

EPA REGION 8'S RESPONSE TO PETITION FOR REVIEW

ATTACHMENT JJ

EPA notes from consultation meetings

Administrative Record Document Nos. 921-923

Proposed Draft Agenda
Cheyenne and Arapaho Tribes of Oklahoma/EPA Region 8 Consultation Meeting
Proposed Dewey-Burdock Uranium In-Situ Recovery Site
Wednesday September 11, 2019
1:00-3:00pm
100 Red Moon Circle, Concho, OK 73669

I. Introductions

a. Present at the meeting are:

1. William Tall Bear, Compliance Officer for Governor Wassana
2. Max Bear THPO
3. Casey Peyton, Assistant Director, Environmental Department
4. Antonio Church, Deputy General Counsel

II. Additions/changes to the agenda from Cheyenne and Arapaho Tribes

Governor Wassana wasn't able to attend. The Tribes may not consider this meeting to be formal consultation. They will probably schedule additional meetings with us in the future. Mr. Church, Deputy General Counsel, says the Tribal Constitution does not allow someone else to stand in for Governor Wassana in this instance.

III. The EPA's proposed action at the Dewey-Burdock uranium in-situ recovery site

1. The Underground Injection Control (UIC) regulatory mission and UIC permitting process

Casey Peyton: Why is the EPA "promoting" this action? Kim and Darcy explained the EPA permitting process. Just because we issue draft permits doesn't mean we are promoting the project. It just means we believe the proposed permits requirements allow the project to be carried out in a manner protective of underground sources of drinking water. The purpose of the draft permits is to get input from Tribes and the public about whether the permit requirements are protective of USDWs. Are there ways to make the permit better. We have regulations that government how we propose draft permit and get public comments. This process includes opportunity for public hearing. The EPA is just explaining the propose project, the permit requirements and the other documents the EPA develops along with the permits.

2. A Class III Draft Area Permit for injection of lixiviant for uranium recovery.

3. A Class V Draft Area Permit for disposal of treated ISR waste fluids into deep injection wells.

Antonio Church: What are the ages of the wells Chuck looked at to evaluate the lower confining zone?

4. Proposed Exemption of uranium ore-bearing aquifers to allow injection of lixiviant

IV. Tribal Consultation

a. Treaty Rights: Max Bear says Yes treaties exist in the area. Antonio will review this also.

- b. Section 106 National Historic Preservation Act: Concern over lack of more extensive cultural survey.

- V. Environmental Justice Analysis: They would like a copy of the EJ Analysis.
- VI. Cheyenne and Arapaho Tribes perspective on 2013 Tribal Cultural Survey? Not adequate. More work should be done to identify sites properly, identify adverse effects, and discuss and agree upon mitigation measures. A federal agency can't do that without tribal input.
- VII. Tribal Concerns: Primary concerns: preserve C&A historic and cultural sites in the area and the natural resources.
- VIII. Next Steps:

Communication through William Tall Bear, Max Bear and Damon Dunbar
Email info:

1. EJ Analysis
2. Draft Permits
3. Website to Docket
4. Info about the public hearing
5. Ask Chuck the age of the wells he reviewed to evaluate the lower confining zone.

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**Cheyenne River Sioux Tribe Meeting
September 30, 2019 in Eagle Butte, South Dakota**

Present at the meeting are:

Chairman Harold Frazier
Bryce In The Woods, Council Member
Steve Vance, THPO
Dave Nelson, Environmental Director
Manny and Renee Iron Hawk representing traditional tribal government
And others
Darcy O'Connor, EPA Region 8i Water Division Director
Kimberly Varilek, Senior Tribal Advisor
Valois Robinson, UIC Program Dewey-Burdock Project Lead

There is a deep well proposed for South Dakota to test for disposal of uranium in metal cases.

When you drill that deep into the ground you don't know what you are going to get.

The Tribe has these concerns:

Concerns about climate change,

Concerns about when the company goes bankrupt. What happens then? Gold mine exploratory drilling near Pe Sla is a threat to the water supply.

Concern about a foreign entity in Lakota homelands.

Concerns about nuclear reactors and the safety of older US reactors.

Concerns about impacts of flowing- native indigenous people have given warnings about floods and other environmental issues and threats.

Concerns about water and warning about injection activity.

