

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket No. 40-9075-LR
POWERTECH (USA) INC.	)	ASLBP No. 25-987-01-LR-BD01
(Dewey-Burdock In Situ Uranium Recovery Facility)	)	July 17, 2026
	)	

DECLARATION OF RUSSEL H ZEPHIER

I, Russel H Zephier, declare as follows:

Position and Qualifications

1. I am the Tribal Historic Preservation Officer (“THPO”) of the Oglala Sioux Tribe. I have served in this position since April 20, 2026. I make this declaration in support of the Oglala Sioux Tribe’s New and Amended Contentions in the above-captioned proceeding. The facts stated herein are based on my personal knowledge, on records maintained by the Oglala Sioux Tribe Cultural Affairs and Historic Preservation Office (the “THPO Office”), and, where indicated, on my professional judgment and experience. If called to testify, I could and would testify competently to these matters.

2. As THPO, I am the officer designated by the Oglala Sioux Tribe to carry out the Tribe’s responsibilities for the identification, evaluation, and protection of historic properties and of places of religious and cultural significance to the Tribe, including under Section 106 of the National Historic Preservation Act (“NHPA”) and the Oglala Sioux Tribe Consultation Ordinance 11-10. I hold a Bachelor of Arts degree in History from Chadron State College and completed a graduate archaeological field school through the University of Nebraska. I have over ten years of professional experience in archaeology, cultural resource management, and historic preservation, including service as a District Archaeologist with the United States Forest Service and as an

Archaeological Technician with the Oglala Lakota Housing Authority. Throughout my professional career, including my service with the United States Forest Service and since assuming the duties of Tribal Historic Preservation Officer, I have reviewed archaeological investigations, Traditional Cultural Property studies, National Register evaluations, and Section 106 consultation documents submitted by numerous federal agencies. My duties include reviewing federal undertakings, evaluating archaeological investigations, identifying Traditional Cultural Properties, consulting with federal agencies, and protecting places of religious and cultural significance to the Oglala Sioux Tribe. Through my education, professional experience, familiarity with Lakota history, the Oceti Sakowin, and traditional cultural landscapes, I am familiar with the cultural significance of the Black Hills, including the Dewey-Burdock project area.

The Tribe's Interest in the Dewey-Burdock Area

3. The Dewey-Burdock project area lies within the aboriginal territory of the Oglala Sioux Tribe and within lands recognized in the 1851 and 1868 Fort Laramie Treaties. The area holds cultural, religious, historical, and ancestral significance to the Oglala Sioux people.

The Surveys Relied On in the Environmental Assessment Did Not Include the Oglala Sioux Tribe

4. I have reviewed, or am familiar with, the identification record on which the NRC Staff's Environmental Assessment ("EA") relies for its description of cultural and historic resources. That record consists principally of archaeological surveys conducted between approximately 2007 and 2012 and a tribal survey conducted in 2013. Based on the records of the THPO Office and my knowledge of this matter, the Oglala Sioux Tribe did not participate in those surveys. No cultural resources survey identifying sites of religious and cultural significance to the

Oglala Sioux Tribe has ever been completed at the Dewey-Burdock site with the participation of the Oglala Sioux Tribe.

The Existing Inventory Cannot Be Treated as a Complete Record of Affected Resources

5. Based on my professional experience and knowledge of cultural resource identification, it is my opinion that the existing inventory of identified sites substantially understates the cultural and historic resources present in the Dewey-Burdock area, for the following reasons.

6. (a) Method. The existing archaeological surveys relied upon for the subject license renewal identify physical, surface-observable artifacts and features. Those surveys were not designed to, and do not reliably, identify Lakota cultural resources or traditional cultural places—places whose significance derives from a living community's beliefs, practices, and oral tradition, which are not always marked by physical remains. Based upon my professional experience and my review of Traditional Cultural Property documentation prepared for culturally significant areas within the Black Hills, archaeological investigations and Tribal cultural resource identification serve complementary but different purposes. Traditional Cultural Properties, sacred places, and cultural landscapes often derive their significance through Lakota oral tradition, ceremonial use, and continuing cultural importance rather than solely through physical archaeological remains. Identification of these places generally requires direct participation by knowledgeable Tribal members and cannot be accomplished through archaeological survey methods alone. As recognized in National Register Bulletin 38, the significance of a traditional cultural place is known principally through the knowledge of the community that values it. A survey that does not include the participation of that community will systematically fail to identify such places.

7. (b) Only the Tribe can identify and assign significance to its own cultural places. It is my professional opinion, and it is consistent with the record of this proceeding, that only knowledgeable members of the Oglala Sioux Tribe can identify and assign cultural and religious significance to Oglala Sioux traditional cultural places and resources. Because the Tribe did not participate in the surveys the EA relies on, those surveys could not and did not capture this category of resources.

8. (c) The known burial and cairn sites are themselves evidence that more exist. The existing record already documents numerous burial features, cairns, and possible gravesites scattered across the area of potential effects, several of which remain unevaluated and several of which were brought to the agency's attention only late and by other Tribes. Cairns and similar stone features are frequently associated with interments and ceremonial use. In my professional judgment, a landscape that has yielded this number of burial-related features through incomplete survey that did not include the Oglala Sioux Tribe is a landscape in which additional graves, burials, and traditional cultural places are likely present but not yet identified. In my professional experience, burial features, cairns, ceremonial features, and other cultural resources are often components of larger cultural landscapes rather than isolated archaeological sites.

