

EPA REGION 8'S RESPONSE TO PETITION FOR REVIEW

**ATTACHMENT AA**

Tribal consultation meeting notes

Administrative Record Document Nos. 914-919

### **Web Conference Meeting**

**Prairie Island Indian Community, Shakopee Mdewakanton Sioux Community and Upper Sioux Community  
The EPA's Proposed Actions at the Dewey-Burdock Uranium Recovery Site near Edgemont, South Dakota  
February 22, 2016**

Attendees: Prairie Island Indian Community (Gabe Miller), Shakopee Mdewakanton Sioux Community (Leonard Wabasha) and Upper Sioux Community (Sara Childers)

EPA Note: Sarah Childers requested consultation meeting, but wanted the others to be able to participate, too. So maybe not actually consultation which is supposed to be only with one tribe at a time?

### **Issues identified during MN Sioux Tribe Web Conference**

Where is the radioactive waste going to be disposed of & what are the impacts from that?

How are the ponds going to be isolated from overflow into surface water? Recent flooding has exceeded what previously the 100 year flood stage.

How will amphibians and other animals in the food chain prevented from entering the ponds, being exposed to radioactivity then released again into the food chain?

How will seed bed be preserved? Maybe someone can come in to identify plant in areas where there will be land disturbance to be sure the same plants are replaced. Go into more detail about how topsoil will be preserved in Cumulative Effects document.

## **Meeting with the Crow Nation, Tuesday, March 1, 2016, Billings, Montana**

### **The EPA's Proposed Actions at the Dewey-Burdock Uranium Recovery Site near Edgemont, South Dakota**

Present at the meeting: Emerson Bull Chief, THPO and Rebecca Nathan, Archaeology and GIS Manager. No Tribal Council members present but Tribal attendees stated they consider this meeting to be government-to-government consultation.

Present from EPA: Darcy O'Connor, OPRA Action ARA; Kim Varelik, ORC acting a Tribal Policy Advisor and Valois Shea, UIC Program permit writer and lead for Dewey-Burdock Project.

Two representatives from the Crow Nation participated in the Tribal Survey. Mr. Bull Chief visited the site during one of the NRC Tribal Consultation Meetings. Powertech paid each Tribe \$10,000 to perform the field work. The Crow representatives looked at sites already identified and submitted a report to the NRC contractor (Beaver Creek?). Mr. Bull Chief believed it was good to have Native Americans on the ground doing the survey because they are able to identify sites that non- Native American archaeologists might miss. The thought process for the survey was pretty good. The Crow representatives surveyed the topographically high areas looking mainly for fasting beds. The Northern Cheyenne walked the whole site.

The Ross project damaged some cultural sites. Mr. Bull Chief would like to see more cultural monitoring during construction and drilling so that doesn't happen at Dewey-Burdock. Have more Native American monitors on site. Ms. Nathan said all the Crow cultural monitors are all trained on what to do if an undiscovered cultural site is discovered during construction/drilling.

Abandoned mines: where are they in relation to the proposed wellfields?

Are we going to use/look at the work NRC did for their 106 process?

NRC mandate is national security. Mr. Bull Chief is more comfortable working with the EPA since our mandate is environmental protection, which is more in line with Tribes' interests.

Two main concerns:

- 1) Groundwater contamination: how will the UIC permits prevent it and what will they require if there is contamination. He would like to declare the groundwater to be a cultural resource under the NHPA. It actually is. There are a number of ceremonies and cures that involve water. Earth Wind Fire and Water are the four sacred elements.
- 2) How will cultural sites be protected? Important to have Tribal cultural monitors on site because they have training to make determinations and evaluation on site.

He would like to see more of a consultation process for the 404 permitting process where surface water channels are impacted. Darcy said that the Army Core of Engineers handle that permitting process. EPA does the enforcement action when the requirements are violated.

### **Follow-up:**

Review the NRC PA to see what the cultural monitoring requirements are.

