

From: Travis Stills
To: [Monteith, Emily](#); [Paul Nickens](#); ostnrranrd@gwtc.net; rst.thpo@rst-nsn.gov; brhodd1@yahoo.com
Cc: [Diaz Toro, Diana](#); [Jamerson, Kellee](#); [Baer, Lorraine](#); [Abe Zeitoun](#); wmap@igc.org; [Richard Stoffle](#); [Cylkowski, David](#); [Roman-Cuevas, Cinthya](#)
Subject: [External_Sender] Re: Summaries of Previous Work at Dewey-Burdock
Date: Thursday, June 07, 2018 7:02:12 PM

Hi Emily,

We continue to work on these concerns and should have something over for your review tomorrow.

A generic statement of "in accordance with federal laws and regulations" is not particularly helpful. Can you provide specific laws and regulations that: 1) confirm each Tribe's ownership of all information and work product; and, 2) afford the confidentiality protections under discussion? The Tribes' concerns are similar to, but also distinctly different from, the NRC's duty to protect information regarding reactors and nuclear fuel cycle.

These matters are normally taken care of by the contractor or academic institution responsible for carrying out a study, well ahead of the survey and with prior consultation and informed consent of the participating Tribe(s). After Tuesday's call, I was quite surprised to learn that the University of Arizona disavowed any involvement in the survey, but it also helped explain why these agreements and protections are not in place.

To aid our preparation of the necessary agreements and protections, please provide the name, official title, contact information, and a short biography of the NRC personnel that plan to take conduct or participate in the cultural resources survey, whether on site or remotely.

Thank you,
Travis

On 6/7/2018 4:11 PM, Monteith, Emily wrote:

Hi Travis,

I appreciate that the Oglala Sioux Tribe is concerned with the protection of sensitive information that may result from the Tribe's participation in the tribal field survey, and I hope that we can work to resolve the Tribe's concerns so we have a productive and fruitful field survey with the Tribe.

As I communicated previously, the NRC staff is committed to – in fact, bound to – protect all such information in accordance with federal laws and regulations. The NRC staff also defers to the Tribe as to information the Tribe wishes to share with us. Of course, our hope is to obtain information that we can assess as part of our environmental review in order to respond to the concerns about the FSEIS raised by the Oglala Sioux Tribe in this proceeding, but it is ultimately within the judgment of the Tribe as to the information they wish to share with the NRC staff. The NRC staff is dedicated to working with the Tribe to ensure that any sensitive information that the Tribe shares with the NRC is adequately protected, including on a case-by-case basis as questions or concerns arise during the course of the survey effort.

The NRC staff is not currently aware of having any agreements with Tribes relating to other cultural resources field surveys, including previous efforts with the Oglala Sioux Tribe, so I'm afraid I don't have any examples of such agreements to offer you. I also don't have a clear understanding of the Oglala Sioux Tribe's specific concerns regarding human subject research or intellectual property. At this point, since the Oglala Sioux Tribe has the clearest understanding of these concerns and how it prefers to navigate them with federal agencies in the context of tribal field surveys, I think it would be most expeditious for the Tribe to provide the NRC staff with the agreement it typically employs with federal agencies in these circumstances, or to otherwise propose the language that it believes would be necessary to ensure the confidentiality of this information beyond the protections provided by governing law.

Finally, while it remains the NRC staff's determination that sharing SUNSI information held by the NRC staff with the Tribes that is necessary to support the field survey effort does not require an amendment to the protective order in this proceeding, I continue to remain happy to work with you toward an agreement among the parties on that matter.

