

From: Wasley, Katie <Katie.Wasley@state.sd.us>
Sent: Friday, May 8, 2026 12:43 PM
To: Diana Diaz Toro
Cc: Guan, Garry
Subject: [External_Sender] RE: NRC Draft Final Section 106 Programmatic Agreement for the License Renewal for the Dewey-Burdock Uranium Recovery Project
Attachments: Draft Final Section 106 PA_SHPOcomments.pdf

Good Morning Diana,

Attached, please find a copy of the PA with SD SHPO's comments. In addition to the comments included in the attached document, the SD SHPO has an additional comment to pass along:

For the "reasonable good faith identification approach," this should be tied to phased identification under 36 CRF 800.4(b)(2) and clarify that additional identification will occur if effects expand or new information arises.

If you have any questions, please feel free to let Garry or I know.

Have a great weekend,



Katie Wasley

Review & Compliance Coordinator

SOUTH DAKOTA STATE HISTORICAL SOCIETY

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From: Diana Diaz Toro
Sent: Friday, April 17, 2026 8:27 PM
To: Guan, Garry ; Wasley, Katie
Subject: [EXT] NRC Draft Final Section 106 Programmatic Agreement for the License Renewal for the Dewey-Burdock Uranium Recovery Project

Greetings,

Attached please find the electronic copy of NRC's letter transmitting the draft Final Section 106 Programmatic Agreement (PA) for the license renewal application from Powertech (USA) Inc. for the Dewey-Burdock in situ uranium recovery project in Custer and Fall River counties, South Dakota. The NRC is kindly requesting your review and comment on the draft Final PA.

Thank you.

Diana

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Tracking Status: None
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south dakota

STATE HISTORICAL SOCIETY

DEPARTMENT OF EDUCATION

**UPDATED DRAFT FINAL PROGRAMMATIC AGREEMENT
AMONG
U.S. NUCLEAR REGULATORY COMMISSION,
U.S. BUREAU OF LAND MANAGEMENT,
U.S. ENVIRONMENTAL PROTECTION AGENCY,
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE,
AND
POWERTECH (USA), INC.
REGARDING THE
DEWEY-BURDOCK IN SITU RECOVERY PROJECT
LOCATED IN CUSTER AND FALL RIVER COUNTIES
SOUTH DAKOTA**

Date

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC) received an application from Powertech (USA), Inc. (Powertech or licensee) to renew NRC license SUA-1600, for a 20-year term, for the Dewey-Burdock in situ uranium recovery (ISR) Project (Dewey-Burdock Project or the undertaking), which has yet to be constructed, and is located near Edgemont, South Dakota in Custer and Fall River counties, South Dakota, pursuant to the NRC licensing authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et seq.*; and

WHEREAS, NRC is considering the renewal of license SUA-1600 for the Dewey-Burdock Project pursuant to its authority under the AEA, 42 U.S.C. §§ 2011 *et seq.*, which makes the project an undertaking requiring compliance by NRC with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 *et seq.*, and its implementing regulations at Title 36 of the *Code of Federal Regulations* (36 CFR) Part 800 (2004); and

WHEREAS, if NRC renews license SUA-1600, Powertech will have met the NRC's requirements to continue to pursue construction and operation of the Dewey-Burdock Project, which will use an ISR methodology to extract uranium and process it to produce yellowcake; and

WHEREAS, the licensed area consists of approximately 10,580 acres (ac) (4,282 hectares [ha]) of mostly private land (97.7 percent) located on both sides of Dewey Road (County Road 6463) and includes portions of Sections 1-5, 10-12, 14, and 15, in Township 7 South, Range 1 East and portions of Sections 20, 21, 27, 28, 29, and 30-35 in Township 6 South, Range 1 East, Black Hill Meridian, (see appendix A and figure 1-0 for fuller description and a map of the project area, respectively); and

WHEREAS, under the terms of the General Mining Act of 1872, Powertech has filed Federal Lode mining claims and secured mineral rights on 240 ac (97 ha) of public lands open to mineral entry and administered by the U.S. Department of the Interior, Bureau of Land Management (BLM), and has the right to develop the mining claims as long as this can be accomplished without causing unnecessary or undue degradation to public lands and in accordance with pertinent laws and regulations under Title 43 of the *Code of Federal Regulations* (43 CFR) Subpart 3809; and

WHEREAS, review and approval of a Plan of Operations for the project that meets the requirements of 43 CFR Subpart 3809 by the BLM-South Dakota Field Office makes the project an undertaking requiring compliance by BLM with Section 106 of the NHPA, 54 U.S.C. § 306108 and 36 CFR Part 800; and

WHEREAS, the BLM, by letter dated March 6, 2025, designated the NRC as the lead agency for compliance with requirements of Section 106 of the NHPA regarding the Dewey-Burdock Project (Agencywide Documents Access and Management System (ADAMS) Accession No. [ML25071A049](#)) pursuant to 36 CFR 800.2(a)(2) and is included in the Attachments to this Programmatic Agreement (PA); and

