

U.S. Nuclear Regulatory Commission (NRC) Teleconference Meeting Regarding the Site Survey Methodology for the Dewey-Burdock *In Situ* Uranium Recovery (ISR) Project

Draft Summary

Date: February 19, 2019

Time: 12:00 pm ET (10:00 am MT) – 3:00 pm ET (1:00am MT)

Participants:

Cinthya Roman-Cuevas, Branch Chief, NRC
Emily Monteith, Attorney, NRC
Joan Olmstead, Tribal Liaison, NRC
Jean Trefethen, Project Manager, NRC
Diana Diaz-Toro, Project Manager, NRC
Jerry Spangler, Senior Technical Reviewer, SC&A (NRC Contractor)
Kyle White, Director, Natural Resources Regulatory Agency, Oglala Sioux Tribe
Thomas Brings, Tribal Historic Preservation Officer, Oglala Sioux Tribe
Jeff Parsons, Attorney, Oglala Sioux Tribe
Travis Stills, Attorney, Oglala Sioux Tribe
Ben Rhodd, Tribal Historic Preservation Officer, Rosebud Sioux Tribe

Purpose:

The purpose of this meeting was to start discussing the proposed site survey methodology (proposed methodology) for identifying Tribal sites of religious and cultural significance at the Dewey-Burdock ISR project drafted by the NRC staff and transmitted to the Oglala Sioux Tribe and other invited Tribes on February 15, 2019. The goal was to have the NRC staff begin explaining sections of their proposal and provide the Oglala Sioux Tribe and other invited Tribes on the call an opportunity to comment, provide additional input, or ask questions. The NRC staff's intention was not to cover the entire proposed methodology, but to allow for an open dialogue discussing sections of the proposed methodology as the meeting time period allowed. The NRC staff intended to discuss the remainder of the document during future meetings.

Draft Summary:

After introductions, Ms. Joan Olmstead discussed the purpose and goals of the meeting and proposed using the prior meeting ground rules. Mr. Parsons indicated that the Oglala Sioux Tribe representatives would need to leave the call at noon mountain time and, thus, the meeting should adjourn at that time. The NRC staff agreed. Mr. Rhodd needed to leave shortly after the start of the meeting for an emergent unrelated matter. He indicated his interest in participating in the future and requested that the summary of the meeting be shared with him.

Ms. Diaz-Toro began discussing the proposed methodology and emphasized that the document provided to the Tribes on February 15, 2019, is not a final document but a working draft intended to elicit and encourage input from the Oglala Sioux Tribe and other invited Tribes in order to modify and then finalize the survey methodology to be used at the site. She discussed the framework upon which the proposal was developed: (i) the NRC staff's March 16, 2018 approach (or March 2018 Approach), developed after negotiations with the parties to the adjudicatory proceeding (Oglala Sioux Tribe, Consolidated Intervenor, and Powertech (USA),

Inc.), which includes a site survey of the licensed project area, and (ii) the Atomic Safety and Licensing Board's (Board's) October 30, 2018, Order, which further defined the scope of the discussions to develop the site survey methodology. Specifically, the Board's Order stated that "...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 only 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." Accordingly, the proposed methodology in the document works within those parameters.

Mr. Parsons commented that the NRC staff is holding tightly to the language in the Board's Order. He elaborated that the NRC staff should not be rigid and try to cram the survey into a limited timeframe, but provide flexibility. Ms. Diaz-Toro explained that, in revising the March 2018 Approach timeline (described in the NRC staff's November 21, 2018, letter to the Oglala Sioux Tribe), the NRC staff took into consideration certain factors like weather and Sun Dance ceremonies. To clarify, the NRC staff asked if the Tribe felt that the two two-week periods to carry out the site survey were insufficient. Mr. Parsons indicated he was not the expert and, thus, the experts should determine the site survey methodology and then develop the timeline, rather than establishing strict time frames and then fit a methodology into those strict time frames. The NRC staff indicated that in following the two two-week survey periods, the NRC staff is trying to be mindful of the Board's Order, but that for today's meeting the discussion would be focused on other aspects of proposed site survey methodology, that had not been negotiated previously. Mr. White also indicated that the two two-week survey periods are not sufficient and adequate, and noted that the timeframe for the survey should take into consideration the Oglala Sioux Tribe's spirituality and culture. He stated that at the end of the day the Tribe wanted to do the best they can for the Dewey-Burdock ISR project. He also expressed that this topic would be further discussed during the February 22, 2019, meeting of the Tribe's Tribal Historic Preservation Advisory Council in South Dakota.

