?

MS. YILMA: The South Dakota state and, of course, BLM is a cooperating agency so we also included BLM-specific information in the SEIS.

JUDGE BARNETT: I'm looking at the bottom of Page 441 of the FSEIS talking about the NPDES permit that will be required for construction.

MS. YILMA: Yes.

JUDGE BARNETT: So there is a surface water discharge permit I guess, at least for construction, is that correct?

MS. YILMA: This NPDES permit deals with stormwater runoff, not necessarily process water.

JUDGE BARNETT: Correct. I understand that.

MS. YILMA: Yes.

JUDGE BARNETT: I understand. But there will be an NPDES permit for it?

MS. YILMA: There will be one, yes, because it is South Dakota's law. If the licensee wishes to discharge into surface water, they have to have an NPDES permit issued.

JUDGE BARNETT: Did you do a NEPA analysis of the surface water discharge due to construction?

MS. YILMA: Well, this is part of it. The section you just referenced, this is where we discuss the NPDES permit requirements and consider those requirements when making our impact assessment to surface water.

JUDGE BARNETT: Okay, so you said this was part of it so the way I read this is that you, the NPDES permit requirements for discharges to surface water will conform to SDDENR regulations. Is that right?

MS. YILMA: That's correct.

JUDGE BARNETT: But there was an additional analysis done beyond that or you just said, well, they have to get this South Dakota permit so, therefore, surface water will not be impacted?

MS. YILMA: In various other place we talk about what the surface water requirements, the NPDES requirements are and we reference them.

Like, for instance, if you look at the next page, on Page 443 we say surface water monitoring and spill response procedures will be established as part of the NPDES permits. So we take into account what is a requirement of that permit when making

assessments of impact for surface water.

JUDGE BARNETT: Okay, thank you.

JUDGE COLE: In using these wells for wastewater disposal, the water you're discharging into the wells is identified as treated wastewater. How is it treated?

MS. YILMA: This is what we were just describing with the ion exchange. That removes the uranium from it and then the settling ponds which settles the radium from it with the barium chloride. We have a --

JUDGE COLE: You have to meet the requirements to discharge it into a well?

MS. YILMA: That is correct.

JUDGE COLE: And traditionally what treatment processes do you use, just plain sedimentation and then you do have to additionally treat it with something else and you say you're using reverse osmosis or ion exchange.

MS. YILMA: The reverse osmosis comes into play for aquifer restoration. The key is that before they inject anything into the deep well disposal they have to meet the release requirements. If they are not meeting those release requirements, they would have to do additional treatment.

JUDGE COLE: What requirements? What kind? You say release requirement?

MS. YILMA: Release or injection requirements.

JUDGE COLE: Who prepares those, does the state of South Dakota or EPA?

MS. YILMA: There is actually a criteria in 10 CFR. I'm sorry.

MALE PARTICIPANT: Part 20, Appendix B.

MS. YILMA: 10 CFR Part 20, Appendix B is the requirement. That is our NRC requirement and there is also EPA's requirement, similar to ours that they would have to meet.

JUDGE COLE: All right, thank you.

MR. DEMUTH: Judge Cole, if I might add to that, the reason for the treatment to the 10 CFR 20 standards is that that material prior to treatment would be regulated as radioactive waste. In a Class V well, EPA will not allow us to inject radioactive waste in a Class V well.

JUDGE COLE: So that has to be removed?

MR. DEMUTH: That is correct. In other states it's managed with a Class I well and that treatment is not required, so that is a specific requirement for the state of South Dakota.

JUDGE COLE: Would precipitation with barium sulphide satisfy that requirement generally?

MR. DEMUTH: I'm not a process engineer so I think, you know, barium chloride has certainly been used historically for treatment of uranium to a degree but more so radium, so the process has been used historically. How effective that is to meet the 10 CFR 20 standards is somewhat dependent on each facility and the makeup water.

JUDGE COLE: Is it barium chloride or barium sulfate or both?

MR. DEMUTH: I believe barium chloride but --

MR. FRITZ: I think the application says barium chloride.

FEMALE PARTICIPANT: Yes.

JUDGE COLE: Okay, thank you.

CHAIRMAN FROEHLICH: I mixed up my papers and forgot a few questions having to do with mitigation, and that was references I guess in the FSEIS to best management practices, BMPs, and that's mentioned a number of places as things that would be used or approaches that would be used to mitigate the effects of different problems that arose. I would ask the Staff, who determines what are the best management

practices for any given task?

MS. YILMA: Your Honor, the Applicant did provide some best management practices but they are typical of ISR operations also, so it's a mixture of the Applicant proposal plus our knowledge of what are best management practices from other facilities.

CHAIRMAN FROEHLICH: The best management practices I guess that are referred to, are they a set of standards, a set of procedures that are drawn up by either a government agency or an industry group or where did that come from?

MS. YILMA: It could be that. Can I just read one thing --

CHAIRMAN FROEHLICH: Sure.

MS. YILMA: -- that we have in Section 6, Chapter 6 of the SEIS? We say, "Best management practices are processes, techniques, procedures or considerations that could be used to effectively avoid or reduce potential environmental impacts." So there are processes, techniques and procedures, that industry practices is one of them.

JUDGE BARNETT: BMPs, is that a term of art from EPA?

MR. PRIKRYL: What was that question? Does it come from EPA?

JUDGE BARNETT: Does EPA have a list of best management practices and is that what you're referring to?

MR. PRIKRYL: No. No, not in this case and I'm not sure if they do have a list of BMPs for ISR.

JUDGE BARNETT: Okay, so I guess that kind of goes back to Judge Froehlich's question. Where is the BMPs? How do you decide what's a BMP?

MR. FRITZ: I could speak a little bit to that, not in every discipline but, for example, on surface water protection. The plan calls for, there's an extensive plan in there for flood control, how we're going to protect surface waters and facilities, things from washing downstream so to speak.

We've mapped the floodplains. We're locating facilities, buildings and ponds outside of floodplains and further diverting runoff around those things, storms at least up to the 100-year storm, and for major facilities the state of South Dakota requires a probable maximum storm design, so.

And then beyond that, we've got stormwater sediment control, and that varies. Let's say during the construction phase when you've got the most disturbance opened up, before you get your temporary

re-veg in, you might put best management practices in.

Even though you got control with a pond downstream, you might go upstream and put a silt fence, a real temporary measure till you get vegetation or a rock check dam.

JUDGE BARNETT: Okay, I understand. So you said you might put BMPs in. Where do you get that list of BMPs I guess?

MR. FRITZ: Well, in this case the Office of Surface Mining and the state of Wyoming have developed a lot of sediment control best management practices, check dams, build dikes.

I think it's specific to different disciplines. There's a set for a certain area for sediment control and maybe something else. I think EPA's word for it is best available control technology and that would deal with air quality control. But I think it kind of depends on what discipline you're working in what the best management practice is and the different stage of development.

MS. YILMA: Your Honor, may I interject? You are correct. There are government agencies' best management practices, such as EPA would have best management practices on how to control, for instance, constituents from getting into the groundwater. There

are best management practices for land remediation, revegetation.

So it is a combination of government agencies' requirements and recommended suggestions to avoid, minimize or eliminate impacts on certain areas. It could be soil, could be air, could be water, various different things.

JUDGE BARNETT: Thank you.

CHAIRMAN FROEHLICH: I guess that was the basis of my concern. I noticed a number of places throughout the FSEIS that there was reference to best management practice, but it didn't include immediately thereafter EPA guidance on this or that. It just said best management practice.

I was curious how someone reading this, a member of the public or whatever, who wanted to comment would know exactly what practice was going to be applied and would be able to give input as to its effectiveness, whatever it might be when it's used as one of the mitigation techniques.

MS. YILMA: In our SEIS if we reference best management practices we would say something like stormwater runoff, having a tree to reduce soil erosion for instance, you know, growing vegetation, sorry, growing vegetation to reduce soil erosion.

And then in Chapter 6 we do talk about certain things in best management practices. Corrective actions that could be implemented are something that we discuss in Chapter 6, specific management actions such as programs, procedures.

In this case it could be the emergency procedures that the Applicant is going to be developing for various spills that they would have to contain within or reporting criteria. We talk about them in opening section of Chapter 6.

CHAIRMAN FROEHLICH: I guess my concern was that I thought I had seen in a number of places that Staff would apply the best management practices to mitigate a particular impact.

And by reading it had no idea what best management practices the Staff was going to rely upon to mitigate that or where I could find them or where someone could comment to you on their effectiveness.

MS. YILMA: Best management practices are common practices, like the EPA's guidance or DENR's guidance for each resource area. It is why that we don't get prescriptive in them because there are guidance out there for each resource area like the gentleman from Powertech stated.

CHAIRMAN FROEHLICH: The cumulative

impacts on groundwater resources, I guess were determined to be moderate overall but small at the Dewey-Burdock facility. Did I read that portion of the FSEIS correct?

MR. PRIKRYL: Judge Froehlich?

CHAIRMAN FROEHLICH: Yes.

MR. PRIKRYL: Yes, I believe you read that correctly.

CHAIRMAN FROEHLICH: So the impacted groundwater resources is moderate overall I guess from this type of an operation but the cumulative impact of the Dewey-Burdock proposal is small? Did I read that correctly? Dewey-Burdock will have a small cumulative effect on groundwater is what the Staff concluded?

MR. PRIKRYL: That's correct, yes.

CHAIRMAN FROEHLICH: Okay. And in that portion of the FSEIS the Staff looked at other ISR projects and other mining and drilling operations in the area, a large area.

MR. PRIKRYL: Yes, yes.

CHAIRMAN FROEHLICH: Okay, and it was in review of those impacts that it was concluded those impacts would be moderate overall?

MR. PRIKRYL: Yes.

CHAIRMAN FROEHLICH: Okay. Did those

cumulative impacts also include impacts from the placement or the things that are going on at the Black Hills Army Depot?

MR. PRIKRYL: Yes, I think we did an analysis on Page 532, the bottom paragraph, starting the bottom paragraph and then going up into the next page. I think there's two paragraphs altogether.

We looked at the distance that the Army Depot was away from the site, looked at the regional hydraulic gradient to determine that the Black Hills Army Depot would not have an impact on the site. We also looked at two Army Corps of Engineers reports that were conducted at the site on contamination at the site to make our finding.

JUDGE COLE: And the site is 20 miles to the southwest? How far?

MR. PRIKRYL: That sounds about right.

MALE PARTICIPANT: Fourteen miles I believe, the EIS.

MR. PRIKRYL: Fourteen miles.

MALE PARTICIPANT: Fourteen miles to the south.

MR. PRIKRYL: You got to remember the Army Depot was down gradient, so it's not going to have an impact on groundwater at the Dewey-Burdock site unless

--

CHAIRMAN FROEHLICH: And the converse is true, I suppose, from your analysis?

MR. PRIKRYL: Yes.

CHAIRMAN FROEHLICH: Because of the gradient?

MR. PRIKRYL: Due to all the mitigation measures, the inward hydraulic gradient, the monitoring that's going to occur at the site. We determined that it's unlikely that fluids would then migrate that far.

CHAIRMAN FROEHLICH: Okay. All right.

JUDGE BARNETT: Following up on this BMP question, I'll have to admit I had not noticed that but now that Judge Froehlich mentions it, so if I look on Page 6-8 of the FSEIS, it says that this is in the table of summary of mitigation measures proposed by Powertech and it's under ecology, Table 6.2-1. It's under ecology and restoration/reclamation is the activity.

And the proposed mitigation measure is, "Construct new overhead power lines using BMPs to reduce bird injuries and mortalities." So my question is how does someone who's reading this know what the BMPs are?

MS. MCKEE: Judge Barnett, that's a good question. Elsewhere in the document it references APLIC, which is Avian Power Line Interaction Committee, I believe, and that's an organization that comes out with these BMPs for protecting birds perched on power lines.

And I can see where the connection may not be exactly for a layperson, much like my connection with some of these other topics is not clear, but it is in there. I don't know how to address it other than to say that those are developed by organizations such as APLIC and that's what it's referring to.

CHAIRMAN FROEHLICH: So for that one there is actually a list, a chart, a series of recommendation --

MS. MCKEE: There's a whole book about --

CHAIRMAN FROEHLICH: That you could pull off the shelf and see what the --

MS. MCKEE: Yes, sir.

CHAIRMAN FROEHLICH: Okay.

JUDGE BARNETT: And that would be in the, sort of the reference list of the FSEIS I guess?

MS. MCKEE: I couldn't tell you for sure, sir.

JUDGE BARNETT: How do you spell the

organization you were talking about?

MS. MCKEE: The abbreviation is A-P as in Paul, L-I-C.

MS. YILMA: It's listed on Page 4-89.

MS. MCKEE: And, sir, also on Page 6-18.

MS. YILMA: It's the second paragraph.

JUDGE BARNETT: Okay, on Page 6-18. Oh I see, okay. Yes, there is a reference on Page 6-18, Avian Power Line Interaction Committee, quote, "Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006." So your testimony is that's what is meant from that table when it was talking about best management plans?

MS. MCKEE: Yes, sir. That's an entire book that tells you how to design all different kinds of power lines to protect raptors from electrocution and other avian species.

JUDGE BARNETT: If someone was reading this and you weren't there to ask that question to, how would they know what you're referring to?

MS. MCKEE: I would defer that to the NRC Staff.

MS. YILMA: Well, in Section 4.89 it says, "The Applicant could mitigate potential impacts to raptor species for power cord distribution lines by

following the Avian Power Line Interaction Committee guidance to avoid activities near active nests specifically prior to fledging of the young." Talks about it in our NEPA section, in Chapter 4 of our NEPA section.

JUDGE BARNETT: Okay. I think it's a fair point that Judge Froehlich has. When BMPs are listed, to the extent they're coming from documents, in particular different documents, it's probably a good idea to have the reference in there. So somebody could look those up and challenge those if they wanted to.

CHAIRMAN FROEHLICH: Playing off of lessons learned yesterday afternoon, this concludes the questions that the Board has of Panel 3. I notice it's 10 to 12:00. Like to give the parties ten minutes to draft up any follow-up questions that they might want the Board to ask of this panel, and we'll go off the record and you'll have ten minutes to collect your thoughts and then we'll resume with Panel 3 cross from the parties. So we'll resume at noon.

(Whereupon, the above-entitled matter went off the record at 11:49 a.m. and resumed at 12:02 p.m.)

CHAIRMAN FROEHLICH: We'll be back on the

record. I think there is something to this ten-minute of or ten-minute after traditional break times in soliciting questions from the parties. I have two or less from each.

For the NRC Staff, when evaluating the potential long-term impacts from spills, did the NRC Staff also consider decommissioning surveys to verify that the site meets the specific conditions for release for unrestricted use?

