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Siha Sapa

Oohenumpa

Date: June 7, 2018

Cintha Roman, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
And Environmental Review
Office of Nuclear Material Safety
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Dewey-Burdock and Nuclear Regulatory Commission (NRC), Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions: (Docket Number 40-9075)

The Cheyenne River Sioux Tribe (CRST), submits comments on the cultural resources identified at the Dewey-Burdock in-situ Uranium Recovery Project in Fall River and Custer Counties, South Dakota.

Recent emails, letters, and phone calls from NRC has asked CRST to participate in a field survey of the Dewey-Burdock project and to discuss and establish the areas to be examined and the survey methodology to be implemented, scheduled for June and September 2018.

It is my understanding that NRC is offering a Scope of Work (SOW), for the field survey and methodology, drafted without the participation of CRST.

CRST along with several other Tribes submitted a SOW for Dewey-Burdock and it was not considered by the company and NRC. The original proposal was submitted was for a 100% survey of the 10,580 acres. This is because of visual and environmental effects to the entire Sacred H'e Sapa "Black Hills" landscape. NRC offered an "open block survey" telling Tribes they could survey areas of "interest", in which limited portions were surveyed. An area surveyed by one Tribe was not surveyed by the others.

Tribes have different interpretations of sites such as stone circles. Some Tribes ignore crescents and quarter circles. The information gathered during this survey limited interpretation and evaluation by THPO's because of the insufficient survey. There was about 23 Tribes contacted for the project and in the end only three (3), Tribes submitted a

report of the survey. Even today Tribes cannot review the original survey and get a complete view of sites and the affects to those sites by the Dewey-Burdock project.

NRC's determination of eligibility of TCP's is a disgrace to the limited sites located in the 2013 report. Most of the sites associated to Tribes were determined "not eligible". Sites determined as unevaluated should be considered eligible until there is a definite eligible or not eligible. These sites will sit on a shelf for many years unevaluated.

The new proposal mentions 20-100 meter transects for the field survey which will not meet the needs of the Traditional Cultural Property (TCP), survey. Tribes submitted the 5 meter transects in the original SOW. Again this is the discipline of non-Native people.

NRC and the company did not agree with the original proposal and considered another bid submitted from an archaeological firm and a Tribe but they pulled out after Tribes submitted comments to this proposal. This proposal was submitted as "underbidding" of what the majority Tribes discussed in caucus. Again a failure in meeting the term "With the interest of Tribes in mind". NRC basically attempted to "buy" the Tribes by submitting a \$10,000 offer and ended up with seven (7), Tribes taking the money. Money seems to be the main issue again with this survey proposal because NRC and the company will not discuss the original SOW.

The NRC representatives, Kevin Hsueh, Haimanot Yilma, Jahari Moore, and Larry Camper, failed NRC's consultation with Tribes during those discussions on the Dewey-Burdock project. When they were no longer contacting CRST on projects I asked what happened to them. Did they get fired for their failure or quit? I was told they all moved up in ranks with NRC. This reminds me of the "bad priests" that get moved to another location without consequences.

So has NRC reviewed the failures of Tribal involvement from Dewey-Burdock Section 106 process?

Another NRC staff person was Sandra Talley who made an unannounced visit to a Tribal meeting in North Dakota. She handed out the NRC Tribal Protocol Manual which is intended to facilitate effective consultation and interactions between the NRC and Native American Tribes concerning activities within the NRC's jurisdiction. I felt sorry for her as she came in at a time when NRC had failed in Tribal consultation. Since then Sandra had compiled comments and concerns from Tribes and emailed a summary report on 11-4-2015. I recommend NRC to read the summary as again Tribes are repeating comments and concerns project to project, year after year.

NRCs compliance to the Section 106 process (36CFR800), is a "national" requirement and should not cater to specific agencies, states, tribes, regions or individual companies.

CRST has been involved in the Section 106 Consultation Process with NRC in multiple states in the Great Northern Plains region. To name a few of the projects consulted on are, Crow Buttes, North Trend, Gas-Hills, Jane Dough, Nichols Ranch, Ross, Smiths Ranch, Hanks Unit, and North Butte, and Dewey-Burdock. We participated in several of the teleconferences while PAs and MOUs were developed for these projects. Although CRST has opposed all uranium mining in Treaty Territory, which the Dewey-Burdock is in, we participate where we can so that maybe some of our concerns will be addressed.

CRST will not sign PAs or MOUs until there is equal authority for the CRST Chairman's signature to that of the US President and the State Historic Preservation Officer (SHPO).