**Northern Arapaho Consultation Meeting/Web Conference, March 2, 2016**

**The EPA's Proposed Actions at the Dewey-Burdock Uranium Recovery Site near Edgemont, South Dakota**

Yufna Soldier Wolf, THPO, Northern Arapaho Tribe

Ms. Soldier Wolf stated that she considered this meeting to be government-to-government consultation.

The EPA presented PowerPoint with information about the EPA's proposed actions at the Dewey-Burdock Site.

Ms. Soldier Wolf said the Tribe's main concern was protection of cultural resources. She is reviewing the NRC Programmatic Agreement and will provide the EPA with her comments.

3/3/16: Meeting w/ Fort Belnap

- Power point presentation
- ? Questions regarding the type of solution used depending on the ground type..

Valois: [is in a sacred area]..

? – land ownership (private & blm land ownership)

? # of wells that they can construct (number & max #) – max # b/c of assessment analysis

? Distance between wells?

? Cross the state boundary

Historic mining holes – there's not ground excavation, mines or additts (?)

? From the THPO perspective – Class III archeological survey (pedestrian survey) – FB may not have been involved (NRC might have done this survey).. what cultural sites were identified.  
Augustana University (Sioux Falls) – did a series of report (Send to Fort Belnap THPO for review).. then they did a separate tribal survey .. ?’s about survey adequacy, and suggestions..

? Treaty requirements – interested to know what the Sioux think.. concerns about treaty interests in the black hills [EMPHASIS – DEFINITE QUESTION ABOUT THIS AREA]

.. [NOTE: correct “animated slide” re: where the zone of the aquifer exemption actually lies – make sure the visual is correct]

?Monitoring wells – if there are hits on these wells, what’s the plan..

[potentially need to consider the presentation ordering – discuss the process first, then identify the proposed activity] – need comments on this process..

? State – authorizes drilling – but not injection..

FB issue: if they need to drill another well, will the Tribes be notified re: a cultural site – how does that work with a blanket permit – look at the PA (programmatic agreement) – 150’ buffer zone radius around known cultural site. (\*\*)

? question on depth of layers (no grid).. 500-700’ in depth.

Beaver Creek (intermittent) as a tributary to Cheyenne River (concern) (\*\*)

? on leeching (aquifer?) – surface water. Valois – biggest concern is the spill potential at the surface re: pipe burst

? recharge area for the aquifer? (in the same area).. drilling into the exposed areas..

? Fall River as a drinking zone? If this is a recharge zone [ look at Zortman Landusky mining – heap leeching issue]..what’s the potential here for spill & contamination?

As part of the permitting process – a Cumulative Effects Analysis –

? will there be well-integrity testing (part of the monitoring program)

- Note – prior question about why “we” allowed the boundary – 120’ – did the company give enough data to determine whether there’s boundary adequacy – in this case, yes.

? Types of metals – arsenic (for example) - protecting aquifer from the mining, drilling, etc.c –

? of any persons living in the boundary? Well water use. (hunting lodge & abandoned residence)..

? what if someone wants to build a house & live near the boundary. –

? who will maintain the water supply post-production.. (good questions)

? Preliminary data available? (some, but will need to do more) – **the well logs will identify the baseline (preliminary data)..** (there’s a preliminary well data re: looking at water levels in the aquifer – there is a breach in the confining zone – possible old wells, or a large diameter well)..  
– **pump well from prior owner (Tennessee Valley Authority)..** there’s a pond on the lower level  
–

Look at the tailing piles that were left from prior use – **will evaluate what’s going on..** –  
rancher who owns the land, not as concerned – communicated access concerns

Access – boundary areas accessible? No – haven’t had this resolved yet b/c of private land owner.. powertech can’t grant complete access to these sites [**perhaps an issue – EPA access to the production area**]

Disclosure re: Surface ponds – they’re not purposed for evaporation – **(\*\*) there will be evaporation b/c of heat... - why don’t they go with a closed circuit system – goes through the plant, there’s a resin for treatment) – why not**

? lined permits? Under the CAA program (subpart W) – issue w/ radon? Also re: RCRA for lining & leech8 detection.

