



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

April 12, 2018

Garrie Kills A Hundred
Tribal Historic Preservation Officer
Flandreau-Santee Sioux Tribe
P.O. Box 283
Flandreau, SD 57028

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

Dear Mr. Kills A Hundred:

I am writing to inform you that the U.S. Nuclear Regulatory Commission (NRC) staff is seeking to obtain further information on the cultural, historical, and religious sites of significance to the Lakota Sioux Tribes that may be impacted by the Powertech (USA) Inc. Dewey-Burdock in situ (ISR) uranium recovery project in Fall River & Custer Counties, South Dakota. This information would be used to supplement the analysis in the final supplemental environmental impact statement (FSEIS)¹ for the Dewey-Burdock ISR project. The adequacy of the analysis in the Dewey-Burdock ISR FSEIS is the subject of an adjudicatory proceeding before the Atomic Safety and Licensing Board Panel (ASLBP).²

After discussions with the parties to the adjudicatory proceeding, including the Oglala Sioux Tribe, the NRC staff has selected an approach to obtain further information on the cultural, historical, and religious sites of significance to the Lakota Sioux Tribes.³ The selected approach, outlined in the March 16, 2018, letter to the Oglala Sioux Tribe (Enclosure 2), includes: (i) onboarding a contractor to facilitate implementation of the approach; (ii) involving the Lakota Sioux Tribes; (iii) holding meetings with Tribal Leaders of the Lakota Sioux Tribes, to the extent possible; (iv) conducting oral history interviews with Tribal Elders of the Lakota Sioux Tribes; (v) providing an opportunity for a field survey of the Dewey-Burdock ISR project site; and (vi) supplementing the analysis in the FSEIS to account for information obtained concerning sites of historic, cultural, and religious significance to the Lakota Sioux Tribes.

¹ 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 Uranium Milling Facilities — Final Report (NUREG-1910, Supplement 4).

² ASLBP's Memorandum and Order LPB-17-09 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML17292B298).

³ The NRC staff shared a proposed approach with the parties to the adjudicatory proceeding – the Oglala Sioux Tribe, Powertech (the licensee), and Consolidated Intervenor – on December 6, 2017 (ADAMS Accession Number ML17340B365). In finalizing this approach, the NRC staff considered (i) information provided by the Oglala Sioux Tribe on January 19 and February 15, 2018 (ADAMS Accession Numbers ML18019B267 and ML18046A171, respectively), (ii) information provided by Powertech provided on January 19 and February 15, 2018 (ADAMS Accession Numbers ML18019B268 and ML18046B443, respectively), and (iii) information provided by Consolidated Intervenor on January 19, 2018 (ADAMS Accession No. ML18024A812), in response to NRC's December 2017 proposal.

Accordingly, the NRC staff is sharing its selected approach with the Flandreau Sioux Tribe to understand your interest and willingness to participate in the implementation of the approach as discussed in this letter and within the established timeline. The details of the NRC's approach and timeline are presented below.

Field Survey

With the support and participation of the Lakota Sioux Tribes and Powertech, the NRC staff, with the assistance of a contractor, will conduct a field survey consisting of the following elements.

1. The Lakota Sioux Tribes who did not participate in the April 2013 tribal field survey of the Dewey-Burdock ISR project site will be invited to participate in a field survey with up to three tribal representatives per Tribe.⁴
2. The field survey will be conducted using a survey methodology that will be established in coordination with the NRC, with the support of the contractor, and the Lakota Sioux Tribes in advance of the field survey.
3. The field survey will allow for the examination of areas of the Tribes' choosing within the Dewey-Burdock license area; however, tribal representatives are encouraged to focus their field survey efforts on those portions of the license area that would potentially be disturbed by project construction and operations. In an effort to carry out an effective and efficient field survey, it is the NRC staff's intent, to the extent possible, to identify potential areas to be examined in coordination with the Lakota Sioux Tribes and NRC contractor prior to the field survey.
4. The field survey will be conducted in two phases. Each phase will be two weeks in length. The first phase will be conducted in mid-June 2018 and the second phase will be conducted at the beginning of September 2018. This approach provides the greatest flexibility and broadest opportunity for tribal participation by providing Tribes time between each of the phases to discuss preliminary results and findings with their Tribal Leaders; an opportunity to revisit the site to examine different areas or re-examine previously-visited areas; and different dates to participate in the field survey if one of the phases conflicts with the Tribes' schedule.
5. During the field survey, the NRC staff and contractor will accompany the participating tribal representatives. The NRC contractor would facilitate the survey, and document findings and supporting information, as appropriate, to be considered in the development of the survey report.
6. The NRC contractor will document the results and findings of the first phase of the field survey, which will be shared with the participating Tribes for their review and comment in July 2018. Upon completion of the second phase of the survey, the NRC contractor will prepare a survey report documenting the results and findings of the first and second phases of the field survey. The survey report will include the following information:

⁴ Based on the information provided by the Oglala Sioux Tribe in its letter dated February 15, 2018 (ADAMS Accession Number ML18046A171), the NRC staff is inviting the following Lakota Sioux Tribes to participate in the field survey: Oglala Sioux Tribe, Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Rosebud Sioux Tribe of Indians, Yankton Sioux Tribe, and Flandreau Sioux Tribe. The NRC staff is also inviting the Crow Creek Sioux Tribe, which participated in the 2013 tribal field survey of the Dewey-Burdock ISR project site, to participate in the other elements of the NRC staff's approach (meeting with Tribal Leaders and oral history interviews with Tribal Elders, discussed in more detail below).

- an identifying label for each identified site of historic, cultural, or religious significance to the Tribes (for example, OST-1, OST-2, etc.);
- a discussion of the fieldwork completed, including the survey methodology and license areas examined;
- a brief description of each individual site recorded;
- a National Register of Historic Places (NRHP) evaluation of each site recorded including recommendations concerning the potential NRHP eligibility and basis;
- potential impacts to identified sites; and
- recommendations for appropriate avoidance buffers or possible mitigation measures, should any of the sites be impacted by the project.

Upon completion of the second phase of the field survey, the NRC will need the participating Lakota Sioux Tribes to provide information to support the development of the survey report. Site descriptions in the report need not include interpretive information that the Tribes may consider confidential. Information concerning the location of any identified sites of historic, cultural, or religious significance to the Tribes may be reported separately and directly to the NRC as a confidential appendix to the survey report so that this information would not be disclosed to the public. The NRC staff will provide the survey report in draft form to the participating Lakota Sioux Tribes for review and comment prior to finalizing the survey report. The NRC anticipates sharing the final survey report with the Lakota Sioux Tribes by the end of December 2018.

To carry out the field survey in a productive and timely manner, Powertech has agreed to support the field survey by:

- providing site access;
- providing a safety briefing to the participants of the field survey (consistent with previous practices, each participating tribal representative would be expected to sign a release of liability);
- providing daily transportation from the Edgemont office to the Dewey-Burdock ISR project area;
- escorting tribal representatives to the areas to be surveyed and, to the extent possible, not directly accompanying the tribal representatives during their examination of the areas (if requested);
- providing GPS unit(s) to document the general boundaries of sites or features encountered and identified during the field survey.
- signing a confidentiality agreement limiting use of this information to appropriate company personnel involved in the project design or operation; and
- providing updated maps of the Dewey-Burdock ISR project site that identify areas that could be impacted by the ISR construction and operations, to the extent possible.

Powertech has also agreed to provide the following reimbursement and compensation to each of the Lakota Sioux Tribes that participates in the NRC's approach.

- Lodging and per diem - \$136.00 per day for lodging and \$59.00 per day for meals and incidental expenses for each tribal representative.
- Mileage - \$0.535 per mile for one round trip for each phase of the field survey for up to two vehicles for each Lakota Sioux Tribe from the tribal representatives' point of origin to Edgemont, South Dakota.

- Honorarium - \$10,000 honorarium to each Lakota Sioux Tribe. Powertech has clarified that the honorarium may be used at each Tribe's discretion and will be paid upon successful completion of all activities pertaining to the NRC's approach, in accordance with the timeline developed by the NRC staff (Enclosure 1), including the submission of a final report identifying historic, cultural, and religious sites at the Dewey-Burdock ISR project or a written submission that no such report will be submitted.

Meetings with Tribal Leaders and Oral History Interviews with Tribal Elders

The NRC staff plans to reach out to the Lakota Sioux Tribes to coordinate meetings with Tribal Leaders. The purpose of the meetings with the Tribal Leaders is to provide an opportunity for the Tribes and the NRC staff to have an open dialogue regarding the NRC staff's activities to gather information about historic, cultural and religious resources of significance to them that could be impacted by the Dewey-Burdock ISR project. Meetings with Tribal Leaders would be based on their availability and the timeframe for implementing this approach.