Mr. Spangler opened up his discussion of the proposed methodology. He introduced himself and provided a brief summary of his background and experience. He also emphasized his collaborative philosophy to overcome disagreements and reach mutually satisfactory outcomes, with the ultimate objective of preservation of resources. He proceeded to explain that the proposed methodology was developed based specifically on the philosophy of Tribal self-determination and participation. He conducted research and reviewed several methodologies, and Dr. Sebastian LeBeau's methodology and the one used by the Bureau of Ocean Energy Management Interagency Agreement (referred to in the proposed methodology as Ball et.al.) appear the most applicable to address the challenge of developing a methodology with scientific integrity that addresses the important and significant traditional Tribal perspectives and values.

Mr. Parsons clarified that the Tribes received the proposed methodology on Friday February 15 and had not had the time to conduct a thorough review and, so, questions and comments might be provided at a later time. However, he clarified that it was helpful for Mr. Spangler to explain the document.

Mr. Stills expressed concern with reliance on a scientific approach in a social science. Specifically, he expressed concerns regarding the definition of a scientific method/process provided by the NRC staff in the proposed methodology. He asked Mr. Spangler why he chose that definition over a social science definition. Mr. Spangler responded that definition of a scientific method/process is the same for all sciences.

As Mr. Spangler continued to discuss the methodology, he explained his thought process in making various decisions regarding the proposed methodology. He emphasized the importance of Tribal input, and that Eurocentric thinking does not necessarily fit in with the Tribal way.

Mr. Spangler continued to discuss Section 2 of the proposed methodology, "Background." He explained the common theme that the NRC should not be the entity dictating a methodology to the Tribe, and, thus, why the Tribes' input is so important in developing the methodology. He noted, that the eligibility of the cultural resources identified is determined by criteria set forth by non-tribal members. Therefore, one of the goals of the proposed methodology is to reach a place where the eligibility determinations can be reconciled with the Tribes' traditional values, for example, by developing an instrument to be used to collect the information.

Before starting the discussions on Section 4, "Objectives and Goals of Discussions," Mr. Parsons indicated that, consistent with the Oglala Sioux Tribe's response dated January 11, 2019, there are concerns with respect to sufficient funds for the site survey. Information he has received from other professionals indicates that undertaking an endeavor such as this requires without exception essentially more resources than \$10,000 to do all of the field survey work. The Oglala Sioux Tribe's counsel asked that Mr. Spangler provide examples of projects he had worked on that operated under the same financial constraints, and asked whether Mr. Spangler thought the funding was adequate based on his personal experience.

Ms. Diaz-Toro replied that the proposed methodology is within the parameters that have been agreed upon and established after extensive discussions with the Tribe since December 2017, and funding is one of those parameters. The Oglala Sioux Tribe specifically indicated that an amount as previously proposed was appropriate. She stated that the NRC staff would make a note of the Tribe's objection to the funding amount and that it could be discussed at another time outside of the scope of the methodology discussions. She also indicated that because Powertech is providing the funding, they would need to be approached to discuss any deviations.