Best wishes,
Emily

From: Travis Stills [<mailto:stills@frontier.net>]

Sent: Thursday, June 07, 2018 12:49 PM

To: Monteith, Emily <Emily.Monteith@nrc.gov>; Paul Nickens <pnickens@scainc.com>; ostnrranrd@gwtc.net; rst.thpo@rst-nsn.gov; brhodd1@yahoo.com

Cc: Diaz Toro, Diana <Diana.Diaz-Toro@nrc.gov>; Jamerson, Kellee <Kellee.Jamerson@nrc.gov>; Baer, Lorraine <Lorraine.Baer@nrc.gov>; Abe Zeitoun <azeitoun@scainc.com>; wmap@igc.org; Richard Stoffle <rstoffle@email.arizona.edu>; Cylkowski, David <David.Cylkowski@nrc.gov>; Roman-Cuevas, Cinthya <Cinthya.Roman-Cuevas@nrc.gov>; Jeff Parsons <wmap@igc.org>

Subject: [External_Sender] Re: Summaries of Previous Work at Dewey-Burdock

Emily,
Thank you for the response, but I think you misunderstand this situation.

First, I think we do agree that the current protective order is inadequate to NRC's survey efforts, and I appreciate your suggested updates. I will review your suggestions, and get back with you. To put it in context, Powertech required updates and changes when OST contractors reviewed previously undisclosed bore hole information. Similarly, the current protective order, and the list of persons who have executed SUNSI affidavits, is inadequate to the cultural survey approaches discussed to date.

Second, the survey presents serious issues with confidentiality and protection of sensitive information about culture and religion, much of which also has human subject research and intellectual property implications. The suggested updates to

SUNSI, which is designed for sensitive information about the nuclear fuel cycle, do not address the concerns of the Federally Recognized Native American Tribal Governments, members, and non-members, and the United States' special duties to protect the Tribes' interests in this situation.

If NRC has example agreements from other cultural resources field surveys, perhaps sharing examples acceptable to NRC (scrubbed of identifying/sensitive information) could help move us forward. I understand that you may be out of the office today, and will look for a response tomorrow.

Travis

On 6/7/2018 9:43 AM, Monteith, Emily wrote:

Hi Travis,

I can respond to your concerns about confidentiality related to the development and sharing of information of a sensitive nature. Per your email, you have concerns that SUNSI provisions are not in place for the field survey effort, and in the webinar you expressed concern that the NRC's contractor is not subject to the SUNSI order in effect in this proceeding.

Regarding the latter point, you correctly observed in the webinar that the protective order states that the Staff and its contractor are not subject to the provisions of that order. However, as the order explains, the Staff's and its contractors' use of SUNSI is governed by NRC regulations and policies. NRC employees, consultants, contractors and subcontractors are responsible for protecting SUNSI according to the procedures specified in NRC Policy and Procedures for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information.

Regarding the provisions for sharing and protecting SUNSI more generally, any SUNSI information the NRC may share with the tribes participating in the field survey is authorized as a sharing of information between the NRC and another governmental entity and its authorized representatives, including the Tribes' contractors. The NRC staff has determined that the Tribes have a need to know such information in order to carry out a tribal field survey. Furthermore, Powertech can independently authorize the sharing of its proprietary information with any person, for any reason. Accordingly, the NRC staff finds that it does not believe it is necessary to amend the protective order or institute a new agreement for the purposes of this effort. Nevertheless, to assuage any further concerns the Tribe may have about receiving such information, I will follow up with you shortly with proposed language that may form the basis of an amendment to the protective order in case you still wish to pursue that for the purposes of conducting the field survey.

Any information newly developed in the course of the field survey effort would be protected by the Staff and its contractor in accordance with applicable laws and regulations, including Section 304 of the NHPA. Such information does not become SUNSI until provided to the NRC by the Tribes, and the Tribes control the information they wish to provide to the agency. Consistent with its usual practices, the Staff would treat as confidential, appropriately mark, and (unless required by law or court order) withhold from release to the public – including the licensee – any information provided by the Tribes to the NRC that may risk harm to a historic site or property.

In your email, you also requested a copy of the NRC's statement of work for the SC&A contract and "any agreements addressing confidentiality/work product so we can know what tasks NRC has (and has not) authorized SC&A to carry out and any TCP protections NRC Staff has already included in SC&A's contract," for the purpose of expediting the Tribe's use of SC&A's proposed methodology to develop an alternate fieldwork approach. It is not clear to me why this information is necessary to that effort, as there is nothing in the terms of the statement of work or contract with SC&A that bears on the specifics of a fieldwork approach for the tribal field survey. As I stated above, any sensitive information received by the Staff and its contractors will be protected consistent with applicable laws and regulations.