MS. YILMA: Your Honor, there's a requirement for decommissioning plan before decommissioning takes place. That decommissioning plan would have all the specific requirements and the NRC Staff would have to review and approve of that decommissioning plan, including what you just mentioned.

CHAIRMAN FROEHLICH: Okay. Was it required as part of the licensee's pre-operational inspection that the NRC Staff verify compliance with license conditions before operations may commence?

MALE PARTICIPANT: That's correct.

CHAIRMAN FROEHLICH: Does this also include evaluation of BMPs, best management practices? You'll have to speak.

MS. YILMA: That's correct. Sorry.

JUDGE COLE: Yes, the microphone doesn't pick up nods.

MS. YILMA: May I just also mention for the record, Your Honor, best management practices are not requirements per se. They are guidance. They are not legally binding. They are guidance, however. Just want to make sure.

CHAIRMAN FROEHLICH: Okay. But you use them as elements, you use them as examples of mitigation at least.

MS. YILMA: Examples of mitigation, yes, that's correct.

CHAIRMAN FROEHLICH: Oh, okay. In the SER, did the Staff evaluate whether operations at Dewey-Burdock project could mobilize contamination from the Black Hills Army Depot?

MALE PARTICIPANT: Yes, Your Honor. Page 31 and 32 of the SER and actually 31 to 33, yes.

CHAIRMAN FROEHLICH: Did the Staff consider its findings in the SER when preparing the final EIS?

MALE PARTICIPANT: EIS.

MS. YILMA: Oh, I'm sorry. Yes. I apologize. I thought you were still answering the question. Your Honor, we always say the safety review

informs the NEPA review, the environmental review so, therefore, yes, we did consider the impacts.

CHAIRMAN FROEHLICH: Finally I'd ask of the Commission Staff, is the NRC Staff aware of the sacredness of eagles and other wildlife to the Lakota people?

MS. YILMA: Yes, Your Honor. I have heard from many tribes that I've been out in the field with that the bald eagle is a sacred bird.

CHAIRMAN FROEHLICH: If there are no other questions at this point, we'll be prepared to take closing arguments, and then I would hope the parties would have a chance to discuss a briefing schedule but incorporating the disclosure requirements and the review of the new data that will have to factor into our schedule as we go forward.

Let's move right to closing arguments. Any volunteers? Who wants to go? Powertech, thank you.

MR. PUGSLEY: Thank you, Your Honor. For purposes of our closing statement, Powertech would like to highlight some key issues and attempt to answer some questions asked by the Board to the best of its ability on the contentions in sequence.

With respect to Contentions 1A and 1B,

we'd like to note for the record, one, that you've heard today, you've heard over the past few days that in terms of the density of archeological sites located at the Dewey-Burdock project site, it is not unique. It is not atypical. It is typical for this region as testified by Dr. Hannus.

The Level III cultural survey, archeological survey, I apologize, was done in satisfaction of South Dakota standards and actually exceeded those standards. Subsurface testing with respect to sites was done appropriately and according to standard practices.

NRC Staff did not err in severing the NEPA process from the Section 106 tribal consultation process. It is not a federal requirement that those processes be conducted jointly. They can be severed.

The tribal TCP field surveys sponsored by NRC Staff and Powertech were conducted with the participation of seven tribes including two Sioux tribes and extensive surveys were conducted over a one-month period that addressed approximately 95 percent of the 10,000 plus acre Dewey-Burdock project site.

The Programmatic Agreement, as stated by NRC Staff, was selected because of the phased nature

of in situ recovery projects and in accordance with Part 800 regulations and Commission precedent that labels ISR projects as able to use phased identification for sites.

The PA was developed in consultation with multiple parties including federal agencies as well as the Advisory Council on Historic Preservation and tribes, in consultation with tribes.

The ACHP was fully informed of the provisions of this agreement, were involved consistently by the Staff and did, indeed, execute that agreement.

And as you will note in the record, that Powertech has cited to regulations at Part 800 where it says ACHP's execution of this PA is a demonstration that NRC Staff engaged in a reasonable and good-faith effort, which is the standard for tribal consultation.

With respect to Contention 2, we'd like to note the following points for the record. First, as stated before, ISR is a phased process in all aspects of its site development.

This is reflected in the 2006 CLI-06-01 Hydro Resources, Incorporated, decision in which the Commission declined to review the Licensing Board's findings that the challenges by the intervenors there

to the procedures associated with post-license issuance, groundwater data gathering is not subject to hearing.

It is part of a performance-based licensing scheme that has been endorsed by Commission policy and used in multiple ISR licenses including the Hydro Resources license in that case.

The FSEIS and the SER adequately demonstrate that sufficient baseline groundwater quality data pursuant to 10 CFR Part 40 Appendix A Criterion 7 was gathered and analyzed and approved by NRC Staff, contrary to allegations levied regarding wellfield installation, and the need to have "complete" data from a complete wellfield.

The 10 CFR Part 40.32(e) Construction Rule expressly prohibits, and by the way, incorporates the definition of construction from 10 CFR 40.4, prohibits the installation of a complete wellfield prior to issuance of a license.

This goes directly to Judge Barnett's question previously of the public availability of post license issuance groundwater quality data gathered pursuant to criterion 5(b)(5) to establish what is called commission approved background.

While we agree that guidance, NUREG-1569

Chapter 2 and Chapter 5 is not binding on this Licensing Board, nor an applicant, the fact of that particular narrow issue of the difference between the data authorized to be gathered in Chapter 2 versus the data authorized to be gathered in Chapter 5 is binding on this Licensing Board because it was specifically authorized and approved by the Licensing Board and the Commission in the Hydro Resources proceeding.

With respect to Contention 3, it is also a phased approach, again, to gathering. We cannot install a complete wellfield including monitoring well network prior to issuance of a license.

And once again, that data that is gathered post license issuance is not subject to challenge. And that is the, in our view, not just the position of NUREG-1569, but the position of the Commission as articulated in the Hydro Resources proceeding.

The FSEIS and SER demonstrate adequate site hydrogeologic characterization, and the ability to control fluid migration, and it meets NRC regulations at Criterion 7 and NUREG-1569 guidance in Chapter 2.

Powertech asserts there are no published studies or site specific investigations that have been offered to show that there are faults, fractures, or

breach of pipes in the licensed area. Indeed, it has been conceded today that there are no such depressions or subsurface features within the Dewey-Burdock project area.

This supports Powertech's site specific evaluation of thousands of drill holes within the area, and as stated by Powertech's witnesses previously, the fact that there are thousands of boreholes present, historic boreholes or current boreholes present in the areas typical of ISR sites throughout the country.

Despite claims that were levied yesterday regarding the presence of multiple faults, joints, and fractures in northwestern Nebraska, it is worth noting for the Board that the Crow Butte facility operated in northwest Nebraska by Cameco Resources has been operating for decades without any problems associated with those issues.

Indeed, as you heard from a Powertech witness, there is a currently licensed ISR operator in operation that has a fault running through a wellfield, and it still operates safely.

It is worth noting that it has been testified that use of the term excursion should not be considered to be an environmental impact. It is an

early warning of the potential for migration of fluid. It is in place as an early warning so that there will be no environmental impact from that.

You've heard a lot of testimony regarding how safety measures imposed in Powertech's license and the record of decision address this issue. As stated yesterday, there was an investigation of the possible potential location of depressions or other features at the Dewey-Burdock site, and that yielded no evidence of such a depression or feature.

In addition, with respect to the Fuson shale, it has been shown at some locations to be a potentially leaky confining unit. These are all explained in Powertech's license application and evaluated by NRC Staff, and as attributed to one or more wells improperly completed in two aquifers and one or more unplugged boreholes.

For the vast majority of the site, there's strong evidence of the competence of the Fuson shale, including potentiometric surface differences and water quality differences between the overlying and underlying aquifers.

Pump tests conducted post wellfield installation are required in the license to demonstrate hydraulic isolation of the production zone

aquifer prior and subject to pre-operational inspection by NRC Staff prior to the commencement of operations.

Pump tests at times show communication through a borehole of a leaking well. In these cases, the well or borehole is plugged in accordance with appropriate state standards, and the pump test is repeated until adequate isolation is demonstrated.

With respect to Contention 4, water balance diagram serves the purpose it was intended for, shows the amount of bleed, the amount of liquid waste requiring disposal, and the amount of water needed from the Inyan Kara and Madison aquifers.

This bleed only .5 to 3 percent of the water, that's all that is not re-circulated, meaning that the characterization of the project water use as massive or tremendous is completely overstated.

The FSEIS documents South Dakota's evaluation of Powertech's Inyan Kara and Madison water right application as well, and their determination is that adequate water is available, there is unappropriated water available, and the water rights may be granted without adversely affecting or impacting existing wells.

With respect to the contentions you heard

testimony on today, Contention 6, I would like to start with the following statement, that we were talking briefly about compliance with licensed conditions.

Commission precedence shows that the Commission does not presume that a licensee will violate its license. In fact, the presumption is the exact opposite, that it will follow its licensed conditions.

And that is consistent with the Atomic Energy Act's mission, which is the licensee has the primary responsibility for the safe possession, use, and handling of Atomic Energy Act materials, in this case, source and 11e(2) byproduct material.

Also, would like to note on the question of best management practices, a good, another analogy in addition to the testimony you heard today is licensees typically develop standard operating procedures which are consistent with industry practices.

Those are developed post license issuance, but the requirement to develop those is in the license, and also subject to pre-operational inspection by NRC Staff prior to commencement of operations.

Again, we reiterate our statements from our testimony and our position statements that evaluation of mitigation measures is not simply limited to a summary chart. It is a chart that provides an ease of use opportunity for a layperson to review, what those are, and then each resource area is separately evaluated for purposes of mitigation.

And as Ms. McKee demonstrated in her testimony, it does reference standard procedures used throughout the country, and particularly in this area of the country, as well as appropriate references to applicable standards and guidelines that Powertech has committed to compliance with and use of, including raptor stipulations recommended by the U.S. Fish and Wildlife Service.

The FSEIS also appropriately considers compliance with other federal and state permitting requirements when considering potential impacts.

And finally with respect to connected actions, the major connected actions including the Bureau of Land Management's plan of operations, EPA's need to issue UIC permits for Class III and Class V wells were actively considered in the FSEIS. You've heard testimony to that effect from NRC Staff.

BLM was a cooperating agency on the

development of the FSEIS. And EPA consulted extensively in the entire NEPA process, starting with pre-draft SEIS issuance discussions and comments. Other related actions such as South Dakota permits such as groundwater discharge and NPDS were also considered in the context of Contention 9.

So with that said, Powertech respectfully requests that this Board find that none of the contentions admitted to this proceeding should result in a modification of its license or the record of decision, and absent anything else requested by this Board on these contentions, Powertech respectfully submits its case to the Board.

CHAIRMAN FROEHLICH: Thank you, Mr. Pugsley. Staff?

MR. CLARK: First, on behalf of the Staff, I would like to thank the Board for the Staff's opportunity to provide some more information regarding its review.

Turning to Contention 1A, the Staff fully complied with laws designed to protect cultural resources. Regarding the National Historic Preservation Act, the Staff made a reasonable and good faith attempt to identify properties important to American Indian tribes.

The Staff didn't need to identify every property at the Dewey-Burdock site, nor did it need for all tribes to agree with the Staff's identification efforts. I'm referring here to the ACHP, the Advisory Council and Historic Preservation's guidance addressing the reasonable and good faith standard.

And that was entered into evidence as Exhibit NRC-047. Page 3 of the ACHP's guidance, which the Board looked at on Tuesday contains those statements.

Regarding NEPA, the Staff complied with this law by finalizing a Programmatic Agreement before it issued its record of decisions for the Dewey-Burdock project. That's another dispute the Board heard Tuesday, and the PA was included in the Staff's NEPA decision document.

In the Programmatic Agreement and the appendix to the Programmatic Agreement, those are Exhibits NRC-18A and 18B, the Staff analyzes impacts to cultural resources and describes the mitigation measures. Again, through the record of decision, these documents are incorporated in the Staff's NEPA review.

Turning to Contention 1B the Staff

consulted extensively with American Indian tribes, as reflected in the Advisory Council's letters to both the Staff and the standing Rock Sioux tribe.

These letters are Exhibits NRC-18D, which is the ACHP letter to the Staff stating that through execution of the Programmatic Agreement, the Staff completed the Section 106 process under the NHPA, and also Exhibit NRC-31, which is the ACHP's letter to the standing Rock Sioux tribe stating that the Staff complied with both the content and the spirit of the NHPA.

Now although the Staff consulted on an equal basis with all interested tribes, Staff would also note that it offered to meet with Oglala Sioux Tribe before any other tribe, and the Staff made that offer in October 2009. The Staff would have met with the tribe in December 2009. But as Ms. Yilma explained, the tribe was not available.

The Staff would also note that it held face-to-face meetings, three face-to-face meetings with tribes, and those were all close to the Pine Ridge Reservation. One was on Pine Ridge, the other two were in Rapid City.

Turning to Contentions 2 and 3, the Staff found that Powertech's application, as supplemented by

its responses to the Staff's request for additional information met the criteria for granting a license in NUREG-1569. That's the standard review plan for uranium recovery facilities.

The standard review plan isn't just relevant to the Staff safety findings, it also includes guidance for determining whether an applicant has provided enough environmental information for the Staff to comply with NEPA.

And here, I'd refer the Board to Pages 29 through 31 of Exhibit NRC-13, and that's a table, three page table showing clearly what sections are relevant to the Staff's safety review, and the sections relevant to the environmental review.

In making its findings under NEPA, the Staff also took into account the numerous conditions it included in Powertech's license. These conditions are mitigation measures, and under NEPA, the Staff reasonably took them into account when assessing the impacts of the Dewey-Burdock project.

Now, at this point I'd focus the Board's attention on two important aspects of the testimony the Intervenors witnesses provided yesterday. The first important point is that Intervenors witnesses did not challenge the findings that Staff made under

the standard review plan.

While they argued the review plan in itself isn't sufficient to comply with NEPA, they didn't argue that the Staff incorrectly applied any of the guidance in the various review plan sections to determine that Powertech did in fact provide enough information in support of its application.

Now, the Staff is aware, as Judge Barnett pointed out yesterday, that the NUREG is not binding on the Board. It's a guidance document. However, under Commission precedent, the standard review plan is nonetheless entitled to special weight.

I'll refer to a number of Commission decisions, including the recent decisions on this point. The Commission made this point most recently in the Seabrook case, that's CLI 12-0575 NRC at 314 Note 78. They also made this very point in Private Fuel Storage, that's CLI 02-2250 NRC at 264.