WHEREAS, under the terms of the Safe Drinking Water Act, Powertech obtained from the Environmental Protection Agency (EPA) two Underground Injection Control (UIC) Area Permits for the Dewey-Burdock Project, a Class III Area Permit for injection wells used for the extraction of uranium and a Class V Area Permit for the disposal of treated ISR process fluids at the Dewey-Burdock site, in accordance with UIC regulations found at Title 40 of the *Code of Federal Regulations* Parts 124, 144, 146 and 147; and

WHEREAS, the EPA, by letter dated November 14, 2025, designated the NRC as the lead agency for compliance with requirements of Section 106 of the NHPA regarding the Dewey-Burdock Project ([ML25335A023](#)) pursuant to 36 CFR 800.2(a)(2) and is included in the Attachments to this Programmatic Agreement (PA); and

WHEREAS, the NRC determined a phased process for compliance with Section 106 of the NHPA is appropriate for this undertaking as was used for the issuance of NRC license SUA-1600, as specifically permitted under 36 CFR 800.4(b)(2), such that completion of the evaluation of and determinations of effects on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Programmatic Agreement (PA) developed in accordance with 36 CFR 800.14(b)(3); and

WHEREAS, the area of potential effects (APE) for the undertaking is the area at the Dewey-Burdock Project site and its immediate environs, which may be directly or indirectly impacted by construction and operation activities associated with the proposed project, as detailed in appendix A (see maps in appendix A), which is consistent with the APE defined for the Section 106 review of the issuance of NRC license SUA-1600 for the Dewey-Burdock Project; and

WHEREAS, in accordance with 36 CFR 800.2(b), the NRC, by letter dated January 24, 2025 ([ML24291A049](#)), notified the Advisory Council on Historic Preservation (ACHP) of the potential for adverse effects to historic properties from the undertaking and invited the ACHP to participate in Section 106 consultation and in the preparation of this PA; and

WHEREAS, the ACHP, by letter, dated October 14, 2025 ([ML25335A035](#)), notified the NRC that it will not participate in the consultation to resolve adverse effects; and

WHEREAS, in accordance with 36 CFR 800.2(c)(1)(i), the NRC initiated consultation with the South Dakota State Historic Preservation Officer (SD SHPO) via letter dated January 24, 2025 ([ML24291A051](#)); and

WHEREAS, in accordance with 36 CFR 800.2(c)(4), the NRC invited Powertech to participate in Section 106 consultation and preparation of this PA via letter dated January 24, 2025 ([ML24291A094](#)); and

WHEREAS, consistent with 36 CFR 800.2(c)(2)(ii), by letters dated January 24, 2025 ([ML24290A178](#)), the NRC invited 25 federally-recognized Indian Tribes who may ascribe religious and cultural significance to historic properties that may be affected by the undertaking, including the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboine and Sioux Tribes, the Lower Brule Sioux Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, the Yankton Sioux Tribe, the Apache Tribe of Oklahoma, and the Shakopee Mdewakanton Sioux Community of Minnesota (collectively referred to as consulting Tribes) to each be a consulting party in the Section 106 process (see appendix B for additional details); and

WHEREAS, in accordance with 36 CFR 800.2(c)(5), by letter dated March 14, 2025 ([ML25067A003](#)), the NRC invited NDN Collective to be a consulting party in the Section 106 process and development of this PA; and

WHEREAS, the NRC invited each of the 25 consulting Tribes to participate in the development of this PA and to sign the PA as a Concurring Party; and

WHEREAS, the BLM, as a federal agency with a federal action related to this undertaking has participated in the Section 106 consultation and development of this agreement and will be an invited signatory; and

WHEREAS, the EPA as a federal agency has participated in the Section 106 consultation and development of this PA and will be an invited signatory; and

WHEREAS, Powertech, as the licensee for federal approvals has been invited to execute this agreement as an invited signatory in recognition of the responsibilities assigned to the licensee under the terms of this PA; and

WHEREAS, the NRC previously completed a Section 106 review for the initial issuance of license SUA-1600 for the Dewey-Burdock Project, which consisted of consultation with BLM, EPA, SD SHPO, ACHP, Tribes that attach religious and cultural significance to properties, and Powertech, and included archaeological surveys, tribal surveys, line-of-sight analysis (for visual effects), evaluation and determination of eligibility for listing in the [National Register of Historic Places](#) (NRHP), evaluation of adverse effects on historic properties, and recommendations to resolve adverse effects (see appendix B), all of which culminated in the execution of a PA in April 2014 ([ML14066A347](#) and [ML14066A350](#)) that expired in April 2024 without being implemented; and

WHEREAS, the surveys conducted included a Class III archaeological survey and evaluative testing ([ML25117A002](#), [ML12144A263](#), [ML12144A268](#), [ML12144A270](#), and [ML12144A279](#)) and tribal surveys ([ML13343A142](#), and [ML13343A155](#)) to identify properties of religious and cultural significance to Tribes; and