Tribes are fighting for consultation. Obama hears and issues the executive order for all Secretaries to develop consultation plans.

Trump has created a hardship and heartache for tribes.

If majority of comments are against this, why is EPA moving forward?

From EPA: the question EPA's asks itself – can the project move forward and protect USDWs? That is the criteria for approving final permits.

The Tribe's main drinking water intake was in the Cheyenne River south of Eagle Butte. Flooding caused turbulence and increase in heavy metals, so they are moving the intake farther downstream. There is already naturally-occurring uranium contamination in the Cheyenne River, why add more? There is uranium in the sediments in Angostura Reservoir. That is why the Tribe changed its water source from the Cheyenne River to the Missouri River. Are the impacts from Dewey-Burdock going to affect aquifers and generations for 10,000 years? Uranium has a bad track history for Tribes. An example is the Navajo Tribe's situation with uranium tailings. Where was EPA on that?

The Tribe has waited a long time for consultation with EPA – back in Marsland and North Trend in Nebraska. Where was EPA then? EPA's cumulative effects analysis should cover all impacts within the Black Hills; the CEA does not encompass enough. This decision matters. Face-to-face consultation is important. Where does all the injectate go? - we don't know for sure.

Traditional belief is you don't mess with the stuff. As long as it is in the ground it can't go into other areas.

There should be more study of seismicity. There are earthquakes in South Dakota. Are all the faults in the area identified?

EPA should get involved with the Tribes to discuss the Programmatic Agreement. The State SHPO should be involved.

The Tribes still have Treaty Rights. They still own the mineral rights – only the surface was taken. The Supreme Court supported the Tribes in this in the 1980 decision. Water is the first medicine. How do you sell your religion? EPA must protect the land and resources held under treaty rights. This was never relinquished by the Tribes. Where was EPA for the Dakota Access pipeline?

We are destroying something sacred with hypotheticals – water is a person. Water has a memory. We use it in ceremonies, pray with it, purify our bodies with it. Impacts to water is not a matter taken lightly. Water is life. How much drinking water do we have left? This project is taking more water. The Cheyenne River is polluted. Where was EPA when that happened? We plan our whole lives around the places in the Black Hills. That is where we came from. According to our creation story, we originated from Wind Cave, where the purest water in the Black Hills can be found. It is the purest water in America. Before the world was created water was here. It is older than the earth. Now we are willing to pollute it for a quick buck. This is Turtle Island. Where are we going to get our water? Mother Earth and Turtle Island need our protection. The Ogallala aquifer has been impacted.

There is nothing good in this project. It is crazy to consider. We are murdering Mother Earth. What is the reward for the Tribes? When it makes a mess Powertech gets to walk away. We are destroying our own environment. That is not who we are as a people. We protect the earth for the 7th generation, for 10,000 years. There is no reward for the Tribes. It goes against our way of life, our creation stories, the Creator himself. Our truth is our suffering. This land is all we've got. Our ancestors sat at a table like this with the federal government for the 1851 and 1868 treaties. There is a long history of mistrust.

This meeting is not government-to-government consultation. The Council needs to be involved for that.

EPA's "formula" is flawed so how can you move forward with this project? There are so many variables. If Powertech doesn't like EPA's formula, whose do we go with? Powertech is bankrupt. How will these variables affect a bankrupt company? We put our trust in science and technology, but we have seen it fail. Don't trust corporate America; it has polluted America. The risk is too great here. Western science and theory give you this result. It doesn't take into account how Tribes use the land, water and other resources. The Tribes have senior water rights. We hope you aren't here just to sell us out. Protect what little we have left. The Cheyenne River is no longer useful for us. Where was EPA then? EPA has a marred track record.

Corporations influence elected officials and EPA. Money is produced. The Tribes have a right to that. Corporations like Powertech are insulated by money. The environment gets sold out. The corporations are here only to take. The natives suffer. The federal government show up only to take and never helps solve the problems. The biggest deception is EPA's role. The people will be left with disaster. The company is the gun; EPA is the bullet. Who is going to profit from uranium? Why are going away from protection? We are all attached to the land. We are all connected. EPA is in the same boat.

The real landowners, with the real interest, have not weighed in yet. They are not being addressed by the federal agencies. There is racial discrimination. MHA has cancer. It is like a third world country there. Would you drink our water?