In a 2005 Yankee Atomic decision, the Commission elaborated on the role of Staff guidance. I'll quote from that decision. The Commission stated, "We recognize, of course, that guidance documents do not have the force and effect of law. Nonetheless, guidance is at least implicitly endorsed by the Commission, and therefore is entitled to

correspondingly special weight." And that citation is CLI 05-1561 NRC at 375 Note 26.

Let's see. The second point I'd make is this, in their testimony yesterday, the Intervenors' witnesses did not challenge the specificity of any of Powertech's licensed conditions, nor the methodology about which Powertech must acquire additional data.

Rather, in response to one of the Board's questions, the witnesses clarified that their only argument is that as a general matter, using licensed conditions to gather additional information on water quality and aquifer confinement doesn't comply with NEPA. It didn't address the conditions specifically in describing problems with them.

The arguments of the Intervenors' witnesses regarding the general use of licensed conditions, as I believe Mr. Pugsley just stated, is foreclosed however by Hydro Resources. A couple decisions, CLI 0601, and I believe also CLI 9922, both those decisions make clear that licensed conditions have an appropriate role under both Atomic Energy Act and NEPA.

For Contention 4, the primary concern the Intervenors' witnesses raised yesterday was that the water balance on the final EAS does not account for

evaporation. As Powertech's witness, Mr. Fritz explained in his answering testimony at A.5, I'm not referring to his testimony yesterday but his pre-filed, written testimony, his answering testimony at answer A.5, the amount of water that will be lost to evaporation is already included in the disposal stream listed in Powertech's water balance.

And both the Staff's and Powertech's witnesses reiterated this point yesterday in their testimony.

Another issue the Board heard about yesterday was draw down in the Madison and Inyan Kara aquifers, two aquifers that concerns residents at Hot Springs, Edgemont and Rapid City.

I'll just make two points here. When reviewing Powertech's water rights applications, the state of South Dakota found that Powertech's annual water consumption will not exceed the recharge rates of either the Madison or Inyan Kara aquifers.

And yesterday, although they were asked about this point, the Intervenors' witnesses didn't provide any information to contradict those findings. They suggested they don't agree with them, but they were unable to give any specific information calling into question the state of South Dakota's findings.

Now for Contentions 6 and 9, the Board heard from the Staff recently enough that I'll just say two things. First, the Staff considered mitigation measures and related licensing actions to the extent consistent with other NRC environmental impact statements and other impact statements prepared by other agencies. What the Staff did here is nothing unusual.

Second, the Staff's consideration mitigation measures and other licensing actions complies with applicable case law, including the case law in mitigation measures that the Staff cited in both its initial and rebuttal statements of position.

That's all I have. And again, on behalf of Staff counsel and the Staff's witnesses, we thank the Board.

CHAIRMAN FROEHLICH: Thank you, Mr. Clark. Your choice to close first, Mr. Parsons.

MR. PARSONS: I'll go ahead.

CHAIRMAN FROEHLICH: Thank you.

MR. PARSONS: Thank you, Your Honor. With respect to Contention 1A, we heard from Staff and from the testimony that acknowledging the importance of the Lakota people and the connection, strong connection of the Lakota tribes to the Dewey-Burdock area, yet

despite this acknowledgment, there was no involvement by the Lakota Sioux tribes in the surveys that were conducted.

And although there were two Sioux tribes that participated in the self-directed tribal surveys, those reports were not completed. And nothing, as was admitted by Staff, is included in the record, or in the Final Supplemental Environmental Impact Statement with regard to those tribes that did conduct.

We heard from the Staff that they conducted no ethnographic studies because they were relying on the tribes to conduct the survey. But then those surveys never occurred.

So our contention, we believe, stands and was bolstered and confirmed by the testimony that despite, and I'll get to 1B in a moment, but despite the efforts made by NRC Staff, the fact remains that the cultural resources survey and analysis that's included in the Final Supplemental Environmental Impact Statement is not sufficient, does not include what even Staff acknowledged was critical input from the Oglala Sioux tribe in particular, but any Lakota tribe.

With respect to 1B, NRC Staff points to their list of contacts they made with the tribes as

evidence that they made a reasonable and good faith. We would urge the Board to look not just at the quantity of contacts, but the quality of those contacts.

And what we find in reading the record is that the NRC Staff rejected the tribe's proposals for a comprehensive survey based on cost and timing without, however, making a counter proposal or working through those issues.

The Staff commented that with regard to the PA, which they assert fixes the problems going forward, that they took into consideration all of the tribes' comments, but we submit that they did not.

If you look at the record, Exhibit NRC-016 are letters from the standing Rock Sioux and the Oglala Sioux tribes that raise specific disagreements with the Programmatic Agreement. And those letters were not responded to, and those criticisms were not dealt with in the Programmatic Agreement.

Again, it's important to remember, not a single tribe signed off on that Programmatic Agreement. Now, they will say that they were not required signatories. But I would submit that that is strong evidence that if they had conducted the meaningful and good faith consultation required under

Section 106, you would have had much more tribal agreement.

And that was testified to, Mr. CatchesEnemy stated on the stand that the tribe's concerns were ignored, from their perspective, and that they did not feel like their voices were heard in that process. I think that's entitled to considerable weight.

With respect to the Programmatic Agreement, and I guess this ties to Contention 1A as well, it's touted as a mitigation measure. If you read the Programmatic Agreement in detail, you see that it does nothing but say we will develop plans in the future to analyze historic resources and come up with mitigation. There are no specifics.

And we continue to raise the concern that the Programmatic Agreement was not analyzed or addressed, although mentioned that it was in preparation, it was not analyzed or assessed in the Final Supplemental Environmental Impact Statement. Through that document is where the public and the decision makers get their information as NEPA contemplates.

With respect to Contention 2, again, Criterion 7 of 10 CFR Appendix 8, the Appendix 8

Criteria, Criterion 7 requires complete baseline data. Powertech's argument should be rejected using the construction rule to somehow modify that term complete.

Their view is complete data only comes in after the NEPA process. We would submit that that undermines and renders nonsensical the requirement in Criterion 7 that there be complete data on the front end.

We heard with regard to Contention 3 that there's significant information left out by NRC Staff. No investigation was conducted, meaningful investigation at least, of any false fractures, boreholes, or breccia pipes. What we have is commitments to look at those factors later.

We heard testimony that those kinds of problems at a ISL site can have serious ramifications. And pushing that analysis off until a later time deprives the public of any meaningful review in a NEPA document. It violates the NEPA hard look.

What we seem to have is an argument of no data, no problem. And we would submit that NEPA requires more than NRC Staff and Powertech agreeing through a licensed condition to take a look at these serious impacts and issues at a later time.

We heard Mr. Pugsley reference evidence that I believe is not in the record, arguing that somehow the Crow Butte has had no problems and is operated safely. There's no evidence as to that, and Mr. Pugsley's comments in that regard should not be considered by the Board.

Importantly, and on that matter, he mentioned that there are no breccia pipes on the site because the Gott map did not show any. I think that's a gross mischaracterization and an improper assumption based on that map. That was one map by one survey in the late '60s.

What we heard is that the science has gotten considerably more advanced since that time, and there was no indication that that map was intended to be a comprehensive study of the entire region.

What we did hear was that if you don't look for those faults and fractures and problems, you will not find them. And there's no evidence that that sort of detailed review has occurred at this site.

What we do hear is that in the future, after the licensing process, after the public is allowed to participate, they will conduct the real studies to determine what the conditions are at the site. And I submit that that process, while I

understand a phased process is allowed under NRC regulations, NEPA requires that hard look.

And what we have at this point is generalized information that did not comply with that hard look, particularly where we have admissions that there are unplugged boreholes that are causing problems now, yet no investigation to confirm that data, no attempts to fix those problems on the front end.

We heard from Mr. Clark that there are some aspects that will require what he termed, what's termed review and approval from Condition 10B, I believe. However, if you dig a little deeper what you find out is that is only three of 16 wellfields where any sort of future review will be provided.

And it's not clear that Powertech will ever proceed to those three wellfields that are not fully saturated. The partially saturated wellfields will have future review, but none of the other wellfields will. So those assurances of somehow the public will get their say in the future, I think are without great impact.

With regard to Contention 4, we continue to believe that the water use impact analysis lacks the necessary detail to comply with NEPA's requirement

for environmental impacts. Our testimony, written, opening, and rebuttal testimony as well as our opening and rebuttal statements we think provide that strong basis for that argument.

With respect to Contention 6, NRC Staff can point to some aspects of the NEPA document where mitigation was reviewed. We're not disputing that. There are some analysis in there of some mitigation, but there is a whole group of mitigation measures that are not reviewed in there.

By simply pointing to some of their mitigation does not excuse the gaps in the review of an analysis of mitigation and their effectiveness that exists in this NEPA document.

One example that the Court brought forward I think is very apt are the BMPs. While there was some ability to point to some BMPs for avian impacts, if you do a search in that NEPA document for BMPs, you find it throughout. And the Staff says well, the testimony was when we use BMPs, we then list what those might be. What you find reading the document is that is simply not true.

They say the South Dakota State Government will impose some BMPs, with no discussion of what those are, simply stating that they are procedures

that reduce impacts, provides the public with no information. That does not comply with NEPA's hard look. The same is true for the cultural resources impacts, to name another.

The programmatic agreement, which is an attempt to rehabilitate the lack of any discussion of mitigation in the Final Supplemental Environmental Impact Statement does nothing more than say we will, in the future, prepare plans for mitigation of impacts.

A statement that plans will be prepared in the future is not a reasonably complete discussion of mitigation that's required under NEPA.

And as I stated in our opening this morning, there are several more examples that are in our briefing where NRC Staff failed to conduct a meaningful review of any mitigation plans, rather just stating that they would be developed at some point.

With regard to Contention 9, when you read the NEPA document, what you find are references to the South Dakota Clean Water Act, NPDES, National Pollution Discharge Elimination System permits, and to the Class V permits and their requirements. But there's no discussion of how those requirements will be met, what the impacts will be associated with

those.

It just simply differs to those agencies to impose those and assumes without analysis that impacts will be small because the applicant is presumed to be complying with those permit requirements. That is not a hard look, that is a deferral of that hard look to other agencies at some point in the future.

Overall, as we stated in our opening, NRC Staff and Powertech have taken a good enough approach. Even when confronted with specific problems, they say that they will look at those later, outside of the NEPA process, outside of the ability of the public to get involved or challenge or seek a hearing.

But NEPA requires a hard look at the front end of the process, not at some point in the future. Pushing meaningful analysis and review until later is simply not sufficient. We very much look forward to the opportunity to brief these issues in detail and provide the Board with much more specific information in our briefing. Thank you very much for the time and your patience throughout.

CHAIRMAN FROEHLICH: Thank you. For Consolidated Intervenors? Mr. Ballanco.

MR. BALLANCO: Thank you, Your Honor. And

I want to thank the Board again for conducting these hearings and giving us the opportunity for the closing remarks.

Though along with that, I must comment it seems strange to be offering a closing remark when certainly there is at least one Contention still active. And I appreciate it for how that characterizes what this entire process has somewhat seemed to, as here I am giving a closing on a Contention that's still outstanding on a hearing to determine the proper issuance of a license that's already been issued.

And I think that's a pattern that all of the Consolidated Intervenors see that we're saying yes first, and then we'll get to the details. And forgive us for asking questions along the way and identifying some of our discomforts.

As Mr. Parsons said, we get the appearance of a good enough mentality. There's a regulation here, there's a plan that can be developed there. There is one person's small impact is another person's five thousand gallons of aqueous arsenic spilled in his watershed.

We've heard about the Dewey-Burdock's site not being unique. One property that is absolutely

unique is my client's. The Wild Horse Sanctuary is entirely unique. In the west, there's not another place like it. It's the largest private wild horse sanctuary in the west, absolutely dependent on the waters that flow through the project site that is unquestionably in the drainage of the Cheyenne river, the water source for the property administered by Mr. Hyde.

There's no good enough when you consider what that means to what Mr. Hyde and his associates have been building for decades now, what some of the other land owners in the vicinity who have to face the risks of these small impacts.

These are real people's lives. It's nothing personal against this Agency. The Federal Government does not have a great track record here, whether we take that from the perspective of the Oglala Lakota, whether we look at the BLM and the management of land.

In Mr. Hyde's personal experience, he's seen the Forest Service destroy forest reserves, he's seen Fish and Wildlife decimate natural predators and cause a prairie dog epidemic. He was honored by the Whooping Crane Conservation Association for coming up with a plan to rescue the whooping crane population,

again, something that was dropped by federal government charges.

A regulation or a policy is not always going to guarantee the kinds of things that we can talk about as small impact. There may be a reg to assess what happens for a spill. That's not going to save horses six hours away from when that happens.

As the Board considers the record that has gone into the decision, the record that was established during these hearings, we would urge to keep in mind that these small impacts in the scheme of this licensing procedure are huge impacts in terms of the neighbors and persons who have to live here long after this project is closed. Again, thank you for being here.

CHAIRMAN FROEHLICH: Thank you, Mr. Ballanco. With the conclusion of closing statements, we now need to set ourselves a briefing schedule so that we can take the record that was made here and the legal arguments that had been put forward by counsel into a decisional document. And the Board stands ready to do just that.

Before we can close the record, we'll have to build in an opportunity for the Intervenors and the Staff to view the newly acquired document. Powertech

has made them available, and has requested the confidentiality agreement apply to these documents.

Have the parties had an opportunity to work out a schedule or a timetable for the review of these documents by your experts?

MR. PARSONS: Jeff Parsons, Your Honor. We have not worked out that schedule. I would want to inform the Board that we would be willing to, as Mr. Pugsley suggested, provisionally sign the protective order to move things along.

And then should we find issue with Mr. Pugsley's affidavit that he intends to file next Tuesday, we'll raise that issue then. But we have not discussed a distinct time table.

I would guess I would note the concern I continue to have with regard to the fact that at least a portion, as I understand it, of the newly acquired information that's been deemed relevant will come into Powertech's possession sometime in September. I'm not sure that issue's been fully discussed.

I don't know if the Board would be open to us trying to work these things out rather than doing so here. But I'm certainly willing to make that attempt.

MR. PUGSLEY: Excuse me, Your Honor. We

certainly welcome the opportunity to meet with the parties as soon as this afternoon to discuss these issues, including the one Mr. Parsons just raised. More than happy to do that.

CHAIRMAN FROEHLICH: I think, what would be best if I outlined sort of my vision of a timetable, but not set that timetable at this point, and then have the parties confer and hopefully respond back with a consensus agreement as to dates for the filing of briefs, transcript corrections, and the review of the data.

I had contemplated that we would establish a period to take place over the next three weeks or so, i.e. by September 12th that the Intervenors and the Staff review the data that Powertech has disclosed.

And then perhaps a week later or so, that we have our proposed transcript corrections from all parties, along with any additional testimony or motions dealing with the newly reviewed well log data from all parties, you have an opportunity to review that.