~~**WHEREAS**, in consideration of the time that has passed since the issuance of NRC license SUA-1600, the information that has been gathered during consultation of this PA (described in appendix B), and the magnitude and nature of the undertaking consistent with 36 CFR 800.4, the NRC proposed to conduct a tribal cultural resource survey within the direct APE of the undertaking after execution of this PA and in accordance with the survey methodology in appendix D; and~~

~~**WHEREAS**, the NRC invited the consulting Tribes to participate in the development of a tribal survey methodology for identifying properties of cultural and religious significance to Tribes, which is included in appendix D to this PA; and~~

~~**WHEREAS**, Powertech's roles and responsibilities in the tribal cultural resource survey are described in this PA and appendices; and~~

~~[Placeholder for additional WHEREAS related to the ongoing consultation process, if necessary]~~

NOW, THEREFORE, the NRC, BLM, EPA, SD SHPO, and Powertech agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the undertaking on historic properties.

STIPULATIONS:

NRC, BLM (on BLM-administered land), and EPA shall ensure that the following measures are carried out within their regulatory authorities:

1) Conditions for Federal Approval:

- a) The NRC will require that Powertech comply with all applicable stipulations and provisions of this PA as a condition of Powertech's renewed license for the Dewey-Burdock Project.
- b) ~~If the Powertech Dewey-Burdock Uranium ISR Plan of Operations is approved, the BLM will ensure this PA, including all applicable stipulations and provisions therein, will be entered as a condition. The BLM will ensure that a Record of Decision on an acceptable Plan of Operation will not be signed until the NRC and SD SHPO have executed this PA, and BLM, EPA, and Powertech have signed the PA as invited signatories (collectively, the "Signatories"). This PA will be entered as a condition of Powertech's Plan of Operation, if approved by the BLM.~~
- c) The NRC shall not renew Powertech's license until the NRC and the South Dakota SHPO have executed this PA, and BLM, EPA, and Powertech have signed the PA as invited signatories (collectively, the "Signatories"). all signatories have signed and the PA has been executed. Upon receipt of a fully executed PA, the NRC will renew the license when all other requirements for the NRC license renewal have been met.

- d) If an NRC license amendment is required due to a change in the design or operation of the Dewey-Burdock Project and if that change would involve ground disturbing activities outside the currently identified disturbance areas as described in appendix A, NRC will reconsider the eligibility determinations of any archaeological sites and tribal sites with tribally defined features and any tribally identified sites previously found not eligible that may be affected by the new ground disturbance.

2) Identification and Evaluation of Historic Properties within the License Boundary:

- a) Appendix B provides information on the previously conducted archaeological and tribal field surveys and describes the cultural resources previously identified ~~to-date~~ within and adjacent to the APE for the Dewey-Burdock Project site. More than 300 cultural resources were identified.
- b) To date, approximately 14 percent of identified sites have been determined eligible for listing on the NRHP, 55 percent have been determined not eligible, and 31 percent remain unevaluated.
- ~~c) Within 60 days of execution of this PA, the NRC will begin to coordinate a tribal cultural resource survey within the direct APE to revisit and reevaluate previously recorded sites of significance to consulting Tribes and identify new sites of religious and cultural significance to consulting Tribes using the survey methodology described in appendix D.~~
- ~~i. Coordination activities will include supporting the selection of a contractor by Powertech to lead and carry out the survey, reimbursement and compensation for tribal representatives participating in the survey by Powertech, the dates of the survey agreeable to the participants, and support for any other activity identified during this coordination period. These coordination activities will be completed, to the extent possible, within 90 days.~~
 - ~~ii. Any party may provide an objection in writing within 5 days of raising the issue. The NRC will consult with the party to resolve the objection within 30 days after receipt of the written objection. If the NRC determines the objection cannot be resolved through consultation, the NRC will follow the process at Stipulation 13(a) — (c) to refer the objection to the ACHP for its advisory opinion.~~
 - ~~iii. Within 30 days of publication of the survey report, the NRC will submit final determinations of NRHP eligibility and effects to the SD SHPO for a 30-day review and concurrence period. The NRC will circulate copies of this correspondence to all the consulting parties.~~
 - ~~iv. When the SD SHPO agrees with an eligibility determination, avoidance of NRHP-eligible properties will be the preferred option. When avoidance is not possible and adverse effects will result, adverse effects will be resolved in accordance with Stipulation 5—Resolution of Adverse Effects.~~
 - ~~v. If identified cultural resources are determined not eligible for listing on the NRHP but are considered traditional cultural places consistent with National Register~~

~~Bulletin 38, “Identifying, Evaluating, and Documenting Traditional Cultural Places,” published in 2024, avoidance will be the preferred option.~~

- ~~vi.—If identified cultural resources are not eligible for listing on the NRHP and are not considered traditional cultural places, no further review or consideration of the properties will be required under this PA.~~
- ~~vii.—When the NRC, BLM, and EPA and the SD SHPO disagree on NRHP eligibility and the disagreement cannot be resolved through further consultation and avoidance is not an option, the NRC will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility, in accordance with 36 CFR § 800.4(e)(2).~~