As Tribes, we assumed the functions and duties of the SHPOs as THPOs but when the time comes to sign a PA the Tribes fall to the back of the document. These PAs, MOAs, or MOUs are supposed to be at a government-to-government level and a document between the two Nations.

Because of how NRC has conducted Section 106 many of the Lakota "Sioux" Tribes refused to participate in projects. The CRST THPO has not been involved in the consultation or identification of sites and seem to be ignored in the eligibility portion when we submit site eligible under Criterion A, B, C, and D. Any determination of eligibility by archaeologists, NRC, or SHPO I will disagree with. Native cultural resources can only be identified and evaluated by Natives who maintain association.

I assume NRC shares comments from Tribes amongst each other but if not here is a portion of a letter I sent to NRC in 2014;

Historic property, along with the other terms such as prehistoric or historic district, site, building, etc. also includes those of religious and cultural significance to Tribes. Federal agencies shall make a reasonable good faith effort in carrying out its effort to identify historic properties.

Jonathan Downing, Executive Director for the Wyoming Mining Association (WMA), commented on August 25, 2014 "This process is of serious concern to the uranium recovery industry as it is a source of delay and increased cost in the permitting process".

He also stated a comment from Ms. Sweeney, General Counsel of the National Mining Association (NMA), January 7, 2013, "Second, NRCs conduct of the National Historic Preservation Act's (NHPA) Section 106 process has become a source of great concern within the uranium recovery industry".

More comments from WMAs Jonathan Downing;
"Conducting a survey of the area with consulting parties, to collect more data after the project applicant has already conducted surveys per NRC regulations, and NEPA requirements, is a waste of the project proponents' time and money".

The Dewey-Burdock project is in a very sensitive area where the Lakota and other Tribes camped, traveled, celebrated and conducted spiritual practices. It is also an area of concern to CRST as any contaminants from uranium will travel into the waters that end up in the Missouri River and Oahe Dam. This river and dam is the drinking water for us. The location is also a concern for Bear Lodge (Devils Tower), Inyan Kaga, and H'e Sapa (Black Hills). We were in this area extensively and the signs are still there. The NRC projects in this area have already destroyed much of the sites with just roads during exploratory drilling and archaeological surveys.

I have attempted to get US Environmental Protection Agency (EPA), to visit with CRST on our concerns with air and water quality near uranium projects. Is EPA a cooperating agency with NRC on Dewey-Burdock? Because CRST has great concern with "deep

injection wells” proposed by the company. There needs to be a permit from EPA. The alternate choice for disposal is “land application of waste or a combination of both”. Either of these will have affects to natural land, air and water.

EPA recently received guidance on how to consult with Tribes on issues with Treaties and the “affects” from projects, upstream, to air and water quality for people downstream. As I stated “CRST opposes all uranium mining in Treaty Territory” but look where uranium has gone on to since.

Cumulative effects should not be considered on one specific project but for all projects within a region. Dozens and dozens of extractive industries are in the same areas and the federal agencies are not looking to each other for the long term affects.

CRST Chairman Harold Frazier stated to the US Government, “What does it mean when the Tribe says No”? He also stood facing a wall and said “This is like talking to the federal agencies or governments, nobody listens”.

On the Ross project NRC developed a PA and in Appendix B, Tribal Consultation it reads;

..... The BLM is required to comply with this Order (EO 13175). Although NRC, as an independent regulatory agency, is explicitly exempt from the Order.

The Section 106 process, as described in Subpart B of 36 CFR 800, consists of four steps:

- (1) Initiation of the Section 106 Process (36 CFR 800.3)
- (2) Identification of historic properties (36 CFR 800.4)
- (3) Assessment of adverse effects (36 CFR 800.5)
- (4) Resolution of adverse effects (36 CFR 800.6)

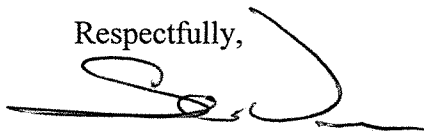
NRC is not consulting with Tribes on the SOW. Instead they want to pick up where they left off in the identification stage.

CRST continues to have concerns to all extractive industries and their destruction to land, air, and water within Treaty Territory and other aboriginal homelands of our ancestors. Because CRST has not been actively involved on all NRC projects, does not mean we are not interested.

CRST does not agree with the SOW as it was not developed with CRST or by CRST.

CRST is requesting face-to-face government-to-government consultation with NRC on the Dewey-Burdock project.

Respectfully,

A handwritten signature in black ink, appearing to be a stylized name, possibly 'R. Frazier', written over a horizontal line.