



Oglala Lakota

Cultural Affairs & Historic Preservation

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Personnel:

Trina Lone Hill – Director/THPO

January 19, 2018

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

Dear Ms. Román,

Thank you for your letter to the Oglala Sioux Tribe's Cultural Affairs and Historic Preservation Office ("Office") dated December 6, 2017 regarding NRC Staff's plan for fulfilling its National Environmental Policy Act (NEPA) obligations with respect to a cultural resources survey for the proposed Dewey-Burdock in situ leach uranium mine. The letter provides the outline of a plan that the Office believes will provide a reasonable likelihood of satisfying NEPA and resolving the Oglala Sioux Tribe's long-standing NEPA contention with respect to the lack of an adequate cultural resources survey at the proposed mine site. While several important details remain to be established, as noted in your letter, the components that make up the basic structure of the plan are realistic, logical, and coincide well with the suggestions put forward by the Tribe and the expert testimony provided by NRC Staff and the Tribe in both the Crow Butte and Dewey-Burdock proceedings.

Primarily, the NRC Staff's proposal rightly identifies a physical survey of the site with the participation of the affected Tribal governments and tribal members as a necessary element for proper identification of traditional cultural properties and resources. Further, the proposal appropriately acknowledges that the only practical way for NRC to design, conduct, and document the physical survey in compliance with NEPA is with the active participation and coordination of a professional contractor with adequate expertise and experience. Indeed, this is the same approach the applicant undertook with respect to the archaeological survey that was incorporated into the application materials. It is important to note that a survey of cultural resources and traditional properties must be carried out by persons with the analogous level of professionalism employed for archaeological resource surveys and analysis. Further, a qualified outside contractor will enable the Tribes to engage in the NRC Staff-directed process without unduly burdening the already taxed resources of the Tribal historic preservation offices. The

Office looks forward to working with NRC Staff to identify potential candidates with suitable experience and expertise for this contractor position, and also to aiding in the selection process.

The NRC Staff's commitment as set forth in its proposal to engage both the Tribal elders and the Tribal councils of multiple Tribes is also appropriate and welcome. As stated in prior communications to NRC Staff, and as evidenced in hearing testimony previously brought to NRC Staff's attention by the Tribe, the involvement of both of these important groups will help improve the end product of the cultural resource impacts analysis and any avoidance and mitigation measures. The Cultural Affairs and Historic Preservation Office commits to working to facilitate NRC Staff's contact with these important groups.

With respect to the field survey protocols set forth in the letter, the Office believes they are generally acceptable. However, as noted in the letter, the specific field survey methodology, timing of the surveys, and length of time necessary for the surveys need to be established. These are key issues the Office wishes to discuss further, in partnership with both NRC Staff and with the benefit of the expertise and experience of the selected contractor. Once the contractor is on board, the Office believes these discussions can begin promptly and the detailed survey can be designed based on the contractor's input. The Office appreciates the references to reimbursement funds from the applicant for the Office's staff time in conducting survey activities, but understands NRC Staff's inability to speak for the applicant as to whether the previously proposed reimbursement would be offered again or whether a different reimbursement would be offered. The Office looks forward to discussing this matter in more detail based on the applicant's position.

The Office also finds the reporting and documentation plan to be generally reasonable. The Office notes that while establishing the basis for determining National Register of Historic Places (NRHP) eligibility is certainly an important element for Tribal comment and participation, NEPA's interdisciplinary cultural resource impact review requirements reach beyond just those resources eligible for the NRHP. As such, the Office appreciates the inclusion of a period of time for the Tribes to review and provide input on the entirety of the report, and not just NRHP eligibility. With respect to any of the cultural resources or properties identified, the Tribe expects to be able to address confidentiality issues, including the appropriate sensitive unclassified non-safeguards information (SUNSI) protocol for each party.

Lastly, the proposed time line presented by NRC Staff appears achievable, although the Office agrees that some flexibility should be preserved to account for finalization of the methodology and any unforeseen circumstances.

Sincerely,

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