3) Protection and Evaluation of Unevaluated Properties within the APE:

- a) Powertech will protect properties identified as “unevaluated” in appendix B (“Unevaluated Properties”) until an NRHP-eligibility determination is completed in accordance with 36 CFR § 800.4(c). Avoidance of Unevaluated Properties will be the preferred option **in accordance with Stipulation 5(a)**. When avoidance is not possible, adverse effects will be resolved in accordance with Stipulation 5—Resolution of Adverse Effects after making eligibility determinations.
- b) If changes in the design or operation of the Dewey-Burdock Project, including wellfield configurations, result in ground disturbance that could affect Unevaluated Properties, Powertech shall sponsor necessary supplemental research and/or field investigations prior to commencing any ground-disturbance activities. The additional studies and/or field investigations will provide information to enable NRC, EPA, and BLM, in consultation with consulting Tribes and the SD SHPO, to make NRHP-eligibility determinations for Unevaluated Properties.
- c) Powertech must provide to NRC, EPA, and BLM a written plan of its investigation methodology (“Investigation Plan”) at least four months prior to commencement of work, to enable the NRC, EPA, and BLM to allocate staff resources for Section 106 reviews; additional review time may be necessary if NRC, EPA, and BLM staff resources are limited or due to conditions beyond the NRC, EPA, or BLM’s control.
- d) The NRC will distribute the Investigation Plan to all consulting parties within three (3) business days of receipt.
- e) Consulting parties will have 30 days to review the Investigation Plan. The NRC will consider any comments received in writing from consulting parties within the specified review period. The NRC will notify Powertech in writing if revisions are necessary within 30 days of the completion of the review period. If revisions to the Investigation Plan are necessary, Powertech will revise the plan accordingly and circulate the revised Investigation Plan to the NRC, BLM (on BLM-administered land), and EPA within 30 days of NRC’s notification. The NRC will forward the revised plan to all consulting parties. A second review period of 30 days may be requested.

- f) Upon approval of the Investigation Plan by the NRC, BLM (on BLM-administered land), and EPA, Powertech will conduct the supplemental research and/or field investigations and provide recommendations concerning NRHP-eligibility of previously unevaluated cultural resources and evaluation of effects for NRC, EPA, and BLM consideration. The report shall follow documentation standards outlined in 36 CFR § 800.11.
- g) The NRC will submit the draft findings of NRHP-eligibility evaluation and draft findings of effects to SD SHPO and consulting Tribes for a 30-day review and comment period.
- h) The NRC may request revisions to the reports or additional investigations after consideration of comments received from SD SHPO, and consulting Tribes. The NRC will provide the revisions, if any, to all consulting parties for a 30-day review and comment period.
- i) The NRC will submit final determinations of NRHP-eligibility and effects to SD SHPO for 30-day review and concurrence period.
- j) When the NRC, EPA, BLM, and SD SHPO, in consultation with the Tribes, agree on NRHP-eligibility, avoidance will be the preferred option in accordance with Stipulation 5(a). Avoidance measures may include, but are not limited to, the relocation of pipelines, roads, facilities, monitoring wells, and other disturbances. When avoidance is not possible, adverse effects will be resolved in accordance with Stipulation 5—Resolution of Adverse Effects.
- k) When the NRC, BLM (on BLM-administered land), EPA and the SD SHPO disagree on NRHP-eligibility and the disagreement is not resolved through further consultation and the resource cannot be avoided, the NRC or BLM (on BLM-administered land) will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility in accordance with 36 CFR § 800.4(c)(2).
- k)) If identified cultural resources are determined not eligible for listing on the NRHP but are considered traditional cultural places consistent with National Register Bulletin 38, "Identifying, Evaluating, and Documenting Traditional Cultural Places," published in 2024, avoidance will be the preferred option in accordance with Stipulation 5(a). When avoidance is not possible and adverse effects will result, adverse effects will be resolved in accordance with Stipulation 5—Resolution of Adverse Effects.

4) Assessment of Effects:

- a) As part of its consideration of the effects of construction and operations on the landscape, the NRC conducted a line-of-sight analysis as part of the issuance of license SUA-1600 to assess the potential for adverse visual effects on all known historic properties located within three miles of the tallest buildings on both the Dewey and Burdock facilities.
- b) The NRC and BLM also consulted with SD SHPO and consulting Tribes in making its determination that eligible or unevaluated archaeological sites and properties of religious and cultural significance to Tribes will be adversely affected by the undertaking as part of

the issuance of license SUA-1600. The effects determination is presented in appendix B, table 3.

~~e)~~

~~d)b) _____ An assessment of adverse effects will also be conducted as part of the tribal survey to be carried out consistent with Stipulation 2(c) of this PA.~~

e)c) _____ The NRC, BLM, and EPA will consult with all consulting parties to develop proposals to resolve adverse effects (as summarized in appendix B table 4 ~~and tribal survey report~~) in accordance with the process set forth in Stipulation 5—Resolution of Adverse Effects.