Mr. Parsons asked if the methodology was developed in accordance with National Environmental Policy Act (NEPA) or National Historic Preservation Act (NHPA). Mr. Spangler indicated that, as written, the proposed methodology could apply to either NHPA or NEPA. Mr. Parsons asked if the NRC staff provided the parameters to Mr. Spangler as hard boundaries, and asked how the potential effects squared up with Traditional Cultural Properties (TCPs) outside this boundary area. Mr. Spangler stated that the Area of Potential Effects (APE) is defined by the Federal agency, and that the cultural landscape beyond the APE can be considered as well, even if not surveyed.

Mr. White, referring to the definition of a traditional cultural landscape (TCL), asked Mr. Spangler to provide examples of cultural landscapes. Mr. Spangler indicated that the Black Hills is an example, along with the Apache Landscape and Bears Ears. Mr. White inquired if the sky was part of a TCL, and Mr. Spangler indicated that, as an example, the view from the mountains would be part of the landscape. Mr. White also indicated that cosmology is part of a tribal cultural knowledge and should be considered and applied as a framework because it relates to their origins. Ms. Diaz-Toro thanked the Tribe and asked if the tribal representatives could provide some suggested reading on the subject. Mr. White recommended the "Lakota Star Sight" by Ronald Woodman.

Turning to the "Goals and Objectives" section of the proposed methodology, Mr. Spangler requested that the Tribes provide their input on goals and objectives for the site survey. In

response, Mr. Stills explained that the goals and objectives are to conduct an interdisciplinary assessment of the impacts of the Dewey-Burdock ISR project on cultural resources so that interim steps can be put in place so that they can be protected through NEPA process. He further noted his concern with the repeated statement that the only issue for discussion is the site survey methodology.

Mr. White further noted that the NRC staff has never proposed an adequate methodology and that the NRC staff has only proposed an open site survey, which the Tribe continues to oppose. The Tribe would like to see a methodology that is more realistic and aligned with the practice of people who conduct TCP surveys. Mr. Spangler explained the importance of the Tribes' input because Tribes are the only ones that have the knowledge to identify, interpret, and ascribe significance to these sites. And, thus, Mr. Spangler encouraged the Tribes' input regarding, for example, the Tribes' definitions and objectives.

Mr. White asked Mr. Spangler what his goal was for blending tribal cultural knowledge with the scientific method in a tangible manner so that it can be used in the decision making process. Mr. White elaborated that Federal agencies who use traditional cultural knowledge end up compartmentalizing the information in a way that devalues the aspects that are important to the indigenous people. Mr. Spangler indicated that Mr. White had identified one of the challenges with moving forward and the need to have their input to the process – how we identify and describe the significance to the Lakota people. He indicated a desire to work together with the Lakota people on those specific descriptions and do so in such a way that the State Historic Preservation Officer (SHPO) will be able to understand the significance based on the input provided.

Mr. Stills requested that Mr. Spangler provide any methodology he has developed or written that had a report produced, so that they could better understand where Mr. Spangler is headed with this draft methodology. He also brought up confidentiality concerns and stated that eligibility (under NHPA) is not the goal, but, because this is a NEPA process, the goal is to identify, define and protect TCPs. Mr. Spangler responded that the eligibility discussion was included in the proposed methodology in response to the Oglala Sioux Tribe's June 15, 2018, cultural resource survey proposal to reflect concerns and issues raised by the Tribe in that letter.

The Oglala Sioux Tribe inquired as to the attendance of the NRC's Tribal Liaison representative at the February 22 meeting of the of the Oglala Sioux Tribe's Tribal Historic Preservation Advisory Council. The NRC staff explained they had not planned on bringing the Tribal Liaison because she was not needed to facilitate an Oglala Sioux Tribe-led meeting. The NRC Tribal Liaison expressed appreciation for the offer.

Action Items:

- The NRC staff will make sure that length of future meetings is clearly communicated so that all participants can plan accordingly.
- The Oglala Sioux Tribe indicated that they would provide the agenda for the February 22 meeting of the Tribe's Tribal Historic Preservation Advisory Council.
- In addition to the February 22 meeting, the participants tentatively agreed to a meeting on March 5 at 10:00am MT (12:00pm ET).