The Board would then review the additional testimony or motions that would come in with the proposed transcripts, and we would shoot to try to

close the record by September 26th.

Shortly thereafter, on or about October 3rd, the parties would have the opportunity to file findings of fact and conclusions of law together with legal briefs because, in this case, Contentions 1A, 1B, 6, and 9 especially seem to turn on legal questions, legal calls whether the statutes of regulations were complied with.

So along with traditional findings of fact and conclusions of law, I think the Board would benefit from a legal brief, a brief that cites to the record we made here, the testimony that we have heard, the exhibits that were prepared and filed.

And in this brief, we'll pull together the facts that came out during the hearing with the legal arguments that have been interspersed all through and some of which have been put before the Board in the pleadings right along the way.

If we have findings of facts, conclusions of law, and briefs from the party at or about October 3rd, the Board would be able to issue its decision within 90 days of the close of the record, i.e. you would have an initial decision by the end of the year.

I would encourage the parties to discuss a schedule with these general parameters in mind,

report back to the Board hopefully with a unanimous agreement, and then we would set a schedule such as that in place to conclude this matter.

MR. ELLISON: Judge Froehlich, I guess I want to just begin by stating an objection to this proposal. The concept, we don't even know if our experts will be available over the next three weeks.

I would note for the Board that we had testimony yesterday that Powertech worked for six years going through these e-logs. That would be like us saying to the Board, how about by this afternoon you have your full complete decision done. And it would be preposterous.

I would submit that the idea that our experts are going to be able to free themselves up immediately, that then they would have and be able to get done in three weeks what it took years for Powertech to do is beyond my comprehension, with all due respect.

What we're doing now is basically what this Board is saying as I'm hearing proposed, look, we've already got our decision ready. Just fill in this little stuff.

What I would suggest is we consult with our experts, we come back with what we understand

based upon their schedules would be when they are available, and what would be a reasonable amount of time for them to review these materials and write a report and discuss it with us, and then we begin after that to start setting up a schedule.

I really don't, unless really due process and substance has nothing to do with these proceedings, this schedule as proposed is completely unreasonable and unworkable from the Consolidated Intervenors' standpoint.

CHAIRMAN FROEHLICH: I would encourage you to consult with your consultants to have them review the material as soon as they possibly can, and to begin to draw conclusions.

In the first sitting with the representative, the portions they have document, and with the electronic data, they will be able to see whether this is a treasure trove of new information that will support your position, in which case I would hear from you within three weeks.

On the other hand, if the data, you know, merely reinforces what's already been reviewed or reviewed by the Staff and I guess the company, well then I'll hear from them that, you know, upon additional review there's nothing new that will come

in.

Certainly, six years, a six year delay is not possible at this point.

MR. ELLISON: I'm not suggesting that. But --

CHAIRMAN FROEHLICH: Well, why don't you consult with your consultant and tell me what is possible?

MR. ELLISON: Okay, because our consultant is a full time college professor. The Tribe's consultant is a full time hydrogeologist who has a very busy schedule as well. It may be months before they're even available to begin such a review.

So I just wanted to put that on the record because I'm really concerned that this data which had elevated itself up to what seemed like the importance that it is, the significance that it is, and now it's being relegated to just a footnote for anything.

CHAIRMAN FROEHLICH: Perhaps you should consider with your consultants an initial review of that. And if the initial review indicates that their view is reinforced with this data, which I am not saying, I don't know what it is, then perhaps we'll go forward and hold open the proceeding.

That wouldn't be my first choice on how to

proceed. Or perhaps go forward with an initial decision on all the other elements, and then bifurcate this. I don't know. I haven't heard from any of the parties who have looked at this data on what it shows other than what Powertech has represented.

Is there anything further? I would encourage you to get a response back to the Board as quickly as possible, because we do need to close the record, or at least move forward on all the other issues.

Not knowing, not knowing what your experts will make of this data, I don't see any other way of proceeding and making use of the record that we have created in this case other than to have them review it just as promptly as they can, and then to report their findings back to you so that you can make the appropriate motions either to re-open the record, to withdraw any further objections to this type of data, or anything that comes of it.

I can't tell you what to do with this or what your clients do with it, but you have to look at it first, and then tell me where it goes.

In any event, that would be the Board's proposal for how to proceed with the procedural dates that would be necessary for us to prepare our

decision. Would the parties please confer, and to the extent it's possible, respond to us.

I don't think, given the objection of Mr. Ellison, that that will be accomplished over a lunch hour. I'm not sure what we should do on that.

MR. ELLISON: I might say, if I might, that one way that might somewhat expedite these proceedings would be if a copy was made of all of the data, and then provide it to our experts so they don't have to work out in addition to finding gaps in their schedules to review, but also finding gaps and an opportunity to go to Edgemont to go and look at data. That might be one way of expediting this, to some extent.

CHAIRMAN FROEHLICH: And I would ask that Powertech consider that.

MR. PUGSLEY: We're certainly prepared to discuss any and all opportunities with the parties.

CHAIRMAN FROEHLICH: Okay. So that we can go forward, I would -- as to the dates proposed for the transcript corrections, does September 19th work for all parties?

MR. CLARK: It works for the Staff, assuming it's the usual seven to ten day turnaround before --

CHAIRMAN FROEHLICH: Yes, it will be a seven day turnaround on the transcripts. So we'll have transcript corrections. Please keep in mind that transcript corrections are to correct typos, not to change the oral testimony that was given.

Even though the witness would have liked to say X or Y, you have to change the transcript only to the extent that the reporter got it wrong, and he doesn't make too many mistakes.

MR. PUGSLEY: That's fine with Powertech, Your Honor.

CHAIRMAN FROEHLICH: All right. We'll have proposed transcript corrections from all parties on the 19th of September. And I will await a report back from the parties after you've had a chance to discuss the arrangements necessary for review of the data.

Looking forward to something that will allow us to move forward with our decision. I would propose one further date. The briefs and findings of facts and conclusions of law at or about, would be set for October 3rd. Is that --

MR. PUGSLEY: Your Honor?

CHAIRMAN FROEHLICH: Yes?

MR. PUGSLEY: I apologize. We would ask

that, because that's Friday, October 3rd I believe. We would ask that it be possibly be Monday the 6th only because Mr. Thompson and I are counsel to Strata Energy, and their Subpart L proceeding is from September 30th to October 2nd in Gillette, Wyoming. So that's all we would ask.

CHAIRMAN FROEHLICH: Okay. As a briefing schedule, Mr. Ellison, October 6th for findings of fact, conclusions of law?

MR. ELLISON: I guess I can't agree to that date with all due respect until we know when we're going to be able to get the data reviewed and be able to move on from there. Seems like we're putting the cart before the horse, unless you're talking about other than Contention 3.

CHAIRMAN FROEHLICH: That may have to be the arrangement, the avenue that we take out of it. I would hope it wouldn't be, but for the record made in this case at least thus far, we would be looking for findings of fact, conclusions of law and briefs on October 6th. Is that acceptable to Staff?

MR. CLARK: That's fine for the Staff, Judge Froehlich. During the August 15th teleconference, the Board suggested it might define the legal issues the parties should address in their

briefs, either at the end of the hearing or at sometime thereafter. Should we be expecting some guidance from the Board on specific legal issues to address?

CHAIRMAN FROEHLICH: The Board would be glad to propose a series of legal questions that will arise from the Contentions that were in this case. They would only be a guide, and they would not limit in any way the parties' ability to address the legal arguments that they've raised or touched upon thus far.

But the Board will endeavor to go through the Contentions and pick up the legal questions as to, you know, sufficiency of the document and what might be guiding. We will issue such a thing, as well.

MR. CLARK: Great, thank you.

CHAIRMAN FROEHLICH: All right. Okay. Is there anything else that the Board need consider before we adjourn?

MR. PUGSLEY: Nothing from Powertech, Your Honor.

CHAIRMAN FROEHLICH: From the Commission Staff?

MR. CLARK: Nothing for the Staff.

CHAIRMAN FROEHLICH: From the Intervenors?

MR. PARSONS: Not at this time, Your Honor.

MR. ELLISON: Not at this time.

CHAIRMAN FROEHLICH: Okay. Then I thank all the counsel, the witnesses who gave testimony in this proceeding for their efforts. Certainly the arguments and the testimony will be a great help to the Board in rendering a decision in this case.

I also want to thank the Fall River Police Department who provided security, the Hotel Alex Johnson for giving us this facility and adequate air conditioning, especially after limited appearance statements in Hot Springs. I thank our court reporter, Mr. Miller. And with that, we'll stand adjourned. Thank you all.

(Whereupon, the above-entitled matter was adjourned at 1:07 p.m.)

