



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

November 21, 2018

Mr. John M. Mays
Chief Operating Officer
Azarga Uranium Corporation
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111-3012

SUBJECT: RESUMING IMPLEMENTATION OF THE U.S. NUCLEAR REGULATORY COMMISSION'S MARCH 2018 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. Mays:

In light of the Atomic Safety and Licensing Board's (Board's) October 30, 2018, decision, the U.S. Nuclear Regulatory Commission (NRC) staff plans to continue its efforts to implement the approach developed for identifying sites of historical, cultural, and religious significance to the Oglala Sioux Tribe and Lakota Sioux Tribes that could be affected by the Dewey-Burdock *in situ* uranium recovery (ISR) project, and gather information to supplement the NRC staff's analysis in the final supplemental environmental impact statement (FSEIS, NUREG-1910 Supplement 4). The NRC staff would like to build upon the progress that has been achieved to date.

Earlier this year, the NRC staff developed an approach that the Oglala Sioux Tribe, Consolidated Intervenors, and Powertech (USA), Inc., accepted as reasonable. This approach (the March 2018 Approach; (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18074A393)) incorporated elements that the Oglala Sioux Tribe described in its May 31, 2017, letter to the NRC staff as necessary for accomplishing a comprehensive cultural resource survey (ADAMS Accession Number ML17152A109). The March 2018 Approach specifically incorporated the following elements:

- A contractor with the necessary experience and training to facilitate the site survey and implementation of the approach.
- Involvement of other Lakota Sioux Tribes.
- Iterative opportunities to survey the site by providing two non-contiguous, two-week periods for conducting the site survey.
- Involvement of Tribal elders via oral history interviews and during the site survey, as appropriate.

Additionally, as part of the March 2018 Approach, Powertech agreed to provide reimbursement for up to three Tribal representatives in addition to an honorarium. Therefore, the NRC staff is seeking to confirm Powertech's willingness to continue to provide reimbursement and support for the field survey as discussed in your letter to the NRC staff dated April 11, 2018 (ADAMS Accession Number ML18101A223).

The NRC staff has reached out to the Oglala Sioux Tribe to seek to confirm the Tribe's willingness to resume discussions on the site survey methodology. As discussed in the Board's October 30, 2018, decision, however, "...the only aspect of the Approach that is open for discussion is the site survey methodology. That is, any tribal negotiating position or proposal should encompass the specific scientific method that would fit into the two-week periods set out in the March 2018 Approach for visiting the physical site, i.e., how the contractor and the Tribe members will walk the site and mark or record located Tribal resources."

Consistent with the Board's October 30, 2018, decision, if the Oglala Sioux Tribe is willing to resume negotiations, the NRC staff has identified corresponding adjustments to the March 2018 Approach schedule (see Enclosure). These milestones reflect key near-term steps for outreach, negotiations, and decisions points. The NRC staff is already taking measures within its control in furtherance of these milestones; in particular, the NRC staff is working actively with its contractor SC&A to select a replacement for Dr. Paul Nickens, who is no longer with SC&A. Therefore, as part of resuming negotiations, the NRC staff is requesting your cooperation in ensuring that the milestones are met. Because the initial milestones affect the feasibility of the overall schedule, if an agreement cannot be reached with the Oglala Sioux Tribe by March 1, 2019, the NRC staff will pause the negotiation process to determine next steps.

Additionally, the NRC staff is requesting that by December 5, 2018, you inform the NRC staff whether Powertech remains willing to provide reimbursement to Tribal representatives and support the field survey.

In accordance with Title 10 of the *Code of Federal Regulations* Section 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy is available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of 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>.

If you have any questions or concerns, please contact Ms. Diana Diaz-Toro of my staff. Ms. Diaz-Toro can be reached at (301) 415-0930 or via e-mail at Diana.Diaz-Toro@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:
NRC Staff's March 2018 Revised Timeline Approach
for the Dewey-Burdock ISR Project

cc w/enclosure:
Mr. Blake Steele, President and CEO
Powertech (USA), Inc.
A. Thompson, Counsel
C. Pugsley, Counsel

**Revised Timeline for NRC Staff's March 2018 Approach for Obtaining Information on Lakota Sioux Cultural Resources
Potentially Impacted by the Dewey-Burdock ISR Project
November 21, 2018**

By November 21, 2018	NRC staff sends letters to Oglala Sioux Tribe and Powertech seeking to confirm their willingness to continue discussions and negotiations on a site survey methodology within the overall parameters of March 2018 Approach.
By December 5, 2018	Responses from Oglala Sioux Tribe and Powertech regarding their willingness to participate in further site survey methodology negotiations.
Between December 5 and December 28, 2018	The NRC staff is willing and open to have discussions with the Oglala Sioux Tribe on a site survey methodology prior to the submittal of the specific objections to the NRC's proposal as outlined in this letter, or its alternative proposal.
By December 28, 2018	Response from Oglala Sioux Tribe regarding specific objections to the NRC staff's proposal as outlined in the NRC staff's November 20, 2018, letter to the Oglala Sioux Tribe, or its alternative proposal.
Between January and February 2019	Conduct webinars/teleconference calls with Oglala Sioux Tribe and Lakota Sioux Tribes to discuss, negotiate, and agree on a site survey methodology and areas to be examined during the field survey.
By March 1, 2019	Reach agreement on the site survey methodology and areas to be examined during the field survey.
By March 8, 2019	NRC staff will transmit the final methodology to the Lakota Sioux Tribes.
April 1-12, 2019	Conduct first phase of Tribal field survey.
Mid-May, 2019	Provide preliminary findings and results of first phase of the field survey to participating Lakota Sioux Tribes for a 30 day review and comment period.
May 20-31, 2019	NRC staff and contractor conduct oral history interviews with Tribal elders. Opportunity to discuss preliminary findings and results of first phase of the field survey.
June 10, 2019	Responses from participating Tribes on preliminary results of first phase of field survey.
June 17-28, 2019	Conduct second phase of Tribal field survey.
July 2019	Sun Dance ceremonies.
Mid-August 2019	Send draft survey report and draft oral history interviews document to participating Lakota Sioux Tribes for a 30-day review and comment period.
Mid-September 2019	Responses from participating Tribes on the survey report and oral history interviews.
Beginning of November 2019	Share final survey report and oral history interviews document with participating Tribes.
Mid-December 2019	NRC staff publishes draft supplemental analysis to the FSEIS for 45-day public review and comment period.
January 2020	NRC staff considers public comments and revises supplemental analysis to the FSEIS, as appropriate.
February 2020	NRC staff publishes final supplemental analysis to the FSEIS.

Enclosure

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DATED: November 21, 2018

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DATE	11/21/2018	11/21/2018	11/21/2018

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