EPA looking at the cumulative effects –

**? confinement on the radon** – and a water cover – then there isn't a radon issue – [NEED MORE INFO ON SUBPART W & DRAFT RULE] -

(\*\*) Concern about evaporation rate due to excessive heat in that area in the summer –

**? about the size of these ponds** (.. Radium Settling pond?) – Quarter mile long(?).. settle it out into a solid sludge – permit limit for radium – can't be above a certain limit

**? Disposal plan of the sludge that can't be reinjected** – (\*\*) stored in a covered facility

**?Treatment/disposal permit for this sludge that would be required (RCRA)** –

3 agencies regulating – NRC, State & EPA

**? what's the mixture they're putting into the deep wells (chloride inclusion).. adding more chloride?**

Discussion re: if there's no demonstration that the deep injection are *not* an USDW, then permit would not authorize this activity...

Will look at the confining activity –

**? why would they even go through the lowest point?** Only allowed if they can identify that they won't cause contamination

**? Very concerned about even being allowed access to the Madison, regardless if it's to go through..**

**?Mitigation plan for potential Madison disturbance** –

- EPA – constant monitoring..

**?What's the material for the well? What about corrosion - - anti/corrosive fluids – additional fluids, to maintain anti-corrosive effects, & chemicals for maintenance (\*\*)**

EPA – looking at fail safes re: catastrophic wells

(\*\*) A lot of wells (over 4000)..

**? on oversight over this development (NRC, EPA & SD state)**

(\*\*)Also concerned about hunting/fishing activity throughout

? will people working on site be protected? The people within the structures.

(\*\*) Concern re: NRC's mandate v. EPA's mandate re: cultural site protections, etc.

#### REQUEST FOR DOCUMENTS

? Tribal access? Currently no – the outer boundaries – National Forest – then BLM Land – Are there boundary designations re: the project area? How is there notice to the public re: entering a project boundary? Is there security? Locking well head – potential for security breaches (shoot off well head & dump) –are there potentials.. Well head breach. (on site boundary)..

? Questions re: stringent treatment requirements if there's a land access permit?

? PLEASE NOTIFY FORT BELKNAP DIRECTLY WHEN THERE'S THE POSSIBILITY OF PUBLIC COMMENT PERIOD OPENING. (\*\*)

? Potential impacts - & potential effect area – distinction between the boundary & some questions on language differences?

?Is there tribal hunting? There will be questions for people about both historic and present-day hunting..

(\*\*) Area of Potential effect – we want to know historical and cultural use (past & present).. fasting area – considerations within this area.. not exclusive to higher points.

(\*\*) AREA – A CORRIDOR – A LOT OF THE TRIBES GOING THROUGH THIS AREA.. Gros Vant

? Dust Control (where do they get their source of water for heavy equipment? SD didn't need an air permit.

? Diagram – where are the processing plants going to be located in relation to the wells – pumping water to these sites?

All recovery wells intend to be pumped to this.

? are these pipelines buried? Freezeline? How close to the ground water?

(\*\*) Agree w/ CHIPPEWA CREE – identify a plow zone – 18-24" – FB – concerned about any ground disturbance, then archeological interest of items potentially below that plow zone – evidence of long-establishment. Concerned about anything below the plow zone (section of land plowed – surface archeological may be gone –



? \*\* about MONITOR on site for awareness – request Monitor or Monitors on site where they are drilling and laying pipelines. Programmatic Agreement concern.

(\*\*)Request Programmatic Agreement for FB review...