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-001	Dr. Lynne Sebastian Initial Testimony.	Identified and Admitted
APP-002	Dr. Lynne Sebastian CV.	Identified and Admitted
APP-003	Dr. Adrien Hannus Initial Testimony.	Identified and Admitted
APP-004	Dr. Adrien Hannus CV.	Identified and Admitted
APP-005	Representative Sample of ALAC Projects.	Identified and Admitted
APP-006	ACHP Section 106 Regulations: Text of ACHP's Regulations, "Protection of Historic Properties: (36 CFR Part 800) (incorporates amendments effective Aug. 5, 2004)".	Identified and Admitted
APP-007	National Park Service, Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 1983	Identified and Admitted
APP-008	South Dakota State Historic Preservation Office, Guidelines for Cultural Resource Surveys and Survey Reports in South Dakota (For Review and Compliance), 2005.	Identified and Admitted
APP-009	Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project (Public Version), Vol. 3 Part 6; ML100670366.	Identified and Admitted
APP-010	Michael Fosha Initial Testimony.	Identified and Admitted
APP-011	Michael Fosha CV.	Identified and Admitted
APP-012	February 11, 2013 letter from Michael Fosha to SDDENR.	Identified and Admitted
APP-013	Hal Demuth Initial Testimony.	Identified and Admitted
APP-014	Hal Demuth CV.	Identified and Admitted
APP-015-A	Revised Technical Report (TR) for the Dewey-Burdock Project; Part 1 of 22; Transmittal Letter, Change Index and Revised TR RAI Responses; ML14035A052.	Identified and Admitted
APP-015-B	Revised TR for the Dewey-Burdock Project; Part 2 of 22; Text through Sec. 2.8.5.7; ML14035A029.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-015-C	Revised TR for the Dewey-Burdock Project; Part 3 of 22; Text Sec. 2.9 through 10.2; ML14035A030.	Identified and Admitted
APP-015-D	Revised TR for the Dewey-Burdock Project; Part 4 of 22; Plates 1.5-1 through 2.6-8; ML14035A031.	Identified and Admitted
APP-015-E	Revised TR for the Dewey-Burdock Project; Part 5 of 22; Plates 2.6-9 through 2.6-12; ML14035A032.	Identified and Admitted
APP-015-F	Revised TR for the Dewey-Burdock Project; Part 6 of 22; Plates 2.6-13 through 2.6-15; ML14035A033.	Identified and Admitted
APP-015-G	Revised TR for the Dewey-Burdock Project; Part 7 of 22; Plates 2.6-16 through 2.7-2; ML14035A034.	Identified and Admitted
APP-015-H	Revised TR for the Dewey-Burdock Project; Part 8 of 22; Plates 2.8-1 through 5.7-1; ML14035A035.	Identified and Admitted
APP-015-I	Revised TR for the Dewey-Burdock Project; Part 9 of 22; App. 2.2-A through 2.5-F; ML14035A036.	Identified and Admitted
APP-015-J	Revised TR for the Dewey-Burdock Project; Part 10 of 22; App. 2.6-A through 2.6-G; ML14035A037.	Identified and Admitted
APP-015-K	Revised TR for the Dewey-Burdock Project; Part 11 of 22; App. 2.6-H through 2.7-E; ML14035A038.	Identified and Admitted
APP-015-L	Revised TR for the Dewey-Burdock Project; Part 12 of 22; App 2.7-F through 2.7-G; ML14035A039.	Identified and Admitted
APP-015-M	Revised TR for the Dewey-Burdock Project; Part 13 of 22; App. 2.7-H 1 of 3; ML14035A040.	Identified and Admitted
APP-015-N	Revised TR for the Dewey-Burdock Project; Part 14 of 22; App. 2.7-H 2 of 3; ML14035A041.	Identified and Admitted
APP-015-O	Revised TR for the Dewey-Burdock Project; Part 15 of 22; App. 2.7-H 3 of 3; ML14035A042.	Identified and Admitted
APP-015-P	Revised TR for the Dewey-Burdock Project; Part 16 of 22; App. 2.7-J through 2.7-L 1 of 2; ML14035A043.	Identified and Admitted
APP-015-Q	Revised TR for the Dewey-Burdock Project; Part 17 of 22; App.2.7-L 2 of 2; ML14035A044	Identified and Admitted
APP-015-R	Revised TR for the Dewey-Burdock Project; Part 18 of 22; App. 2.7-M; ML14035A045.	Identified and Admitted
APP-015-S	Revised TR for the Dewey-Burdock Project; Part 19 of 22; App 2.7-N through 2.8-H; ML14035A046.	Identified and Admitted
APP-015-T	Revised TR for the Dewey-Burdock Project; Part 20 of 22; App. 2.8-I through 2.9-L; ML14035A047.	Identified and Admitted
APP-015-U	Revised TR for the Dewey-Burdock Project; Part 21 of 22; App. 2.9-M through 3.1-A; ML14035A048.	Identified and Admitted
APP-015-V	Revised TR for the Dewey-Burdock Project; Part 22 of 22; App. 3.1-B through 7.3-D; ML14035A049.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-016-A	Revised Response to the Request for Additional Information (RAI) for the Technical Report (TR) for the Dewey-Burdock Project; Cover Letter; ML11207A711.	Identified and Admitted
APP-016-B	Revised TR RAI Response; Text Part 1: ML11208B712.	Identified and Admitted
APP-016-C	Revised TR RAI response; Text Part 2; ML11208B719.	Identified and Admitted
APP-016-D	Revised TR RAI response; Text Part 3; ML11208B714.	Identified and Admitted
APP-016-E	Revised TR RAI Response; Exhibits Part 1; Exh. 2.6-1 through 2.6-4; ML11208B716.	Identified and Admitted
APP-016-F	Revised TR RAI response; Exhibits Part 2; Exh. 2.6-5; ML11208B763.	Identified and Admitted
APP-016-G	Revised TR RAI response; Exhibits Part 3; Exh. 2.6-6 through 3.1-1; ML11208B764.	Identified and Admitted
APP-016-H	Revised TR RAI Responses; Exhibits Part 4; Exh. 3.1-2 through 5.7-1; ML11208B767.	Identified and Admitted
APP-016-I	Revised TR RAI response; Appendices Part 1; App. 2.5-D through 2.6-G; ML11208B765.	Identified and Admitted
APP-016-J	Revised TR RAI response; Appendices Part 2; App. 2.6-H 1 of 3; ML11208B766.	Identified and Admitted
APP-016-K	Revised TR RAI response; Appendices Part 3; App. 2.6-H 2 of 3; ML11208B769.	Identified and Admitted
APP-016-L	Revised TR RAI response; Appendices Part 4; App. 2.6-H 3 of 3; ML11208B770.	Identified and Admitted
APP-016-M	Revised TR RAI response; Appendices Part 5; App. 2.7-B through 2.7-G; ML11208B771.	Identified and Admitted
APP-016-N	Revised TR RAI response; Appendices Part 6; App. 2.7-H 1 of 4; ML11208B777.	Identified and Admitted
APP-016-O	Revised TR RAI response; Appendices Part 7; App. 2.7-H 2 of 4; ML11208B778.	Identified and Admitted
APP-016-P	Revised TR RAI Response; Appendices Part 8; App. 2.7-H 3 of 4; ML11208B784.	Identified and Admitted
APP-016-Q	Revised TR RAI Response; Appendices Part 9; App 2.7-H 4 of 4; ML11208B827.	Identified and Admitted
APP-016-R	Revised TR RAI response; Appendices Part 10; App. 2.7-K; ML11208B832.	Identified and Admitted
APP-016-S	Revised TR RAI Response; Appendices Part 11; App. 2.7-L 1 of 4; ML112088833.	Identified and Admitted
APP-016-T	Revised TR RAI Response; Appendices Part 12; App. 2.7-L 2 of 4; ML11208B868.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-016-U	Revised TR RAI response; Appendices Part 13; App. 2.7-L 3 of 4; ML11208B864.	Identified and Admitted
APP-016-V	Revised TR RAI response; Appendices Part 14; App. 2.7-L 4 of 4; ML11208B865.	Identified and Admitted
APP-016-W	Revised TR RAI response; Appendices Part 15; App. Vol. 4 Cover; ML11208B870.	Identified and Admitted
APP-016-X	Revised TR RAI response; Appendices Part 16; App. 2.7-M; ML11208B872.	Identified and Admitted
APP-016-Y	Revised TR RAI response; Appendices Part 17; App.2.9-B through 2.9-K; ML112150229.	Identified and Admitted
APP-016-Z	Revised TR RAI response; Appendices Part 18; App. 3.1-A 1 of 2; ML11208B922.	Identified and Admitted
APP-016-AA	Revised TR RAI response; Appendices Part 19; App. 3.1-A 2 of 2; ML11208B924.	Identified and Admitted
APP-016-BB	Revised TR RAI response; Appendices Part 20; App. 6.1-A through 7.3-C; ML11208B925.	Identified and Admitted
APP-017	Figures to Accompany Demuth Initial Testimony.	Identified and Admitted
APP-018	USGS Water-Supply Paper 2220, Basic Ground-Water Hydrology, 1983.	Identified and Admitted
APP-019	National Mining Association's (NMA) Generic Environmental Report in Support of the Nuclear Regulatory Commission's Generic Environmental Impact Statement for In Situ Uranium Recovery Facilities; ML080170159	Identified and Admitted
APP-020	ISR animation (Video of ISR Operation).	Identified and Admitted
APP-021-A	Dewey-Burdock Project Technical Report (TR); re-submitted August 2009; Part 1; Text thru Sec. 2.7.1; ML092870298	Identified and Admitted
APP-021-B	Dewey-Burdock Project TR; re-submitted August 2009; Part 2; Text Sec. 2.7.2 thru 2.9; ML092870295.	Identified and Admitted
APP-021-C	Dewey Burdock Project TR; Re-submittal August 2009, Part 3; Text Sec 3 thru End; ML092870299.	Identified and Admitted
APP-021-D	Dewey-Burdock Project TR; Re-submitted August 2009; Part 4; Plate 1.5-1; ML092870313.	Identified and Admitted
APP-021-E	Dewey-Burdock Project TR; Re-submitted August 2009; Part 5; Plate 1.5-2; ML092870314.	Identified and Admitted
APP-021-F	Dewey-Burdock Project TR; Re-submittal August 2009; Part 6; Plate 2.5-1; ML092870315.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-021-G	Dewey-Burdock Project TR; re-submitted August 2009; Part 7; Plate 2.6-1; ML092870316.	Identified and Admitted
APP-021-H	Dewey-Burdock Project TR; Re-submitted August 2009; Part 8; Plate 2.6-2; ML092870317.	Identified and Admitted
APP-021-I	Dewey-Burdock Project TR; Re-submittal August 2009; Part 9; Plate 2.6-3; ML092870318.	Identified and Admitted
APP-021-J	Dewey-Burdock Project TR; Re-submittal August 2009; Part 10; Plate 2.6-4; ML092870305.	Identified and Admitted
APP-021-K	Dewey-Burdock Project TR; re-submitted August 2009; Part 11; Plate 2.6-5; ML092870306.	Identified and Admitted
APP-021-L	Dewey-Burdock Project TR; re-submitted August 2009; Part 12; Plate 2.6-6; ML092870307.	Identified and Admitted
APP-021-M	Dewey-Burdock Project TR; Re-submitted August 2009; Part 13; Plate 2.6-7; ML092870309.	Identified and Admitted
APP-021-N	Dewey-Burdock Project TR; re-submitted August 2009; Part 14; Plate 2.6-8; ML092870310.	Identified and Admitted
APP-021-O	Dewey-Burdock Project TR; Re-submitted August 2009; Part 15; Plate 2.6-9; ML092870311.	Identified and Admitted
APP-021-P	Dewey-Burdock Project TR; Re-submitted August 2009; Part 16; Plate 2.6-10; ML092870312.	Identified and Admitted
APP-021-Q	Dewey-Burdock Project TR; re-submitted August 2009; Part 17; Plate 2.6-11; ML092870320.	Identified and Admitted
APP-021-R	Dewey-Burdock Project TR; re-submitted August 2009; Part 18; Plate 2.6-12; ML092870321.	Identified and Admitted
APP-021-S	Dewey-Burdock Project TR; re-submitted August 2009; Part 19; Plate 2.6-13; ML092870322.	Identified and Admitted
APP-021-T	Dewey-Burdock Project TR; Re-submitted August 2009; Part 20; Plate 2.6-14; ML092870323.	Identified and Admitted
APP-021-U	Dewey-Burdock Project TR; re-submitted August 2009; Part 21; Plate 2.6-15; ML092870324.	Identified and Admitted
APP-021-V	Dewey-Burdock Project TR; re-submitted August 2009; Part 22; Plate 2.8-1; ML092870325.	Identified and Admitted
APP-021-W	Dewey-Burdock Project TR; re-submitted August 2009; Part 23; Plate 2.8-2; ML092870326.	Identified and Admitted
APP-021-X	Dewey-Burdock Project TR; re-submitted August 2009; Part 24; Plate 2.8-3; ML092870327.	Identified and Admitted
APP-021-Y	Dewey-Burdock Project TR; re-submitted August 2009; Part 25; Plate 3.1-1; ML092870328.	Identified and Admitted
APP-021-Z	Dewey-Burdock Project TR; re-submitted August 2009; Part 26; Plate 3.1-2; ML092870329.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-021-AA	Dewey-Burdock Project TR; Re-submitted August 2009; Part 27; App. 2.2-A thru 2.6-B; ML092870350.	Identified and Admitted
APP-021-BB	Dewey-Burdock Project TR; re-submitted August 2009; Part 28; App. 2.6-C thru 2.7-B(partial); ML092870351	Identified and Admitted
APP-021-CC	Dewey-Burdock Project TR; Re-submittal August 2009; Part 29, App. 2.7-B (Partial) thru 2.7-F; ML092870370.	Identified and Admitted
APP-021-DD	Dewey-Burdock Project TR; re-submitted August 2009; Part 30; App. 2.7-G thru 2.8-F (partial); ML092870354.	Identified and Admitted
APP-021-EE	Dewey-Burdock TR; Re-submitted August 2009; Part 31; App. 2-8.F (Partial); ML092870357.	Identified and Admitted
APP-021-FF	Dewey-Burdock Project TR; re-submitted August 2009; Part 32; App. 2.8-G thru 2.9-A; ML092870358.	Identified and Admitted
APP-021-GG	Dewey-Burdock Project TR; re-submitted August 2009; Part 33; App. 4.2-A thru 7.3-A (partial); ML092870343.	Identified and Admitted
APP-021-HH	Dewey-Burdock Project TR; re-submitted August 2009; Part 34; App. 7.3-A (partial) thru 7.3-B; ML092870344.	Identified and Admitted
APP-022	Geochemical Data from Groundwater at the Proposed Dewey Burdock Uranium In-situ Recovery Mine, Edgemont, South Dakota: U.S. Geological Survey Open-File Report 2012-1070.	Identified and Admitted
APP-023	Uranium In-Situ Recovery and the Proposed Dewey Burdock Site, Edgemont, South Dakota, Public Meeting Talk Given by Dr. Raymond Johnson, U.S. Geological Survey, in Hot Springs, SD on Feb. 7, 2013 and Custer, SD on May 22, 2013.	Identified and Admitted
APP-024	Pre-Licensing Well Construction, Lost Creek ISR Uranium Recovery Project; ML091520101.	Identified and Admitted
APP-025	Numerical Modeling of Hydrogeologic Conditions, Dewey-Burdock Project, February 2012; ML12062A096.	Identified and Admitted
APP-026	Update on USGS research at the proposed Dewey Burdock uranium in-situ recovery mine, Edgemont, South Dakota, presentation to EPA Region 8 in Denver, CO on Feb. 22, 2012, based on USGS OFR 2012-1070.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-027-A	Report to Accompany Madison Water Right Permit Application, June 2012; ML12193A239.	Identified and Admitted
APP-027-B	Report to Accompany Madison Water Right Permit Application, June 2012, Appendix A; ML12193A234.	Identified and Admitted
APP-027-C	Report to Accompany Madison Water Right Permit Application, June 2012, Appendix B; ML12193A235.	Identified and Admitted
APP-028	Report to the Chief Engineer on Water Permit Application No. 2685-2 [Madison Aquifer], ADAMS Accession No. ML13165A160, November 2, 2012.	Identified and Admitted
APP-029	Letter Agreement between Powertech and Fall River County Commission.	Identified and Admitted
APP-030	NUREG/CR-6733, A Baseline Risk-Informed, Performance-Based Approach for In Situ Leach Uranium Extraction Licensees - Final Report, July 2001; ML012840152.	Identified and Admitted
APP-031	Decision of the TCEQ Executive Director regarding Uranium Energy Corporation's Permit No. UR03075.	Identified and Admitted
APP-032	In-Situ Leach Uranium Mining in the United States of America: Past, Present and Future, by D.H. Underhill, in IAEA TECDOC-720, Uranium In Situ Leaching, Proceedings of a Technical Committee Held in Vienna, 5-8 October 1992, September 1993.	Identified and Admitted
APP-033	Safety Evaluation Report for the Moore Ranch ISR Project in Campbell County, Wyoming, Materials License No. SUA-1596; ML101310291.	Identified and Admitted
APP-034	Safety Evaluation Report for the Nichols Ranch In Situ Recovery Project in Johnson and Campbell Counties, Wyoming, Material License No. SUA-1597; ML102240206.	Identified and Admitted
APP-035	Safety Evaluation Report for the Lost Creek Project in Sweetwater County, Wyoming, Materials License No. SUA-1598; ML112231724.	Identified and Admitted
APP-036	Safety Evaluation Report for the Strata Energy, Inc. Ross ISR Project, Crook County, Wyoming, Materials License No. SUA-1601; ML14002A107.	Identified and Admitted
APP-037	Errol Lawrence Initial Testimony.	Identified and Admitted
APP-038	Errol Lawrence CV.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-039	Materials License SUA-1597 for the Nichols Ranch ISR Project, July 2011; ML111751649.	Identified and Admitted
APP-040-A	Dewey-Burdock Project Environment Report (ER); Re-submittal August 2009; Part 1; Cover thru Sec. 3.4.2.1.1; ML09270345.	Identified and Admitted
APP-040-B	Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 2; Sec. 3.4.2.1.2 thru 3.12; ML092870346.	Identified and Admitted
APP-040-C	Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 1; Sec. 4 thru end; ML092870360.	Identified and Admitted
APP-040-D	ER Plate 3.1-1; ML092870380.	Identified and Admitted
APP-040-E	ER Plate 3.3-1; ML0921870381.	Identified and Admitted
APP-040-F	ER Plate 3.3-1; ML092870381.	Identified and Admitted
APP-040-G	ER Plate 3.3-3; ML092870383.	Identified and Admitted
APP-040-H	ER Plate 3.3-4; ML092870591.	Identified and Admitted
APP-040-I	ER Plate 3.3-5; ML092870386.	Identified and Admitted
APP-040-J	ER Plate 3.3-6; ML092870387.	Identified and Admitted
APP-040-K	ER Plate 3.3-7; ML092870388.	Identified and Admitted
APP-040-L	ER Plate 3.3-8; ML092870389.	Identified and Admitted
APP-040-M	ER Plate 3.3-9; ML092870390.	Identified and Admitted
APP-040-N	ER Plate 3.3-10; ML092870592.	Identified and Admitted
APP-040-O	ER Plate 3.3-11; ML092870586.	Identified and Admitted
APP-040-P	ER Plate 3.3-12; ML092870588.	Identified and Admitted
APP-040-Q	ER Plate 3.3-13; ML092870589.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-040-R	ER Plate 3.3-14; ML092870590.	Identified and Admitted
APP-040-S	ER Plate 3.3-15; ML092870394.	Identified and Admitted
APP-040-T	ER Plate 3.5-1; ML092870395.	Identified and Admitted
APP-040-U	ER Plate 3.5-2; ML092870397.	Identified and Admitted
APP-040-V	ER Plate 6.1-1; ML092870593.	Identified and Admitted
APP-040-W	ER Replacement Plates; ML093370652.	Identified and Admitted
APP-040-X	ER App. 3.3-A thru 3.3-E; ML092870411.	Identified and Admitted
APP-040-Y	ER App. 3.3-F thru 3.4-A; ML092870421.	Identified and Admitted
APP-040-Z	ER App. 3.4-B thru 3.4-E; ML092870414.	Identified and Admitted
APP-040-AA	ER App.3.5-A thru 3.5-F; ML092870416.	Identified and Admitted
APP-040-BB	ER App. 3.5-F thru 3.5-I; ML092870422.	Identified and Admitted
APP-040-CC	ER App. 3.5-J thru 3.6-C; ML092870407.	Identified and Admitted
APP-040-DD	ER App. 4.6-A; ML092870409.	Identified and Admitted
APP-040-EE	ER App. 4.14-C thru 6.1-G; ML092870413.	Identified and Admitted
APP-041	Using Groundwater and Solid-phase Geochemistry for Reactive Transport Modeling at the Proposed Dewey Burdock Uranium In-situ Recovery Site, Edgemont, South Dakota, presentation given to EPA on April 11, 2012.	Identified and Admitted
APP-042-A	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Cover Letter; ML12244A519.	Identified and Admitted
APP-042-B	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text thru Sec. 4; ML12244A522.	Identified and Admitted

