



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 24, 2017

Ms. Trina Lone Hill
Tribal Historic Preservation Officer
Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge, SD 57770-2070

SUBJECT: COORDINATION OF A TRIBAL SURVEY TO IDENTIFY CULTURAL RESOURCES AT THE DEWEY-BURDOCK *IN SITU* URANIUM RECOVERY PROJECT (DOCKET NUMBER 40-9075)

Dear Ms. Lone Hill:

The U.S. Nuclear Regulatory Commission (NRC) staff is in receipt of your May 31, 2017, response ("response") to our letters dated April 14, 2017, and May 8, 2017, inviting the Oglala Sioux Tribe to participate in a survey of the Dewey-Burdock *in situ* uranium recovery (ISR) project area in Fall River & Custer Counties, South Dakota for sites of cultural, historical, and religious significance to the Oglala Sioux Tribe.

In your response, you stated that the terms of the survey opportunity offered are unacceptable to the Oglala Sioux Tribe for the reasons detailed in the response and in prior communications to the NRC staff. The NRC staff acknowledges that the Oglala Sioux Tribe considers the offered site survey opportunity to be unacceptable and understands this statement to convey the Tribe's rejection of the offer.

The NRC staff offered the survey invitation as part of the NRC staff's continued effort to consult in good faith with the Oglala Sioux Tribe on a mutually acceptable approach to remedying the deficiencies identified by the Atomic Safety and Licensing Board (Board) in its April 2015 Partial Initial Decision. By way of background, the NRC staff notes that in the teleconference meeting held on January 31, 2017, between representatives of the Oglala Sioux Tribe and the NRC staff, the NRC staff presented a preliminary survey approach as a starting point for discussions regarding a mutually acceptable survey approach. During the teleconference meeting, the Oglala Sioux Tribe expressed its disappointment regarding the preliminary survey approach and committed to provide specific information concerning the Tribe's desired parameters of a site survey by mid-March 2017 and to engage in further discussions with the NRC staff in the April 2017 timeframe concerning the Tribe's proposal. Throughout this period and thereafter, the NRC staff continued to seek this input from the Tribe, as well as information concerning the Tribe's availability for further discussions regarding the parameters of a site survey.

On April 14, 2017, having not received this information, the NRC staff issued the survey invitation in order to maintain communication with the Oglala Sioux Tribe and provide the Tribe with a broad window for selection of survey dates before the onset of unfavorable weather in early autumn, taking into account the Tribe's unavailability during the month of July due to the Sun Dance ceremonies. Further, as the NRC staff explained in its meeting with the Tribe on

January 31, 2017, and in the absence of the specific input from the Oglala Sioux Tribe, the NRC staff offered the open site survey and honorarium to afford the Tribe the flexibility to select and use a survey methodology that it deemed acceptable for the identification of its own sites of cultural, historical, and religious significance.

In your response, you shared information from the administrative records for the Dewey Burdock ISR and Crow Butte ISR proceedings that reflect the Oglala Sioux Tribe's position regarding the NRC's survey proposal. The positions you raised in your response, including but not limited to the length of the site survey, the survey methodology, and the requirement that the staff coordinate with the governments of all Lakota Sioux Tribes before designing a cultural resources survey, appear to be far apart from the discussions in the May 19, 2016, government-to-government meeting, the January 31, 2017, teleconference, and the reasonable opportunity to identify cultural resources described in the NRC staff's letters dated April 14, 2017, and May 8, 2017.

In light of the Tribe's view expressed in its response regarding the design and conduct of a site survey, and the more than 2 years of consultation that have occurred since the Board's Partial Initial Decision in this licensing proceeding, the NRC staff reluctantly recognizes that further consultation is unlikely to result in a mutually acceptable settlement of the dispute regarding the outstanding contentions.

Finally, in your response, you requested confirmation of the identity of the NRC staff's decision maker for the conduct of the National Historic Preservation Act (NHPA) consultation process, as well as clarification of the roles and responsibilities of the NRC officials who would meet with Tribal leaders in a government-to-government context. As described in the NRC staff's letter to the Oglala Sioux Tribe's then-Tribal Historic Preservation Officer, Mr. Dennis Yellow Thunder, dated August 26, 2015, Ms. Kellee Jamerson is the primary point-of-contact for the NRC in its consultations with the Oglala Sioux Tribe regarding the Dewey-Burdock ISR project. She has been involved with the project since its early stages and continues to manage the day-to-day project activities. In this same letter, the NRC introduced the new management with decision-making authority over the National Environmental Policy Act and NHPA reviews for materials facilities such as ISRs. Since this August 26, 2015, letter, the NRC has made managerial changes, which the NRC communicated to the Oglala Sioux Tribe. Mr. Craig Erlanger, who participated in the consultation meeting with the Oglala Sioux Tribe on May 19, 2016, in Pine Ridge, South Dakota, was promoted from Deputy Director to Director of the Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards (NMSS). I am the new Chief of the Environmental Review Branch and met you during the January 31, 2017, teleconference meeting. Mr. Erlanger continues to be one of the decision-makers and NRC officials when meeting with Tribal leaders in a government-to-government consultation context, along with me. For your information, enclosed is an organizational chart for NMSS.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

T. Lone Hill

3

If you have any questions or comments, please contact me at (301) 415-7093 or Ms. Jamerson of my staff. Ms. Jamerson can be reached at (301) 415-7408 or via e-mail at Kellee.Jamerson@nrc.gov.

Sincerely,

/RA/

Cintha I. Román, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-9075
License No. SUA-1600

Enclosure:
NMSS Organization Chart

cc: Mr. Troy "Scott" Weston, President

T. Lone Hill

4

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