With the assistance of its contractor, the NRC will also request oral history interviews with the Tribal Elders of the Lakota Sioux Tribes. The oral history interviews would be focused on gathering information about resources of significance to the Lakota Sioux Tribes that could be impacted by the Dewey-Burdock ISR project. Information gathered through these interviews would be documented in a report to be developed by the NRC contractor in coordination with the Tribes. The NRC understands the importance of protecting the information gathered through these interviews. Accordingly, information that the Tribes consider confidential would be documented separately so that this information would not be disclosed to the public.

Based on the timeline for conducting the activities described in this letter, the NRC staff would carry out oral history interviews in August 2018, unless the Tribes would like to conduct them earlier. These meetings could also provide an opportunity for the Tribes and NRC staff to discuss preliminary results of the first part of the site survey.

The NRC staff anticipates sharing the documentation of the oral history interviews with participating Lakota Sioux Tribes by the end of October 2018 for review and comment. The NRC staff anticipates sharing the final documentation with participating Lakota Sioux Tribes by the end of December 2018.

Supplementing the FSEIS

The NRC staff's supplemental analysis to the FSEIS for the Dewey-Burdock ISR project, Supplement 4 to NUREG-1910, will describe potential impacts to sites of historic, cultural, or religious significance to the Lakota Sioux Tribes using the information gathered through the field survey, oral history interviews, and any other information provided by the Tribes. The NRC staff anticipates publishing a draft of the supplemental analysis for a 45-day public comment period by mid-February 2019. The NRC staff anticipates that after reviewing and considering comments, it will publish the final analysis by May 2019.

Timeline

In an effort to be transparent and proactive, and to ensure that the NRC staff's approach can be carried out in a timely manner, the NRC has established the enclosed schedule and milestones (Enclosure 1). This timeline takes into consideration the schedule expectations discussed in the ASLPB's Order LBP-17-09, limited activities that can be accomplished during the winter months, and the Oglala Sioux Tribe's previous comments regarding schedules and interests. Delays in this schedule will impact the NRC staff's ability to carry out the approach as described in this letter.

To carry out these activities in a productive and timely manner, the NRC staff requested the Oglala Sioux Tribe's assistance in facilitating the implementation of this approach with the Lakota Sioux Tribes. The NRC staff greatly appreciates the Oglala Sioux Tribe's commitment to assisting with such coordination efforts and understands that the Tribe has begun its outreach to the Tribes.

The NRC is requesting your response regarding the Flandreau Sioux Tribe's interest and willingness to participate in the implementation of the NRC's approach and timeline, as discussed in this letter, no later than May 11, 2018. In addition, the NRC staff welcomes any input or information that the Flandreau Sioux Tribe would like to provide in advance of the anticipated webinar/teleconference call to establish the survey methodology, which is anticipated to occur the week of May 28, 2018. If there are dates during that week when the Tribe would prefer to hold the webinar/teleconference call, please let the NRC know as well. The NRC staff looks forward to the Flandreau Sioux Tribe's participation.

In accordance with 10 CFR 2.390, 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 NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or comments, please contact Ms. Kellee 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

Enclosures:

1. Timeline for NRC Staff's Final Approach
for Obtaining Information on Lakota Sioux
Cultural Resources Potentially Impacted
by the Dewey-Burdock Project
2. March 16, 2018, Letter to the Oglala Sioux Tribe
from NRC

cc w/encl.:

Mr. Kyle White, Oglala Sioux Tribe
Mr. Jeff C. Parsons, Counsel
for the Oglala Sioux Tribe
Mr. Travis E. Stills, Counsel
for the Oglala Sioux Tribe

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S APPROACH TO IDENTIFY HISTORIC, CULTURAL, AND RELIGIOUS SITES AT THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA (DOCKET NUMBER: 40-9075)

DATED: April 12, 2018

DISTRIBUTION:

JTappert, NMSS RBurrows, NMSS MSampson, NMSS WVonTill, NMSS
 CErlanger, NMSS KJamerson, NMSS BSmith, NMSS PMoulding, OGC
 EMonteith, OGC DCylkowski, OGC

ADAMS Accession Number: ML18102A209

***via e-mail**

OFC	FCSE/ERB	OGC	FCSE/ERB	FCSE/ERB
NAME	DDiaz-Toro *	EMonteith*	AWalker-Smith	CRomán
DATE	04/11/2018	4/11/2018	04/12/2018	04/12/2018

OFFICIAL RECORD COPY