9. (d) The passage of time and erosion continue to expose features. The NRC Staff's own summary of the June 11, 2025 site visit records that, considering the passage of time and events such as erosion and heavy precipitation, tribal representatives recommended revisiting sites and re-evaluating eligibility determinations. In my experience, erosion and weathering expose previously buried features over time. The identified inventory is therefore not only incomplete but not static; sites not visible during earlier survey may be exposed now.

10. For these reasons, it is my opinion that the number and location of cultural and historic resources—including graves and traditional cultural places—that would be affected by the Dewey-Burdock project cannot be known on the present record, and that additional such resources are reasonably likely to be present within the area of potential effects.

A Complete Survey Methodology Is Available and the Tribe Is Willing to Conduct It

11. A reasonable and available means exists to identify these resources: a cultural resources survey conducted with the participation of the Oglala Sioux Tribe. In September 2021, the NRC Staff and the Oglala Sioux Tribe jointly developed and agreed upon a survey methodology for identifying sites of historic, cultural, and religious significance to the Oglala Sioux Tribe at an in situ uranium recovery site, in connection with the Crow Butte facility. That methodology provides a workable framework for a survey at Dewey-Burdock.

12. The Oglala Sioux Tribe is willing and able to participate in such a survey through its Tribal Historic Preservation Office, Tribal Archaeologist, Tribal Cultural Specialists, and knowledgeable Tribal representatives using the September 2021 methodology as an effective framework for identifying places of religious and cultural significance. The Tribe's position is, and has been, that this survey should be completed before any licensing decision and before any ground-disturbing activity, not deferred until construction is underway.

Consequences of Proceeding Without a Complete Survey

13. If the Dewey-Burdock project proceeds to construction or other ground-disturbing activity before a complete survey is conducted with the Tribe's participation, graves, burials, and traditional cultural places that have not been identified are at risk of disturbance, destruction, and desecration. Such harm to ancestral graves and sacred places is irreparable; it cannot be undone or adequately compensated after the fact. Avoidance measures drawn around only the currently

identified sites cannot protect resources that have not been identified. Moreover, although NRC has not sought my input, I have reviewed a copy of the Final Appendix B to the recently approved Programmatic Agreement for Powertech (USA) Inc., Dewey-Burdock Project. Appendix B confirms that the previous surveys, all of which were rejected by NRC judges and the D.C. Court of Appeals as inadequate, identified and determined that 15 sites were eligible for listing on the National Register of Historic Places, three of which were related to railroads and Euroamerican activities. Most alarming, Table 3 of Appendix B contains 28 pages listing of sites that include many “unevaluated” burials and grave sites. For many sites in Table 3, the Tribes who participated in the surveys “did not provide eligibility recommendations.” As part of the Survey the NRC had agreed upon, the Oglala Sioux Tribe would have provided the knowledge and expertise necessary to carry out the incomplete surveys, made eligibility recommendations, and informed a plan to avoid or minimize impacts to graves and cultural sites. Table B demonstrates that, without direct participation by the Oglala Sioux Tribe, the agencies lacked the Tribal knowledge and cultural expertise necessary to fully identify, evaluate, and make informed recommendations regarding places of religious and cultural significance.

The Agency’s Failure to Identify the Tribe’s Current Historic Preservation Officer

14. I am the current THPO of the Oglala Sioux Tribe. To my knowledge, the NRC Staff has not contacted me in my capacity as THPO regarding the Dewey-Burdock license renewal. Based on the records of the THPO Office, the office of THPO has changed hands since early 2025: Ms. Trina Lone Hill, who corresponded with the NRC Staff in early 2025, has not served as THPO since October 2025; Reuben Weston, served as acting THPO from approximately October 2025 to April 17, 2026; and I have served since April 20, 2026. To my knowledge, the NRC Staff did not inquire of the Tribe who its current THPO was, and continued to identify Ms. Lone Hill as the

Tribe's THPO after she had left that office. As recently as July 8, 2026—after the Programmatic Agreement was executed, the Environmental Assessment issued, and the renewed license issued—the NRC Staff's letter to the President of the Oglala Sioux Tribe announcing completion of the Section 106 process identified Ms. Lone Hill, on its cc line, as the Tribe's Tribal Historic Preservation Officer (ADAMS Accession No. ML26181A237).

15. It is the agency's responsibility, not the Tribe's, to identify and consult with the Tribe's designated representative. Had the NRC Staff sought to confirm the identity of the Tribe's Historic Preservation Officer, the Tribe would have been given a better chance of providing that information. Instead, a new Final Programmatic Agreement was enacted, with a 23-page list of sites that confirms NRC Staff has not carried out the duties imposed by federal laws.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. § 1746.

Executed on July 15, 2026.



Russel H Zephier
Tribal Historic Preservation Officer
Oglala Sioux Tribe