The Staff looks forward to working with the Tribe on the upcoming field survey effort, as well as the promised input from the Tribe on the fieldwork approach.

Regards,
Emily

From: Travis Stills [<mailto:stills@frontier.net>]
Sent: Wednesday, June 06, 2018 1:29 PM
To: Paul Nickens <pnickens@scainc.com>; ostnrranrd@gwtc.net;
rst.thpo@rst-nsn.gov; brhodd1@yahoo.com
Cc: Diaz Toro, Diana <Diana.Diaz-Toro@nrc.gov>; Jamerson, Kellee <Kellee.Jamerson@nrc.gov>; Monteith, Emily <Emily.Monteith@nrc.gov>; Baer, Lorraine <Lorraine.Baer@nrc.gov>; Abe Zeitoun <azeitoun@scainc.com>; wmap@igc.org; Richard Stoffle <rstoffle@email.arizona.edu>
Subject: [External_Sender] Re: Summaries of Previous Work at Dewey-Burdock

Thanks Paul,

I appreciate your effort to address a large volume of information in a short time, particularly in light of restraints imposed by NRC Staff's denial of the OST request to move the survey back by one week, to be conducted June 18- June 29.

Please allow me to reiterate that one prerequisite that requires immediate attention is an update to the NRC's SUNSI Order/Affidavit and OST (and other Tribe's) confidentiality agreements, intellectual property agreements, and similar protections afforded when addressing the locations and cultural/spiritual context of Traditional Cultural Properties. Confidentiality is a key aspect of the survey. NRC's existing SUNSI order and affidavit are attached, but needs to be updated. We look forward to NRC Staff providing proposed updates to conform with federal law and the current circumstances. The OST has similar requirements, which will be provided separately, in due course. Please circulate any other forms, releases, affidavits, etc. that NRC, Powertech or SC&A plan to use during the cultural resources survey, especially the field survey.

As discussed on the call yesterday, the work plan looks like NRC Staff's previous use of an open site survey, which has been rejected by the Sioux Tribes and orders of the ASLB, and the Commission. I appreciate the acknowledgement of Dr. Stoffle and yourself that an open site approach is not an accepted methodology, and efforts under time constraints to pull together a sound methodology. Per your request, we will use SC&A's suggested work plan to provide an alternate approach that establishes a sound, yet flexible, methodology before going into the field. To expedite this process, it would be helpful for NRC Staff to provide a copy of SC&A's scope of work and any agreements addressing confidentiality/work product so we can know what tasks NRC has (and has not) authorized SC&A to carry out and any TCP protections NRC Staff has already included in SC&A's contract.

We look forward to SC&A's summary and review of the available information (which goes beyond the information in Powertech's application materials, as amended in 2013), maps discussed on the call, and SC&A's literature review report that NRC is currently reviewing.

We expect to send a proposed schedule around either today or tomorrow.

Travis

cc: Emily Monteith, NRC Staff Counsel

On 6/5/2018 8:49 PM, Paul Nickens wrote:

Kyle and Ben,

As promised during the teleconference call this afternoon, I am attaching two summary documents from the Dewey-Burdock Programmatic Agreement document; the PA itself is not included. Together, these summary documents offer a concise compilation of the previous archaeological efforts (2007-2008) and the 2013 Tribal field surveys. If you find that you have questions on the information presented therein, please let me know.

A third attachment is a summary of a proposed (for consideration by the participating Tribes) initial work plan.

Kyle, I did not receive Mr. Rom's email address. If you could forward these documents to his office, I would appreciate it.

Thanks again for the good conversations of the past few days. I look forward to further discussion of these important issues.

Paul Nickens
SC&A, Inc.
(520) 404-6186

This email may contain privileged and confidential information intended only for the use of the specific entity named herein.

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