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
APP-042-C	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 5 thru 8; ML12244A520.	Identified and Admitted
APP-042-D	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 9 thru end; ML12244A521.	Identified and Admitted
APP-043	Revised Response to TR RAI 5.7.8-3(b), June 27, 2012, ML12179A534.	Identified and Admitted
APP-044	Results of Acceptance Review for TR RAI Responses; ML110470245.	Identified and Admitted
APP-045	Responses to Technical Review Comments for Dewey-Burdock Large Scale Mine Permit Application; ML13144A182.	Identified and Admitted
APP-046	Doyl Fritz Initial Testimony.	Identified and Admitted
APP-047	Doyl Fritz CV.	Identified and Admitted
APP-048	Report to the Chief Engineer on Water Permit Application No. 2686-2 [Inyan Kara Aquifer], ADAMS Accession No. ML13165A168, November 2, 2012.	Identified and Admitted
APP-049	Water Right Permit No. 2626-2 Application and Permit.	Identified and Admitted
APP-050	ER RAI Responses, transmittal letter and text; ML102380516.	Identified and Admitted
APP-051	Groundwater Discharge Plan (GDP) permit application, as updated with replacement pages through November 2012.	Identified and Admitted
APP-052	Dewey-Burdock BLM Site Determinations; January 10, 2014 letter from BLM to SD SHPO; ML14014A303.	Identified and Admitted
APP-053	Gwyn McKee Initial Testimony.	Identified and Admitted
APP-054	Gwyn McKee CV.	Identified and Admitted
~~APP-055~~	~~Greater Sage-Grouse Management Plan, South Dakota, 2008-2017; ML12241A215.~~	Not Offered
~~APP-056~~	~~A Report on National Greater Sage-Grouse Conservation Measures.~~	Not Offered
~~APP-057~~	~~Greater Sage-grouse (Centrocercus urophasianus) Conservation Objectives: Final Report.~~	Not Offered

Applicant's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
~~APP-058~~	~~Endangered Species Act Consultation Handbook, Procedures for Conducting Section 7 Consultations and Conferences, U.S. Fish and Wildlife Service and National Marine Fisheries Service,1998~~	Not Offered
~~APP-059~~	~~Frequently Asked Questions on ESA Consultations, USFWS.~~	Not Offered
~~APP-060~~	~~Whooping Crane (Grus americana) 5-Year Review: Summary and Evaluation, USFWS.~~	Not Offered
~~APP-061~~	~~Division of Migratory Bird Management, Important Information for Sandhill Hunters, Fall Whooping Crane Sightings 1943-1999.~~	Not Offered
~~APP-062~~	~~Black-Footed Ferret Recovery Plan, Second Revision, Nov. 2013.~~	Not Offered
APP-063	Answering Testimony of Dr, Lynne Sebastian.	Identified and Admitted
APP-064	Dr. Adrien Hannus Answering Testimony.	Identified and Admitted
APP-065	Hal Demuth Answering Testimony.	Identified and Admitted
APP-066	Errol Lawrence Answering Testimony.	Identified and Admitted
APP-067	Figure to Accompany Errol Lawrence Answering Testimony.	Identified and Admitted
APP-068	Doyl Fritz Answering Testimony.	Identified and Admitted
APP-069	Figures to Accompany Doyl Fritz Answering Testimony.	Identified and Admitted
APP-070	Gwyn McKee Answering Testimony.	Identified and Admitted
APP-071	2013 Wildlife Monitoring Report for the Dewey-Burdock Project.	Identified and Admitted

Consolidated Intervenor's Exhibits			
ADAMS Number	**Exhibit Number**	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
INT-001		Testimony of Dr. Louis Redmond regarding Lakota Cultural Resources.	Identified and Admitted
INT-002		10/31/09 Report of Dr. Richard Abitz on Powertech Baseline Report.	Identified and Admitted
INT-003		Statement of Professional Qualifications of Dr. Louis Redmond.	Identified and Admitted
INT-004		Statement of Professional Qualifications of Dr. Hannan LaGarry	Identified and Admitted
~~INT-005~~		~~Statement of Professional Qualifications of Dr. Richard Abitz.~~	Excluded by Board Order (August 1, 2014)
INT-006		Declaration of Wilmer Mesteth regarding Lakota Cultural Resources.	Identified and Admitted
INT-007		Testimony of Susan Henderson regarding water resources issues and concerns of downflow rancher.	Identified and Admitted
~~INT-008~~		~~Testimony of Dr. Donald Kelley a former forensic pathologist regarding the radiological impact on humans and other animals.~~	Excluded by Board (At Hearing)
~~INT-008a~~		~~Dr. Donald Kelley Affidavit~~	Excluded by Board (At Hearing)
~~INT-009~~		~~Statement of Qualifications of Dr. Kelley.~~	Excluded by Board (At Hearing)
INT-010		Testimony of Peggy Detmers a Wildlife Biologist Regarding the D-B Site and Endangered Species.	Identified as Proffered
INT-010a		Statement of Qualifications of Peggy Detmers.	Identified as Proffered
INT-010b		Map - Beaver Creek Watershed.	Identified as Proffered
INT-010c		Map - Central Flyway.	Identified as Proffered
INT-010d		Map - Whooping Crane Route.	Identified as Proffered
INT-010e		Map - D-B Project Site.	Identified as Proffered
INT-010f		Google Photo - Dewey Project - close.	Identified as Proffered

Consolidated Intervenor's Exhibits			
ADAMS Number	**Exhibit Number**	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
INT-010g	Google Photo - Dewey Project - Medium Height.		Identified as Proffered
INT-010h	Google Photo - Dewey Project - Wide.		Identified as Proffered
INT-010i	Map - 5 state area - D-B Project.		Identified as Proffered
INT-010j	GPS Google Photo - D-B Project - Close-up.		Identified as Proffered
INT-010k	GPS Google Photo - D-B Project - Drainage.		Identified as Proffered
INT-010l	GPS Google Photo - D-B Project - wideshot.		Identified as Proffered
INT-010m	Map - D-B area.		Identified as Proffered
INT-010n	GPS Google Photo - D-B Project - triangle.		Identified as Proffered
INT-010o	Diagram - Whooping Crane Bioaccumulaton.		Identified as Proffered
INT-010p	Beaver Creek Final Fecal Coliform.		Identified as Proffered
~~INT-010q~~	~~IPAC~~		NOT FILED
INT-011	Testimony of Marvin Kammera, a rancher, on potential impacts on down flow ranchers as to Inyan Kara water quantity and quality.		Identified and Admitted
INT-012	Testimony of Dayton Hyde, Owner/Operator of Black Hills Wild Horse Sanctuary, on Potential Impacts and Concerns about Proposed ISL Mine on Downflow Surface and Underground Water Resources.		Identified and Admitted
INT-013	Testimony of Dr. Hannon LaGarry a geologic stratigrapher regarding fractures, faults, and other geologic features not adequately considered by Powertech or NRC staff.		Identified and Admitted
INT-014	Testimony of Linsey McLane, a Bio-chemist Regarding Bioaccumulation of Heavy Metals in Plant and Animal Species.		Identified and Admitted
~~INT-014a~~	~~Powerpoint of Linsey McLane, a biochemist regarding bioaccumulation of heavy metals in plants and animal species~~		NOT FILED
NT-014b	Linsey McLane Affidavit		Identified and Admitted

Consolidated Intervenor's Exhibits			
ADAMS Number	**Exhibit Number**	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
~~INT-15~~	~~INT Comments on DSEIS , with Exhibits~~		NOT FILED
INT-016	Petition to Intervene, with Exhibits.		Identified and Admitted
INT-017	Statement of Contentions on DSEIS, with Exhibits.		Identified and Admitted
INT-018	INT Statement of Contentions on FSEIS, with Exhibits.		Identified and Admitted
INT-019	Dr. Redmond Rebuttal Letter.		Identified and Admitted
INT-020	Rebuttal Written Testimony of Dr. Hannan LaGarry.		Identified and Admitted
INT-020A	Expert Opinion Regarding the Proposed Dewey-Burdock Project ISL Mine Near Edgemont, South Dakota.		Identified and Admitted
INT-021A	Violation History - Crow Butte ISL mine in Crawford, Nebraska.		Identified and Admitted
INT-021B	Violation History - Crow Butte ISL mine in Crawford, Nebraska.		Identified and Admitted
INT-021C	Violation History - Crow Butte ISL mine in Crawford, Nebraska.		Identified and Admitted
INT-022A	Violation History - Smith Highland Ranch.		Identified and Admitted
INT-022B	Violation History - Smith Highland Ranch.		Identified and Admitted
INT-022C	Violation History - Smith Highland Ranch.		Identified and Admitted
~~INT-023~~	~~Violation History - Irigaray-Christiansen Ranch~~		NOT FILED