? Possible to look at NRC PA – not just the historic portion & environmental portion – (\*\*)to include Tribal EPA to also be included in the PA as signatory (including other Tribes as well) - FB – echo other tribes **\*\* OFFICIAL ASK – if there's opportunity to the existing PA..**

(\*\*)Look to support the Tribes nearest to the site to provide monitors, and then look to support the Oglala if needed.. available

- (\*\*)GRAND CENTRAL STATION - A LOT OF WHERE THESE TRIBES PASS – big cultural area.

Additional Questions on the UIC piece?

(\*\*)Send power point presentation –

(\*\*)What if it doesn't happen all according to plan? CLEAN UP – EMERGENCY/CLEAN-UP RESPONSE

(\*\*)Zortman Landusky knowledge – disastrous – strip mining effects & environmental effects..

[CONSIDER INFORMATION PROVIDED IN THE DIAGRAMS, THEIR ACCURACY, DEPICTIONS, ETC.]

[What additional information /protective measures would EPA need to consider?]

Provided background on the process.

(\*\*)After we have draft-permits, can then go through specific language –

[Good description of the permit challenge].

Financial Bond info from NRC – FB – question about perpetual water treatment at this site...  
are there funds or financial consideration issues where we can address this issue. Note:  
Zortman Landusky – agencies responsible b/c not enough of look at investing the bond

money - bond for treatment? State bond – investment? Just now available for payment –  
(\*\*)Look at Zortman Landusky as a warning – TOO LOW OF BONDING

? about maintaining the sludge – confining the sludge somewhere else (disposal site) –  
perpetual site.. how is the storage site going to maintain the radium sludge?

? – ultimate long-term waste stream (cradle to grave) operation, in re: to storage &  
maintenance.

Worker's safety?

Continued discussion re: formal consultation – can be formal, informal..

At the point of issuing permits – complimentary/in-conjunction with NRC? Discussion re; the  
process of interagency work/cooperation.

?ACHP signed on to the PA.. THPO police – if they can't come to an agreement [?? What  
happens if ACHP agree but the Tribes don't agree?]

NRC didn't include the FB.. have FB consulted with NRC in Wyoming..

(\*\*)Class III pedestrian survey..

(\*\*)Dust – Noise considerations – Air issues – wildlife issues – all concerns for FB and the  
potential questions/re disturbance

Local rancher groups re: against this? (\*\*)Potential reaction/insight from cattlemen groups.

(\*\*)Another site in Crow Butte (heart butte?)..

(\*\*)REQUEST FOR POWERPOINT - ..

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\*\* - Denotes Tribal Comment During Consultation

**From:** Yufna Soldier Wolf <yufnanathpo@gmail.com>  
**Sent:** Tuesday, April 19, 2016 1:17 PM  
**To:** Shea, Valois  
**Subject:** comments to PA



Valois,  
I had a hard time trying to figure out how to do this, I didn't want to scan my comments and felt that an email would at the least communicate what I was shooting for.

Definitions of a TCP could be put into the PA. I have a copy of what ACHP defines as a TCP.

### **DEFINITIONS**

Historic Properties – fifty (50) year old or older and listed or eligible for listing on the National Register of Historic Places and / or considered a Traditional Cultural Property (TCP) by Native Americans.

Properties – Same Definition as Historic Properties.

Traditional Cultural Property (TCP) – an Ecological Knowledge Property and / or a Religious or Culturally Significant Property defined by Consulting THPOs.

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(which could be put in before Stipulations on page 4.)

Any language with Historic Property should also include TCP.  
For example....Historic Property/TCP. page 7.) d.) Powertech shall prepare a treatment plan for each affected historic property/tcp...

Page 8 iii. Last paragraph should include the language "with culturally sensitive information". J.) of page 8 is more of a question. Why aren't the tribes a part of agreed terms or appropriate terms? Tribes left out for a reason?