5) Resolution of Adverse Effects:

a) Avoidance of the NRHP-eligible properties, unevaluated properties, and traditional cultural places will be the preferred option. Powertech shall avoid eligible and unevaluated archaeological sites, and eligible, unevaluated, and not eligible sites of religious and cultural significance to Tribes within and adjacent to the direct APE. Powertech will propose an avoidance buffer around the site boundary for each site within and adjacent to the direct APE prior to commencing ground disturbing activities. The NRC will provide the proposed avoidance buffers to BLM, EPA, South Dakota SHPO, and Tribes for a 30-day comment period upon receipt of Powertech’s proposal. Powertech will consider the comments received in finalizing the avoidance buffers to be provided to NRC 15 days after NRC transmits the comments to Powertech. Prior to commencement of ground disturbing activities, the avoidance buffers must be appropriately demarcated to avoid inadvertent incursions by Powertech staff or contractors.

a)b) _____ At least 60 days prior to commencing ground disturbing activities within each wellfield, Powertech shall submit to the NRC, BLM, and EPA, written confirmation that Powertech will not conduct ground disturbing activities within the avoidance buffer areas identified in accordance with Stipulation 5(a). When avoidance is not possible ~~and adverse effects will result~~, adverse effects will be resolved as described below.

c) The notification in Stipulation 5(b) must include a detailed description of the activities (e.g., scope of activities, schedule of the activities, duration of the activities) that would result in potential adverse effects and identify the sites that would be impacted. The notification should also include a map showing the location of the potentially affected sites in relation to the location of the ground disturbing activities. The NRC will solicit suggestions from consulting parties, through a 30-day comment period to start within 15 days of Powertech’s notification that avoidance is not possible, concerning supplemental research and/or field investigations necessary to evaluate adverse effects and potential measures to avoid, minimize, or mitigate adverse effects on NRHP-eligible properties, unevaluated properties, and traditional cultural places described in appendix B for that discrete area that cannot be avoided ~~and the tribal survey report described in Stipulation 2(c) of this PA. The evaluation of adverse effects could include re-evaluation of the NRHP-eligibility or tribal cultural place determination.~~

d) Powertech must provide to NRC, EPA, and BLM the written plan of the proposed research and/or field investigations (“Adverse Effects Evaluation Plan”) that considers

the input received from consulting parties within 30 days after the NRC transmits the input received in response to Stipulation 5(c).

~~b)~~—

~~e)~~ The NRC, BLM, and EPA, in consultation with consulting parties, will determine what treatment measures are appropriate to each adversely affected NRHP-eligible properties, unevaluated properties, and traditional cultural places.

~~e)f)~~ Treatment plans will be coordinated with any research and/or field investigations to be conducted in accordance with Stipulation 5(c) through (f) to the extent practicable.

~~d)g)~~ _____ Treatment ~~measures~~ plans can include, but are not limited to the following:

- i. For archaeological properties that are significant for their research data potential (Eligibility Criterion D, NRHP), the treatment measures may follow standard mitigation through data recovery. ~~Treatment plan(s) for d)~~ Data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). Treatment plan(s) must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plan(s) should group related sites and areas, so related resources can be considered in context, and to minimize the burden of review and approval by agencies.
- ii. Treatment plan(s) for properties eligible under Criteria A, B, and C, or significant for values other than their potential research potential shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource, if warranted. This may include, but not be limited to, use of such approaches as relocating the historic property, landscaping to reduce visual effects, public interpretation, ethnographic recordation, oral history, archival research, or prescribing use of a component or activity of this undertaking in such a way as to minimize effects to historic properties. Methods of recordation and documentation described in the treatment plan(s) shall be consistent with the *Secretary of the Interior's* standards and guidelines or other standards specified by NRC.
- iii. In lieu of standard mitigation approaches described above, treatment plan(s) may adopt other alternative approaches to avoid, minimize, or mitigate effects to historic properties, including, but not limited to, assisting in the development of Tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans.

~~e)h)~~ _____ In conjunction with the submission of their Project Monitoring Plan and Annual Report Monitoring (see Stipulation 12), which will detail construction and operations activities for each year, Powertech will submit one or more ~~draft~~ treatment plans based

on input provided by all consulting parties on potential treatment measures in conjunction with the Adverse Effects Evaluation written plan. A ~~draft treatment~~ plan will identify properties that will be affected ~~that year~~ and measures that will be taken to avoid, minimize, or mitigate those effects. To the extent possible, treatment plan(s) should group related sites and areas, so related resources can be considered in context, and to minimize the burden of review and approval. ~~A draft treatment plan will be submitted for NRC, BLM, and EPA review four months prior to construction, so the NRC, EPA, and BLM can appropriately allocate staff resources to the extent possible;~~ Additional time may be necessary in the event that NRC, BLM, and EPA staff resources are limited due to conditions beyond the staff's control.