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-001	Initial Testimony and Affidavits from Haimanot Yilma, Kellee L. Jamerson, Thomas Lancaster, James Prikryl, and Amy Hester	Identified and Admitted
NRC-002-R	REVISED - Statement of Professional Qualifications of Po Wen (Kevin) Hsueh.	Identified and Admitted
NRC-003	Statement of Professional Qualifications of Haimanot Yilma	Identified and Admitted
NRC-004	Statement of Professional Qualifications of Kellee L. Jamerson	Identified and Admitted
NRC-005	Statement of Professional Qualifications of Thomas Lancaster	Identified and Admitted
NRC-006	Statement of Professional Qualifications of James Prikryl	Identified and Admitted
NRC-007	Statement of Professional Qualifications of Amy Hester	Identified and Admitted
NRC-008-A-1	NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact	Identified and Admitted
NRC-008-A-2	NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental....	Identified and Admitted
NRC-008-B-1	NUREG-1910, Supplement 4, Vol. 2, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental	Identified and Admitted
NRC-008-B-2	NUREG-1910, Supplement 4, Vol. 2., Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact Statement for In-Situ Leach....	Identified and Admitted
NRC-009-A-1	NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact Statement....	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-009-A-2	NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic	Identified and Admitted
NRC-009-B-1	NUREG-1910, S4, V2, DFC, EIS for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Suppl to the GEIS for In-Situ Leach Uranium Milling Facilities (Chapter 5 to 11 and Appendices)....	Identified and Admitted
NRC-009-B-2	NUREG-1910, Supplement 4, Vol. 2, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic	Identified and Admitted
NRC-010-A-1	NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No.	Identified and Admitted
NRC-010-A-2	NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4)(May 2009) (ADAMS Accession No. ML091480244 Page 153-512	Identified and Admitted
NRC-010-A-3	NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No. ML091480244) Pages 513-704.	Identified and Admitted
NRC-010-B-1	NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009) (ADAMS Accession No. ML091480188). Pages 1-272.	Identified and Admitted
NRC-010-B-2	NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009) (ADAMS Accession No. ML091480188). Pages 273-612.	Identified and Admitted
NRC-011	Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466).	Identified and Admitted
NRC-012	Materials License SUA-1600, Powertech (USA), Inc. (Apr. 8, 2014) (ADAMS Accession No. ML14043A392).	Identified and Admitted
NRC-013	NUREG-1569, Standard Review Plan for In-Situ Leach Uranium Extraction License Applications (June 4, 2003) (ADAMS Accession No. ML031550272).	Identified and Admitted
NRC-014	NUREG-1748, Final Report, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs (Aug. 2003) (ADAMS Accession No. ML032450279).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-015	Dewey-Burdock ISR Project Summary of Tribal Outreach Timeline (Apr. 8, 2014) (ADAMS Accession No. ML14099A010).	Identified and Admitted
NRC-016	Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (ADAMS Accession No. ML14077A002)	Identified and Admitted
NRC-017	Dewey-Burdock ISR Project Documents Pertaining to Section 106 of the National Historic Preservation Act (June 10, 2014), available at http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock/section-106-docs.html	Identified and Admitted
NRC-018-A	Final PA for the Dewey-Burdock Project. (ADAMS Accession Nos. ML14066A347).	Identified and Admitted
NRC-018-B	Final Appendix for the Dewey-Burdock Project PA. (ADAMS Accession No. ML14066A350).	Identified and Admitted
NRC-018-C	NRC PA Signature Page. (ADAMS Accession No. ML14098A464).	Identified and Admitted
NRC-018-D	Letter from ACHP finalizing Section 106. (ADAMS Accession No. ML14099A025).	Identified and Admitted
NRC-018-E	ACHP PA Signature Page. (ADAMS Accession No. ML4098A1550).	Identified and Admitted
NRC-018-F	BLM signature on PA; (Mar. 25, 2014) (ADAMS Accession No. ML14098A102).	Identified and Admitted
NRC-018-G	South Dakota SHPO PA Signature Page. (ADAMS Accession No. ML14098A107).	Identified and Admitted
NRC-018-H	Powertech PA Signature Page. (ADAMS Accession No. ML14098A110).	Identified and Admitted
NRC-019	Summary Report Regarding the Tribal Cultural Surveys Completed for the Dewey-Burdock Uranium In Situ Recovery Project. (Dec. 16, 2013) (ADAMS Accession No. ML13343A142).	Identified and Admitted
NRC-020	NRC Letter transmitting the Applicant's Statement of Work to all consulting parties. (May 7,2012). (ADAMS Accession No. ML121250102).	Identified and Admitted
NRC-021	3/19/2010 NRC sent initial Section 106 invitation letters to 17 tribes requesting their input on the proposed action. ADAMS Accession No. ML100331999.	Identified and Admitted
NRC-022	Letter to Oglala Sioux Tribe Re: Request for Updated Tribal Council Members Consultation (Sep. 8, 2010) ADAMS Accession No. ML102450647).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-023	Powertech Dewey-Burdock Draft Scope of Work and Figures - Identification of Properties of Religious and Cultural Significance (Mar.07,2012) (ADAMS Accession No. ML120870197).	Identified and Admitted
NRC-024	NRC Staff Letter Postponing fall 2012 tribal survey. (12/14/2012). ADAMS Accession No. ML12335A175.	Identified and Admitted
NRC-025-A	HDR, Engineering Inc., "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming"....	Identified and Admitted
NRC-025-B	HDR, Engineering Inc. "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming.""....	Identified and Admitted
NRC-026	WY SHPO (Wyoming State Historic Preservation Office). "Dewey-Burdock Line of Sight Analysis." Email (September 4) from R. Currit, Senior Archaeologist, Wyoming State Historic Preservation Office to H. Yilma,NRC. September 4,2013....	Identified and Admitted
NRC-027	ACHP, National Register Evaluation Criteria, Advisory Council on Historic Preservation. (Mar. 11, 2008) (2012 ADAMS Accession No. ML12262A055).	Identified and Admitted
NRC-028	Email from Waste Win Young to NRC Staff re SRST Comments Final Draft PA Dewey-Burdock SRST THPO Comments (Feb. 20, 2014) (ADAMS Accession No. ML14105A367).	Identified and Admitted
NRC-029	Letter to Cheyenne River Sioux Tribe re: Response Received Regarding Tribal Survey for Dewey-Burdock (Dec. 14, 2012) (ADAMS Accession No. ML12335A175).	Identified and Admitted
NRC-030	Standing Rock Sioux Tribe Comments - Final Draft PA Dewey-Burdock SRST-THPO Comments (Feb. 05, 2014) (ADAMS Accession No. ML14055A513).	Identified and Admitted
NRC-031	04/07/2014 Letter from the Advisory Council on Historic Preservation to the Standing Rock Sioux Tribe Concerning the Dewey- Burdock ISR Project, SD. ADAMS Accession No. ML14115A448.	Identified and Admitted
~~NRC-032~~		NOT FILED
NRC-033	09/13/2012 Summary of August 30,2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. ADAMS Accession No. ML12255A258.	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-034	Letter to Ponca Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550372).	Identified and Admitted
NRC-035	Letter to Santee Sioux Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550172).	Identified and Admitted
NRC-036	Letter to Crow Tribe of Montana Re: Invitation for Formal Consultation Under Section 106 of the national Historic Preservation Act (Mar. 04,2011) (ADAMS Accession No. ML110550535).	Identified and Admitted
NRC-037	12/3/2010 Yankton Sioux tribe requests face-to-face meeting to discuss past and current project as well as request for TCP survey. Sisseton Wahpeton and Fort Peck tribes also asked for face-to-face meeting via phone....	Identified and Admitted
NRC-038-A	Invitation for Informal Information-Gathering Meeting Pertaining to the Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal, In-Situ Uranium Recovery Projects (May 12, 2011)(ADAMS Accession No. ML111320251).	Identified and Admitted
NRC-038-B	Informal Information Gathering Meeting - Pine Ridge, SD Invitation to Section 106 Consultation Regarding Dewey-Burdock Project (ADAMS Accession No. ML111870622) (Package).	Identified and Admitted
NRC-038-C	Memo to Kevin Hsueh Re: Transcript for the June 8, 2011 Informal Information - Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870623).	Identified and Admitted
NRC-038-D	Attendee List - Informal Information Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870624).	Identified and Admitted
NRC-038-E	Transcript Re: Informal Information-Gathering Meeting Pertaining to Crow Butte Inc. and Powertech Inc. Proposed ISR Facilities (June 8, 2011) (ADAMS Accession No. ML111721938) (Pages 1-195).	Identified and Admitted
NRC-038-F	Presentation Slides for the Section 106 Consultation Meeting Pertaining to the Proposed Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR In-Situ Uranium Recovery Projects (June 8, 2011) (ADAMS Accession No. ML111661428).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-039	Meeting Agenda for Informal Information Gathering Pertaining to Dewey-Burdock, Crow Butte. Accompanying NRC letter with map of the proposed project boundary and digital copies of the Class III	Identified and Admitted
NRC-040	Letter to Richard Blubaugh, Powertech, Re: NRC Information Request Relating to Section 106 and NEPA Reviews for the Proposed Dewey-Burdock Project (Aug. 12, 2011) (ADAMS Accession No. ML112170237).	Identified and Admitted
NRC-041	8/31/2011 NRC letter from Powertech letter and proposal in response to the Aug 12, 2011 request for NHPA Section 106 info. This letter enclosed a proposal which outlined a phased approach to	Identified and Admitted
NRC-042	10/20/2011 NRC provided copies of the 6/8/2011 meeting transcripts to all the Tribes. Thank you Letter to James Laysbad of Oglala Sioux Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining....	Identified and Admitted
~~NRC-043~~		NOT FILED
NRC-044	1/19/2012 NRC invitation letters to all THPOs for a planned Feb 2012 meeting to discuss how best to conduct the TCP survey. (ADAMS Accession No. ML12031A280).	Identified and Admitted
NRC-045	2/01/2012 (February 14-15, 2012 meeting agenda). (ADAMS Accession No. ML120320436).	Identified and Admitted
NRC-046	3/28/2012 - NRC transmitted transcripts of the NRC face-to-face meeting in Rapid City, SD to discuss how best to conduct the TCP survey. (ADAMS Accession Nos. ML120670319).	Identified and Admitted
NRC-047	Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review (ACHP), availablae at http://www.achp.gov/docs/reasonable_good_faith_identification.pdf.	Identified and Admitted
NRC-048	NEPA and NHPA, A Handbook for Integrating NEPA and Section 106 (CEQ and ACHP), available at http://www.achp.gov/docs/NEPA NHPA Section 106 Handbook Mar2013.pdf.	Identified and Admitted
NRC-049	Letter to Crow Creek Sioux Tribe Re: Transmittal of Applicant's Draft Statement of Work (May 7, 2012) (ADAMS Accession No. ML 121250102).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-050	Letter to Oglala Sioux Tribe Re: Transmittal of Transcript from Teleconference Conducted on April 24, 2012 (June 26, 2012) (ADAMS Accession No. ML12177A109).	Identified and Admitted
NRC-051	NRC Email Re: August 9, 2012 Teleconference Invitation and Revised Statement of Work Transmittal (Aug. 07, 2012) (ADAMS Accession No. ML12261A375).	Identified and Admitted
NRC-052	NRC Request Re: Scope of Work with Coverage Rate, Start Date, Duration, and Cost (Aug 30, 2012) (ADAMS Accession No. ML12261A470).	Identified and Admitted
NRC-053	Letter to Tribal Historic Preservation Officer Re: Transmittal of Tribes' Proposal and Cost Estimate of the Dewey-Burdock ISR Project (Oct. 12, 2012) (ADAMS Accession No. ML12286A310).	Identified and Admitted
NRC-054	Letter to James Laysbad, Oglala Sioux Tribe, Re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR ISP Projects (Oct. 28, 2011) (ADAMS Accession No. ML112980555)	Identified and Admitted
NRC-055	Letter to Tribal Historic Preservation Officers Re: Request for a Proposal with Cost Estimate for Dewey Burdock Project (Sep. 18, 2012) (ADAMS Accession No. ML12264A594).	Identified and Admitted
NRC-056	H. Yilma Email Re: Draft PA for Dewey-Burdock Project (Nov. 22, 2013) (ADAMS Accession No. ML13329A420).	Identified and Admitted
NRC-057	Dewey-Burdock Project Draft Programmatic Agreement (Nov. 22, 2013) (ADAMS Accession No. ML ML13329A466).	Identified and Admitted
NRC-058	Draft Appendix A for Dewey-Burdock Project PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A468).	Identified and Admitted
NRC-059	Table 1.0 - NRC NRHP Determinations for Dewey-Burdock Draft PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A470).	Identified and Admitted
NRC-060	STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Request for Review and Comment on 21 Archaeological Sites, Surface Transportation Board....	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-061	Letter to Oglala Sioux Tribe Re: Transmittal of TCP Survey Report for Dewey-Burdock Project (Dec. 23, 2013) (ADAMS Accession No. ML13357A234).	Identified and Admitted
NRC-062	NRC Overall Determinations of Eligibility and Assessments of Effects (Dec. 16, 2013) (ADAMS Accession No. ML13343A155).	Identified and Admitted
NRC-063	Draft NRC NRHP Determinations - Table 1.0 for Draft PA (Dec. 13, 2013) (ADAMS Accession No. ML13354B948).	Identified and Admitted
NRC-064	Letter from John Yellow Bird Steele, President of the Oglala Sioux Tribe Re: Refusal to Accept Dewey-Burdock In Situ Project Proposal (Nov. 5, 2012) (ADAMS Accession No. ML13026A005).	Identified and Admitted
NRC-065	Letter from Sisseton Wahpeton Oyaye Tribe Re: Refusal to Accept Dewey-Burdock In Situ Recovery Project Proposal (Nov. 6, 2012) (ADAMS Accession No. ML13036A104).	Identified and Admitted
NRC-066	Letter from Standing Rock Sioux Tribe Re: Tribal Survey Using Persons Without Sioux TCP Expertise to Identify Sioux TCP (Nov. 5, 2012) (ADAMS Accession No. ML13036A110).	Identified and Admitted
NRC-067	Email from Standing Rock Sioux Tribe Providing Comments on Final Draft PA Dewey-Burdock SRST-THPO (Feb. 20, 2014) (ADAMS Accession No. ML14059A199).	Identified and Admitted
NRC-068	Email Re: Transmittal of a Follow-up Email Pertaining to an Upcoming Field Survey for the Dewey-Burdock Project (Feb. 08, 2013) (ADAMS Accession No. ML13039A336).	Identified and Admitted
NRC-069	Letter to Oglala Sioux Tribe Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock ISR Project (Nov. 6, 2013) (ADAMS Accession No. ML13308B524.	Identified and Admitted
NRC-070	Letter to J. Fowler, ACHP, Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock IS Project (Nov. 13, 2013) (ADAMS Accession No. ML13311B184).	Identified and Admitted
NRC-071	Letter from Department of State Re: Keystone XL Pipeline Project Traditional Cultural Property (TCP) Studies (Aug. 4, 2009).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-072	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. I, (Page 1.2 through Page 4.18)....	Identified and Admitted
NRC-073	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota (Pages 5.53 through 5.106)....	Identified and Admitted
NRC-074	NRC (1980). Regulatory Guide 4.14, Radiological Effluent and Environmental Monitoring at Uranium Mills. ADAMS Accession No. ML003739941.	Identified and Admitted
NRC-075	NRC, 2009. Staff Assessment of Ground Water Impacts from Previously Licensed In-Situ Uranium Recovery Facilities, Memorandum from C. Miller to Chairman Jaczko , et al. Washington DC: USNRC, July 10, 2009d ADAMS Accession No. ML091770385.	Identified and Admitted
NRC-076	NUREG/CR-6705, Historical Case Analysis of Uranium Plume Attenuation.. (Feb. 28, 2001) (ADAMS Accession No. ML010460162).	Identified and Admitted
NRC-077	05/28/2010 NRC Staff Request for Additional Information for Proposed Dewey-Burdock In Situ Recovery Facility (ADAMS Accession No. ML101460286).	Identified and Admitted
NRC-078	09/13/2012 NRC Staff RAI: Summary of August 30, 2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. (ADAMS Accession No. ML12255A258).	Identified and Admitted
NRC-079	09/09/2013 NRC Staff RAI: Email Concerning Review of Powertech's Additional Statistical Analysis of Radium-226 Soil Sampling Data and Gamma Measurements and Request for Information. ADAMS (Accession No.	Identified and Admitted
NRC-080	12/09/2013 NRC Staff RAI: NRC Staff review of revised statistical analysis of the Radium 226 (soil) and gamma radiation correlation for screening surveys at the proposed Dewey-Burdock Project requesting additional information....	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-081	Gott, G.B., D.E. Wolcott, and C.G. Bowles. Stratigraphy of the Inyan Kara Group and Localization of Uranium Deposits, Southern Black Hills, South Dakota and Wyoming. ML120310042. U.S. Geological Survey Water Resources Investigation Report....	Identified and Admitted
NRC-082	Driscoll, D.G., J.M. Carter, J.E. Williamson, and L.D. Putnam. Hydrology of the Black Hills Area, South Dakota. U.S. Geological Survey Water Resources Investigation Report 02-4094. (ADAMS Accession No. ML12240A218). 2002.	Identified and Admitted
NRC-083	Braddock,W.A. Geology of the Jewel Cave SW Quadrangle Custer County, South Dakota. U.S. Geological Survey Bulletin 1063-G. (08 April 2013)....	Identified and Admitted
NRC-084-A	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survery for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program....	Identified and Admitted
NRC-084-B	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program,....	Identified and Admitted
NRC-084-C	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium....	Identified and Admitted
NRC-084-D	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survery for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program....	Identified and Admitted
NRC-084-E	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survery for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program....	Identified and Admitted
NRC-084-F	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survery for Edgemont, South Dakota, Wyoming. National Uranium	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-085	Darton, N.H. Geology and Water Resources of the Northern Portion of the Black Hills and Adjoining Regions of South Dakota and Wyoming. U.S. Geological Survey Professional Paper 65. 1909....	Identified and Admitted
NRC-086	Epstein, J.B. "Hydrology, Hazards, and Geomorphic Development of Gypsum Karst in the Northern Black Hills, South Dakota and Wyoming. "U.S. Geological Survey Water-Resource Investigation Report 01-4011....	Identified and Admitted
NRC-087	NUREG-1910, Final Report, Supplement 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities....	Identified and Admitted
NRC-088	NUREG-1910, Final Report, Supplement 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities....	Identified and Admitted
NRC-089	NUREG-1910, Final Report, Supplement 3, Environmental Impact Statement for the Lost Creek ISR Project in Sweetwater County, Wyoming. Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities....	Identified and Admitted
NRC-090	SDDENR. "Report to the Chief Engineer on Water Permit Application No. 2686-2, Powertech (USA) Inc., November 2, 2012." November 2012a. ADAMS Accession No. ML13165A168.	Identified and Admitted
NRC-091	NRC. "Staff Assessment of Groundwater Impacts from Previously Licensed In-Situ Uranium Recovery Facilities." Memorandum to Chairman Jaczko, Commissioner Klein, and Commissioner Svinicki, NRC from C. Miller....	Identified and Admitted
~~NRC-092~~		NOT FILED
NRC-093	EPA comments on FSEIS; (ADAMS Accession No. ML14070A230).	Identified and Admitted
NRC-094	NRC Regulatory Guide 3.11, Rev. 3, Design, Construction, and Inspection of Embankment Retention Systems at Uranium Recovery Facilities, November 2008, (ADAMS Accession No. ML082380144).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-095	Letter to P. Strobel Re: EPAs Response Comment to FSEIS (Mar. 25, 2014) (ADAMS Accession No. ML14078A044).	Identified and Admitted
NRC-096	Comment (14) of Robert F. Stewart on Behalf of the Dept. of the Interior, Office of Environmental Policy and Compliance on Draft Supplemental Environmental Impact Statement (DSEIS), Dewey-Burdock Project.....	Identified and Admitted
~~NRC-097~~	~~Request for Information Regarding Endangered or Threatened Species and Critical Habitat for the Powertech Inc. Proposed Dewey-Burdock In-Situ Recovery Facility Near Edgemont South Dakota (Mar. 15, 2010).(ADAMS Accession No. ML100331503).~~	Not Offered
~~NRC-098~~	~~FWS. Whooping Cranes and Wind Development - An Issue Paper. (Apr. 2009)....~~	Not Offered
~~NRC-099~~	~~Avian Power Line Interaction Committee. "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006" (ADAMS Accession No. ML12243A391).~~	Not Offered
~~NRC-100~~	~~Informal Information Gathering Meetings Trip Summery (Dec. 9, 2010) (ADAMS Accession No. ML093631627).~~	Not Offered
~~NRC-101~~	~~Email from Mitchell Iverson of BLM. (June 25, 2012) & Wildlife Stipulations in the Current 1986 South Dakota Resource Management Plan. (ADAMS Accession No. ML12249A030).~~	Not Offered
~~NRC-102~~	~~USGS. "Fragile Legacy, Endangered, Threatened, and Rare Animals of South Dakota, Black-footed Ferret (Mustela nigripes)." (2006), available at http://www.npwrc.usgs.gov/resource/wildlife/sdrare/species/mustnigr.htm.~~	Not Offered
~~NRC-103~~	~~FWS. "Species Profile, Whooping Crane (Grus Americana)".~~	Not Offered
~~NRC-104~~	~~BLM. "Draft Environmental Impact Statement, Dewey Conveyor Project." DOI-BLM-MT-040-2009-002-EIS. (Jan. 2009b) (ADAMS Accession No. ML12209A089).~~	Not Offered
~~NRC-105~~	~~BLM. "Final Statewide Programmatic Biological Assessment: Black-Footed Ferret (Mustela nigripes)." August, 2005. Cheyenne, Wyoming: U.S. Bureau of Land Management, Wyoming State Office.~~	Not Offered