Page 9 f.) Powertech shall offer to provide appropriate financial compensation to (needs to specific) signatory tribes, all tribal representatives, who exactly? I see an issue where a tribal member shows up saying they represent and are not a part of THPO. The language here needs to be specific.

g.) of page 9  
The NRC will consult with the 23 consulting tribes on identification of "TCPs" with religious and cultural significance.

l.) If NRC< BLM and SD SHPO make the determination that identified TCP's are not eligible for listing on the NRHP, no further review or consideration of the TCP will be required under this PA. I am

against this entirely, our jobs as tribes is to negotiate through mitigation how sites can be preserved this language doesn't give tribes any say so and will allow destruction to sites without consulting tribes.

Page 10.

n.) (is this paragraph in regards to l?)

8.) confidentiality 2nd paragraph historic property/tcp

9.) Anticipated Discoveries a.) Human Remains should NEVER be viewed or lumped into the same category as "finds" i.e. artifacts, features etc. This paragraph needs to be written to reflect that human remains are a priority (they are our ancestors) and should be respected. Private land owners can also have the opportunity to donate back to tribes if they should feel to do so.

Page 11 c.) Tribes have no role in the discoveries? why not? Language need to be clarified.

d.) Tribes should and never have to contact the proponent. The proponent isn't a Federal Government tribes have no business doing consultation on a Gov to Gov basis with a proponent.

This paragraph needs clarification. If tribes want to be a part of evaluations the Federal Agencies have to contact tribes give them 30 days to review and it should never be the tribes contacting a non federal agency.

h.) there is no private land process...even something written saying that private land owners can donate to the tribes is giving them an option.

These are some concerns I have with the PA and would like clarification and written language to show a good faith effort in going forward with this undertaking.

Thank you for your time and look forward to hearing back.

Yufna Soldier Wolf

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Yufna Soldier Wolf

NATHPO-Director

307-840-0837 call or text Cell

307-856-1628 Office call or lv msg

**Standing Rock Sioux Tribe/EPA Formal Consultation Meeting  
Proposed Dewey-Burdock Uranium In-Situ Recovery Site  
Greasy Grass Room, Administration Building  
1 Standing Rock Ave, Fort Yates, ND  
9:00 am Thursday, May 5, 2016**

Present at the Meeting are:

Chairman Archambault	Allyson Two Bears, Environmental Director
John Eagle, THPO	Doug Crow Ghost, Water Resources Director

Is the EPA aware of the Fort Laramie Treaty of 1868 and the land that belonged to the Great Sioux Nation at that time? The Dewey-Burdock site is located in this area. A map of the 1868 Treaty area should be included in the EPA presentation.

The whole Black Hills is a sacred area. The Dewey-Burdock site cannot be separated out. EPA cannot say the impacts will be only at the Dewey-Burdock site. The whole Black Hills area is impacted by the Dewey-Burdock Site.

The EPA stating that they have knowledge of how the Black Hills is sacred to the Sioux Tribes is not the same as saying you have understanding of the meaning of the Black Hills to the Sioux Tribes. The EPA needs to keep that difference in mind as they move forward with the decision-making process.

Water is sacred to many tribal ceremonies. We are concerned about the impacts to surface water and groundwater.

The EPA should also meet with the Great Plains Tribal Water Alliance.

**Agenda Standing Rock Sioux Tribe/EPA Formal Consultation Meeting  
Proposed Dewey-Burdock Uranium In-Situ Recovery Site  
Greasy Grass Room, Administration Building  
1 Standing Rock Ave, Fort Yates, ND  
9:00 am Thursday, May 5, 2016**

- I. Introductions
- II. The EPA's role at the proposed Dewey-Burdock uranium in-situ recovery (ISR) site
  - a. The EPA Region 8 Underground Injection Control Program has received two types of UIC Permit Applications:
    - 1. A Class III Permit Application for the injection of lixiviant to mobilize uranium in ore bodies.
    - 2. A Class V Permit Application for the disposal of treated ISR waste fluids into deep injection wells.
  - b. The UIC regulatory mission: protection of groundwater
  - c. UIC permitting process
- III. Tribal Consultation and the National Historic Preservation Act Section 106 Process
- IV. Tribal Concerns
- V. Next Steps