- i. The treatment plan shall contain a description of the effects on each adversely affected historic property, unevaluated property, and tribal cultural place and a description of the proposed treatment for each of those properties.
 - ii. If monitoring by a qualified archaeologist and/or Tribal monitor is part of the strategy for resolving or preventing adverse effects, the treatment plan shall include a Treatment Monitoring Plan. The objective of monitoring is to protect known sites from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for discoveries per Stipulation 8—Unanticipated Discoveries are implemented.
 - iii. If data recovery is determined to be an appropriate treatment and part of the strategy for resolving adverse effects, the treatment plan shall specify all details of the research design, field, and laboratory work methodology (including mapping, geomorphological or other specialized studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation as appropriate), and report preparation.
- ~~f) Upon receipt of a draft treatment plan and Adverse Effects Evaluation written plan, the NRC will transmit the Adverse Effects Evaluation written plan and treatment plan to the consulting parties and will begin coordination of the implementation of these plans with the consulting parties within 10 days of receipt of the plans. ~~submit the draft treatment plan to all c~~ Consulting parties ~~for a~~ will have 1530-day review and comment period. ~~The NRC, BLM, and EPA will share all comments and consider any comments received in writing from consulting parties within the specified review period.~~~~
- ~~g) —~~
- ~~h) —~~ The NRC may ask Powertech to revise the draft treatment plan and Adverse Effects Evaluation plan based on comments received from the consulting parties. ~~The NRC will forward proposed revisions to the draft treatment plan to all consulting parties for a 15-day review and comment period. The NRC will share any changes with the licensee.~~
- ~~i) —~~
- ~~i) —~~ The NRC will then distribute the final treatment plan and Adverse Effects Evaluation plan to SD SHPO for a 30-day review and concurrence period, and copies of the plan will be distributed to consulting parties. Upon concurrence by the SD SHPO, or if the SD SHPO

does not respond in writing within 30 days, Powertech can begin implementing the treatment plan.

i) —

j) —

k) Any party may provide an objection in writing within 5 days of raising the issue. If, after consultation, the NRC, BLM, and EPA and the SD SHPO cannot agree on appropriate terms for the treatment plan or “Adverse Effects Evaluation” plan, the NRC will refer the matter to the ACHP for comment pursuant to Stipulation 13(a) – (c) ~~—Dispute Resolution. The NRC, BLM, and EPA will consider ACHP comments in making a final decision on measures to resolve the adverse effects.~~

k)) Powertech will provide regular (at least once every two years) Historic Preservation Training to Powertech staff or contractors prior to ground disturbing activities. The training will be documented in Annual Report.

6) Coordination with Other Federal Reviews:

Any federal agency that will provide approval or assistance for the undertaking as presently proposed may comply with its Section 106 responsibilities for the undertaking by agreeing to the terms of this PA in writing and sending copies of such written agreement to all the signatories and consulting parties of this PA. Such agreement to the terms of this PA will not necessitate an amendment to the PA.

7) Confidentiality:

The NRC, BLM, EPA, and other parties to this agreement acknowledge the need for confidentiality concerning tribal spiritual and cultural information, which was or may be provided to the NRC, BLM, and EPA during the consultation process. Information provided by consulting tribal representatives, which has been identified as sensitive and was accompanied by a request for confidentiality, will remain confidential to the extent permitted by state and federal laws.

NRC, BLM, and EPA shall restrict disclosure of information concerning the location or other characteristics of historic properties, as well as properties of religious and cultural significance to Tribes, to the fullest extent permitted by law in conformance with Section 304 of the NHPA, South Dakota Codified Laws, § 1-20-21.2, Section 9 of the Archaeological Resources Protection Act of 1979, and Executive Order on Indian Sacred Sites 13007 (61 FR 26771; May 29, 1996).

8) Unanticipated Discoveries:

In the event a previously unknown cultural resource is discovered during the implementation of the Dewey-Burdock Project, all ground disturbance activities shall halt within 150 feet of the area of discovery to avoid or minimize impacts until the property is evaluated for listing on the NRHP by qualified personnel. The following additional steps shall be taken:

a) Powertech will notify the NRC, BLM (if the site is on BLM-administered land), EPA, the SD SHPO, and the consulting Tribes (Tribal Historic Preservation Officer and/or the

Tribal Cultural Resource Office) of the discovery within 48 hours. Unanticipated discoveries may include artifacts, bone, features, or concentrations of these materials outside previously identified sites, or in and adjacent to previously identified eligible and not eligible sites. Discoveries may also include stones and groups of stones that are out of place in their sedimentary contexts and may be parts of stone features. A “discovery” may also include content suspected to be man-made.