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
~~NRC-106~~	~~FWS. "South Dakota Field Office, Black-Footed Ferret," (Sep. 9, 2013), available at http://www.fws.gov/southdakotafieldoffice/b-fferret.htm.~~	Not Offered
~~NRC-107~~	~~FWS. "Black-Footed Ferret Draft Recovery Plan." Second Revision, (Feb. 2013), available at....~~	Not Offered
~~NRC-108~~	~~South Dakota State University. "South Dakota GAP Analysis Project." Brookings, South Dakota: South Dakota State University, Department of Wildlife and Fisheries Sciences (Jan. 13, 2012), available at http://www.sdstate.edu/nrm/gap/index.cfm.~~	Not Offered
~~NRC-109~~	~~South Dakota State University. "Suitable Habitat Predicted for the Black-Footed Ferret in South Dakota." available at http://www.sdstate.edu/nrm/gap/mammals/upload/blfootferret-model.pdf.~~	Not Offered
~~NRC-110~~		NOT FILED
~~NRC-111~~	~~Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466).~~	Not Offered
~~NRC-112~~	~~Travsky, A., Beauvais, G.P. "Species Assessment for the Whooping Crane (Grus Americana) in Wyoming." October 2004.Cheyenne, Wyoming: United States Department of the Interior, Bureau of Land Management,....~~	Not Offered
~~NRC-113~~	~~Endangered and Threatened Wildlife and Plants; 12-Month Findings for Petitions to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered. 75 Fed. Reg. 13,909-13,959....~~	Not Offered
~~NRC-114~~	~~Habitat Assessment and Conservation Strategy for Sage Grouse and Other Selected Species on Buffalo Gap National Grassland, U.S. Department of Agriculture, Forest Service (Sep. 2005) (ADAMS Accession No.....~~	Not Offered
~~NRC-115~~	~~Email with Attachments from Mitchell Iverson, BLM, RE: Meeting at 11:30 EST(June 25, 2012) (ADAMS Accession No. ML12250A802).~~	Not Offered
~~NRC-116~~	~~Attachment 1, Appendix C, South Dakota Field Office Mitigation Guidelines (June 25, 2012) (ADAMS Accession No. ML12250A827).~~	Not Offered
~~NRC-117~~	~~Appendix D South Dakota Field Office Reclamation Guidelines.~~	Not Offered

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
~~NRC-118~~	~~BLM. Email Subject "Appendix E Wildlife Stipulations" and attachments. From M. Iverson, BLM, Acting Field Manager, South Dakota Field Office, to A. Hester, CNWRA, Southwest Research Institute. (June 25, 2012.)~~	Not Offered
~~NRC-119~~	~~BLM. Email Subject "Wildlife and Special Status Stipulations in the 1896 South Dakota Resource Management Plan" and attachment. From M. Iverson, BLM, Acting Field Manager, South Dakota Field Office, to H. Yilma, Project Manager....~~	Not Offered
~~NRC-120~~	~~Peterson, R.A. "The South Dakota Breeding Bird Atlas." Jamestown, North Dakota: Northern Prairie Wildlife Research Center. 1995.http://www.npwrc.usgs.gov/%20%20resource/birds/sdatlas/index.htm~~	Not Offered
~~NRC-121~~	~~BLM. "Newcastle Resource Management Plan."(2000) (ADAMS Accession No. ML12209A101).~~	Not Offered
~~NRC-122~~	~~Sage-Grouse Working Group (Northeast Wyoming Sage-Grouse Working Group). "Northeast Wyoming Sage-Grouse Conservation Plan." (2006) (ADAMS Accession No. ML12240A374).~~	Not Offered
~~NRC-123~~	~~SDGFP. "Sage Grouse Population Dynamics."(Nov. 20, 2009), available at http://gfp.sd.gov/hunting/small-game/sage-grouse-population-dynamics.aspx~~	Not Offered
~~NRC-124~~		NOT FILED
~~NRC-125~~	~~U.S. Fish and Wildlife Service Press Release and Draft Report to Help Sage-Grouse Conservation Objectives (August 23, 2012) (ADAMS Accession No. ML12276A248)....~~	Not Offered
~~NRC-126~~	~~U.S. Fish and Wildlife Service. "Greater sage-grouse (Centrocercus urophasianus) Conservation Objectives: Final Report"(Feb. 2013), available at http://www.fws.gov/mountain-prairie/ea/03252013_COT_Report.pdf~~	Not Offered
~~NRC-127~~	~~Department of Environment And Natural Resources Recommendation Powertech (USA) Inc. Large Scale Mine Permit Application. (April 15, 2013), available at http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf.~~	Not Offered

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
~~NRC-128~~	~~SDGFP. "Colony Acreage and Distribution of the Black-Tailed Prairie Dog in South Dakota, 2008" (Aug. 2008), available at http://gfp.sd.gov/wildlife/docs/prairedog-distribution-report.pdf~~	Not Offered
~~NRC-129~~	~~S. Larson, FWS letter re Environmental Comments on Powertech Dewey-Burdock Project, Custer and Fall River County, South Dakota. (Mar. 29, 2010) (ADAMS Accession No. ML1009705560).~~	Not Offered
~~NRC-130~~	~~E-mail from Terry Quesinberry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, to Amy Hester, Research Scientist, Center for Nuclear Waste Regulatory Analyses, Southwest Research Institute.....~~	Not Offered
~~NRC-131~~	~~E-mail from Terry Quesinberry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, to Haimanot Yilma, Environmental Project Manager for Dewey-Burdock, Office of Federal and State Materials and Environmental....~~	Not Offered
NRC-132	Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA.	Identified and Admitted
~~NRC-133~~		NOT FILED
NRC-134	Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota. Materials License No. SUA-1600 (April 2014) ADAMS Accession No. ML14043A347.	Identified and Admitted
NRC-135	Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota, Materials License No. SUA-1600, Docket No. 40-9075 (March 2013), ADAMS Accession No. ML13052A182.	Identified and Admitted
NRC-136-A	A - Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological Contract Series No. 251....	Identified and Admitted
NRC-136-B	Palmer, L. and J.M. Kruse Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas Black Hills Archaeological Region Volumes I and II....	Identified and Admitted
NRC-136-C	Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-137	Department of Environment and Natural Resources, Recommendation, Powertech (USA) Inc, Large Scale Mine Permit Application at 6 (April 15, 2013), available at http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf.	Identified and Admitted
NRC-138	Jack R. Keene (1973). Ground-Water Resources of the Western Half of Fall River County, South Dakota. South Dakota Department of Natural Resource Development, Geological Survey, Report of Investigations, No. 109, 90 pg....	Identified and Admitted
NRC-139	U.S. Geological Survey, 2006, Quaternary fault and fold database for the United States, accessed June 20, 2014, from USGS web site: http//earthquakes.usgs.gov/regional/qfaults/.	Identified and Admitted
~~NRC-140~~		NOT FILED
NRC-141-A	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 1-42	Identified and Admitted
NRC-141-B	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession	Identified and Admitted
NRC-141-C	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 124-132	Identified and Admitted
NRC-141-D	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 133-143	Identified and Admitted
NRC-141-E	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155).	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-142	Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (Mar. 17, 2014) (ADAMS Accession No. ML14077A002. Pages 5-1	Identified and Admitted
NRC-143	Letter to Oglala Sioux Tribe re: Invitation for Government-to-Government Meeting Concerning Licensing Actions for Proposed Uranium Recovery Projects. (Mar. 12, 2013) (ADAMS Accession No. ML13071A653).	Identified and Admitted
NRC-144	SRI (SRI Foundation). "Overview of Places of Traditional and Cultural Significance, Cameco/Powertech Project Areas." Rio Rancho, New Mexico: SRI Foundation. (June 8, 2012) (ADAMS Accession No. ML12262A113).	Identified and Admitted
NRC-145-A	Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 1-14	Identified and Admitted
NRC-145-B	Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 15-18	Identified and Admitted
NRC-146	2013/03/13 Powertech Dewey-Burdock LA - RE: field survey in the spring of 2013. (Mar. 13, 2013) (ADAMS Accession No. ML13078A388).	Identified and Admitted
NRC-147	2013/03/13 Powertech Dewey-Burdock LA - RE: field survey for Dewey-Burdock. (Mar. 13, 2013) (ADAMS Accession No. ML13078A384).	Identified and Admitted
NRC-148	Letter from Oglala Sioux Tribe in response to February 8, 2013 letter to Tribal Historic Preservation Officer March 23, 2013 (ADAMS Accession No. ML13141A362).	Identified and Admitted
NRC-149	2013/08/30 Powertech Dewey-Burdock LA - Request for Availability to discuss development of a PA for the Dewey Burdock Project. (Aug. 30, 2013) (ADAMS Accession No. ML13267A221).	Identified and Admitted
NRC-150	2013/11/14 Powertech Dewey-Burdock LA - Reminder: Teleconference to discuss the development of the PA for the Dewey Burdock project is scheduled for Friday. (Nov. 15, 2013. (ADAMS Accession No. ML13322B658).	Identified and Admitted
NRC-151	NRC Staff Rebuttal Testimony.	Identified and Admitted
NRC-152	Statement of Professional Qualifications of Hope E. Luhman.	Identified and Admitted

NRC Staff's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
NRC-153	Excerpt from Parker, P. and T. King. Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register of Historic Places Bulletin 38. (1990) (ADAMS Accession No. ML12240A371).	Identified and Admitted
NRC-154	Excerpt from Bates, R. and J. Jackson. Dictionary of Geological Terms 3rd Edition. (1984).	Identified and Admitted
NRC-155	Letter from South Dakota Historical Society re: Dewey-Burdock Project, (Jan. 2014).	Identified and Admitted
NRC-156	Johnson, R. H. "Reactive Transport Modeling for the Proposed Dewey-Burdock Uranium In-Situ Recovery Mine, Edgemont, South Dakota, USA." International Mine Water Association, Mine Water-Managing the Challenges. 2011.	Identified and Admitted

Oglala Sioux Tribe's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
OST-001	Opening Written Testimony of Dr. Robert E. Moran.	Identified and Admitted
OST-002	U.S. EPA, 2007, TENORM Uranium Occupational and Public Risks Associated with In- Situ Leaching; Append. III, PG 1-11.	Identified and Admitted
OST-003	US EPA, 2008, Technical Report on Technologically Enhanced Naturally Occurring Radioactive Materials from Uranium Mining, Volume 1: Mining and Reclamation Background: Previously published on-line and printed as Vol. 1 of EPA 402-R-05-007....	Identified and Admitted
OST-004	U.S. EPA, 2011 (June), CONSIDERATIONS RELATED TO POST-CLOSURE MONITORING OF URANIUM IN-SITU LEACH/IN-SITU RECOVERY (ISL/ISR) SITES, Draft Technical Report; [Includes Attachment A: Development of the Groundwater Baseline for Burdock ISL Site....	Identified and Admitted
OST-005	Powerpoint presentation prepared by Dr. Robert E. Moran.	Identified and Admitted
OST-006	Boggs, Jenkins, ?Analysis of Aquifer Tests Conducted at the Proposed Burdock Uranium Mine Site, Burdock, South Dakota,? Tennessee Valley Authority, Report No. WR28-1-520-109, May 1980.	Identified and Admitted
OST-007	Boggs, Hydrogeologic Investigations at Proposed Uranium Mine Near Dewey, South Dakota (1983).	Identified and Admitted
OST-008	Keene, Ground-water Resources of the Western Half of Fall River County, S.D., Dept. of Natural Resource Development Geological Survey, Univ. S.D., Report of Investigations No. 109 (1973).	Identified and Admitted
OST-009	TVA, Draft Environmental Statement, Edgemont Uranium Mine.	Identified and Admitted
OST-010	OST Petition to Intervene, with Exhibits.	Identified and Admitted
OST-011	OST Statement of Contentions on DSEIS, with Exhibits.	Identified and Admitted
OST-012	OST Statement of Contentions on FSEIS, with Exhibits.	Identified and Admitted
OST-013	OST Statement of Undisputed Facts submitted with OST Motion for Summary Disposition.	Identified and Admitted
OST-014	Declaration of Michael CatchesEnemy.	Identified and Admitted
OST-015	Declaration of Wilmer Mesteth.	Identified and Admitted

Oglala Sioux Tribe's Exhibits		
Exhibit Number	**Exhibit Title (as reflected in ADAMS)**	**Exhibit Status**
OST-016	February 20, 2013 letter from Standing Rock Sioux to NRC Staff.	Identified and Admitted
OST-017	March 22, 2013 letter from Oglala Sioux Tribe to NRC Staff.	Identified and Admitted
OST-018	Rebuttal Testimony of Dr. Robert E. Moran.	Identified and Admitted
OST-019	Powertech Press Release.	Identified and Admitted
OST-020	E-Mail from Chris Pugsley, Powertech, re NRC Proceeding.	Identified and Admitted
OST-021	Powertech Quarterly Management Discussion and Analysis.	Identified and Admitted