- b) Powertech will have the discovery evaluated for NRHP eligibility by a professional who meets the Secretary of the Interior’s Professional Qualifications Standards in Archaeology (36 CFR § 61).
- c) Powertech will provide results of evaluation and initial eligibility recommendation to the NRC, BLM, and EPA within five business days of the discovery, and the NRC will in turn provide the results of the evaluation and eligibility recommendation to the Tribes for a 5-business day review and comment period.
- d) The NRC, BLM, and EPA will request concurrence from the SD SHPO within five business days of receipt of the concurrence request.
- e) When the NRC, BLM, EPA, and SD SHPO agree evaluated cultural resources are NRHP-eligible, avoidance of the cultural resources will be the preferred option in accordance with Stipulation 5(a). When avoidance is not possible and adverse effects will result, adverse effects will be resolved in accordance with Stipulation 5—Resolution of Adverse Effects.
- f) If the NRC, BLM, EPA, and SD SHPO make the determination that identified cultural resources are not eligible for listing on the NRHP, no further review or consideration of the properties will be required under this PA. If identified cultural resources are determined not eligible for listing on the NRHP but are considered traditional cultural places consistent with National Register Bulletin 38, “Identifying, Evaluating, and Documenting Traditional Cultural Places,” published in 2024, avoidance will be the preferred option in accordance with Stipulation 5(a).
- g) When the NRC, BLM (on BLM-administered land), EPA, and the SD SHPO disagree on NRHP-eligibility and the disagreement is not resolved through further consultation and the resource cannot be avoided, the NRC will refer the issue to the Keeper and request a formal determination of eligibility in accordance with 36 CFR § 800.4(c)(2).
- h) Human remains identified during ground disturbance activities will be treated in accordance with Stipulation 9—Human Remains and appendix C—Treatment of Human Remains on State, Private, and BLM Land.
- i) In the event of unanticipated discovery, Powertech may continue to work in other areas of the site; however, ground disturbance activities shall not resume in the area of discovery until the NRC, BLM, and EPA have issued a written notice to proceed.

9) Human Remains:

- a) The NRC, EPA, BLM, and Powertech recognize human remains, funerary objects, sacred objects, and items of cultural patrimony encountered during ground disturbance activities should be treated with dignity and respect.
- b) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on BLM land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR § 10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land.
- c) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law as described in appendix C – Treatment of Human Remains on State, Private, and BLM Land.
- d) Non-Native American human remains found on federal, state, or private land will be treated in accordance with applicable state law.

10) Disposition of Archaeological Collections:

- a) BLM will curate artifacts, materials or records resulting from archaeological identification and mitigation conducted on BLM land at the Billings Curation Center, in accordance with the Billings Curation Center Packaging Requirements in accordance with 36 CFR § 79, “Curation of Federally-Owned and Administered Archaeological Collections.” BLM will consult with Tribes as required by 36 CFR § 79.
- b) Where testing or excavation is conducted on private land, any recovered artifacts remain the property of the landowner. Powertech will return the artifacts to landowners. Powertech will encourage landowners to donate the artifacts to the SD Archaeological Research Center or a Tribal entity, in coordination with the NRC, EPA, SHPO, and consulting Tribes. Where a property owner declines to accept responsibility for the artifacts and agrees to transfer ownership of the artifacts to SD Archaeological Research Center or Tribal entity, Powertech will assume the cost for curating the artifacts in a facility meeting the requirements of 36 CFR § 79, “Curation of Federally-Owned and Administered Archaeological Collections.”

11) Qualifications:

The identification, evaluation, and mitigation of historic properties carried out pursuant to this PA shall be performed by or under the direct supervision of qualified individuals in the appropriate historic preservation discipline meeting the appropriate standards set forth in 36 CFR § 61.

In recognition of the special expertise Tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR § 61 will not apply to knowledgeable, designated tribal representatives carrying out identification and evaluation efforts for properties of religious and cultural significance to Tribes.

12) Compliance Monitoring:

NRC, BLM, EPA, and Powertech affirm that avoidance of adverse effects to historic properties and traditional cultural places remains the preferred course of action as committed to by Powertech. The following additional steps shall be taken:

- a) Powertech will ensure employees and/or contractors involved in all phases of the Dewey-Burdock Project are aware of and comply with the requirements of the PA. Powertech may use measures such as initial orientation training, as well as pre-job briefings to inform employees and contractors of their responsibilities under the PA.
- b) Prior to initiating construction activities, Powertech will develop a Project Monitoring Plan identifying specific areas, activities, and if appropriate, historic properties, unevaluated properties, and traditional cultural places that require monitoring during development of the Dewey-Burdock project, ensuring the requirements of this PA and the treatment plans developed under the provisions of Stipulation 5—Resolution of Adverse Effects are met. The project monitoring plan will contain the anticipated construction and operation schedule and specify the construction and operations activities ~~for the first year~~. The project monitoring plan will also include provisions for annual reporting of the results of the monitoring program to the signatories of and the consulting parties to this PA.
 - i. Powertech will provide the Project Monitoring Plan to the NRC, which will distribute it to the signatories and consulting parties to this PA for a 30-day review and comment period.
 - ii. The NRC will request that Powertech make any necessary revisions to the plan, and the revised Project Monitoring Plan will remain in effect for all covered ground-disturbing activities during the license period.
- c) Powertech will engage the services of a Monitor with specific responsibilities to coordinate the requirements of the monitoring plan, the treatment plans, and this PA during the Dewey-Burdock Project construction.
 - i. The Monitor will meet the Secretary of the Interior's Professional Qualifications for Archaeology. Preference will be given to individuals meeting those qualifications who are employed by tribal enterprises, especially during phases of the monitoring program where sites with religious and cultural significance to the Tribes might be affected. In the case of an unanticipated discovery or imminent threat to a historic property (for which avoidance had been planned), the Monitor shall have authority to stop certain construction activities.
 - ii. The Monitor will coordinate with Powertech and its contractors during the construction phases of the Dewey-Burdock project.
- d) Powertech will provide annual ~~periodic~~ updates (Annual Report – Monitoring) to all consulting parties on the status of the project monitoring program as follows:

- i. On or before ~~January-October~~ 31 of each year following the commencement of construction, unless the signatories agree in writing that the terms of this PA have been fulfilled, Powertech shall prepare and provide an annual report to the NRC, BLM, EPA, and SD SHPO detailing how the applicable terms of the PA are being implemented, anticipated ground disturbing activities for the next year, and any deviations worth noting. This report will also provide photo documentation confirming that the demarcated avoidance buffers established in Stipulation 5 have been avoided.
- ii. Powertech shall provide an annual report every year if ground disturbing activities have or will occur, and every third year thereafter if no ground disturbing activities have or will occur, as long as the PA remains in effect, unless the signatories agree to another time period for reporting.
- iii. Powertech shall provide copies of the report to all consulting parties.
- i.iv. If any of the signatories so request, Powertech shall coordinate a conference call with all participating consulting parties to review the annual report, assess the outcomes achieved, and/or discuss issues raised in the annual report. The conference call shall be coordinated within 30 days after the request.

13) Dispute Resolution:

Should any signatory to this PA object in writing to any action proposed or to the manner in which terms of the PA are implemented, the NRC shall consult with the party to resolve the objection. If the NRC determines the objection cannot be resolved, the NRC will:

- a) Forward all documentation relevant to the dispute, including the NRC proposed resolution, to the ACHP and send a copy to all other consulting parties. The ACHP shall provide NRC with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRC shall prepare a written response that takes into account timely advice or comments regarding the dispute from the ACHP, signatories, concurring parties, and consulting parties, and provide a copy of this written response to them. NRC will then proceed according to its final decision.
- b) If the ACHP does not provide its advice regarding the dispute within the 30-day period, the NRC may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, NRC shall prepare a written response that takes into account timely comments regarding the dispute from the signatories, and provide the signatories and the ACHP with a copy of such written response.
- c) The NRC's responsibilities under this PA, which are not the subject of the dispute, shall remain unchanged.

14) Amendment:

This PA may be amended when such an amendment is agreed to in writing by all signatories. If a required signatory does not sign the amended PA, the amendment will be void.

Any party that signs this PA as a concurring party will be provided an opportunity to consult and comment on the proposed amendment.

The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP. The amendment shall be appended to this PA as an appendix.

15) Termination:

- a) If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment to the PA pursuant to Stipulation 14—Amendment. If within 30 days (or another period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- b) If this PA is terminated the NRC shall either (i) execute a new PA pursuant to 36 CFR § 800.6(c)(8) with signatories as defined in 36 CFR § 800.6(c)(1) or, (ii) the NRC shall request comments, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7(c)(4). NRC shall notify the signatories as to the course of action it will pursue.
- c) After the termination of this PA and until the NRC completes consultation and a new PA is executed or the NRC has requested, taken into account, and responded to the comments of the ACHP under 36 CFR § 800.7, Powertech is required to follow the terms and conditions of this PA for current ground-disturbing activities and is not permitted to begin any such activities in new areas.
- d) If the terms of this PA are satisfied prior to its expiration date, NRC shall provide written notification to the other signatories and consulting parties to close out this PA.

16) Duration:

This PA shall remain in effect for 20 years from its date of execution (last date of signature **by signatories**), or until completion of the work stipulated, whichever comes first, unless extended by agreement among the signatories. During the effective period and prior to the expiration of the PA, the NRC may consult with the signatories and concurring parties to amend this stipulation to extend the duration of the PA, in accordance with Stipulation 14—Amendment.

17) Anti-Deficiency Act:

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (Pub.L. 97–258, 96 Stat. 923; 31 U.S.C. §1341, Limitations on expending and obligating amounts). If compliance with the Anti-Deficiency Act alters or impairs the ability of the NRC to implement this Agreement, the NRC will consult in accordance with the amendment and termination procedures in this Agreement.

18) Execution:

Execution of this PA by the NRC, BLM, EPA, SD SHPO, and Powertech and the implementation of its terms is evidence the NRC and BLM have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

Nothing in this PA shall be construed or interpreted to alter the NRC's enforcement authority related to compliance with the NRC's regulations or license conditions.

This PA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

19) Severability:

Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

20) Sovereign Immunity:

No signatory to this agreement waives their sovereign or governmental immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.

~~Nothing in this PA shall be construed or interpreted to alter the NRC's enforcement authority related to compliance with the NRC's regulations or license conditions.~~

~~This PA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.~~