Youth are rising up and saying "How dare you?" The youth marched here about global climate change. We have to hear them. It is their future we are affecting. We want to leave a better future for our youth. That is our way. We are here to preserve what little we have left for our grandchildren.

Santee Sioux Nation/EPA Region 8 Consultation Meeting
Proposed Dewey-Burdock Uranium In-Situ Recovery Site
Wednesday November 20, 2019
2:00-4:30 pm
108 Spirit Lake Ave West, Niobrara, NE 68760

Chairman Roger Trudell

The Sioux Tribes have historic ties to the Black Hills and continue to make present day journeys for ceremonial purposes. There are many cultural sites, e.g. Bear Butte, Sundance areas, area where ceremonial plants are gathered.

The Santee Sioux were signers of the 1868 treaty

- The Santee Sioux have these concerns:
- How can injected water be contained.
- How can all the ISR contaminants be controlled.
- What are the impacts to wildlife and livestock.

Opposed to removal of uranium. Once it is out of the ground, becomes more dangerous.

The Creator put many things in the ground for a purpose. Once removed from the ground, not linked to purpose, not compatible to humans. Stealing from the ground.

Mining is a Violation of treaty rights.

Burials took place in the Black Hills and surrounding areas. Potential to lose what was buried with those people and disturbance of burial grounds. This is not appropriate. Anywhere where prayers are made is sacred ground and should be treated as such.

If OST, CRST, SRST are against it, Santee Sioux support that. Chairman Trudell and the tribal council are opposed.

What prevents seepage of deep injection wells into underground sources of drinking water. Leaking is always possibly regardless of permit application.

Stuart Redwing Tribal Secretary joined the meeting at 3:05 pm. Sits on Nebraska Committee of Indian Affairs. There have been too many negative impacts to Tribal Lands: this project along with the oil pipeline. There was a big oil spill in ND over that pipeline. Third one to occur. First one was by Freedman, second by Sisseton. Third one the amount was underestimated. It was discovered by a farmer in his field when his tractor got bogged down.

Fracking issues while drilling. Methane release into drinking water and wells. Companies claim safe and fast, but these problems arise.

Water table getting deeper. Need to protect what we have.

Medicinal plants: sage, sweet grass. NE Audubon wants to start sweet grass growing. Quite a few folks go out and harvest plants – sweet grass not abundant here. Sage along highway has pesticide.

Four biospheres come together here on the Santee Sioux Reservation: desert, deciduous, coniferous, prairie grass. Cactus, wild turnup, which has a purple flower. The root is dug up root.

Duane Whipple is the tribal historian and museum curator. He is looking to hire a THPO soon.

Have any of the companies that have been drilling oil wells or any industrial activities, including uranium, gold, timber, been truthful forthcoming about what they have found as far as sacred sites and artifacts? There should have been consultation in these situations.

Mr. Redwing was instrumental in getting the MOU for pesticide governance between EPA Region 7, state and Tribe. Pesticide officer. Tribal Pesticide Policy Council – other tribal pesticide officers.

Good examples of gov't to gov't consultation: 2011 floods when State, Counties & Fed gov't worked together.

From: [Varilek, Kimberly](#)
To: [Robinson, Valois](#)
Subject: 11-20-19 - Consultation w/ Santee Sioux Tribe
Date: Friday, May 15, 2020 9:32:21 AM

Valois – here are my notes from our 11-20-19 Meeting. I will look for other notes as well, just so you have them. These are a rough version. Thanks! – Kim V.

11-20-19 - Consultation w/ Santee Sioux Tribe

Wednesday, November 20, 2019
1:26 PM

Meeting w/ Chairman Trudell

- Background re: the permitting, permitting injection wells -

Looking at specific areas for input:

- Updates on the permit
- Treaty Rights
- EJ Analysis
- NHPA 106 issues (NRC Site-survey)- was this survey extensive enough.

Historic Ties to the Blackhills (for sacred purposes)

- Signatories to the 1868 Treaty
- Ceremonial plants & a number of cultural site (near Bear Butte), sundances up there
- CONCERNS of this site.

Concern with water injection, very concerned about the Oglala aquifer - (effects on concerns of wildlife)

Opposed to the injection of water - opposed to uranium removal in general, due to the destructive nature of the issues.

Once those things are in the ground, they have the same purpose - those things may not be compatible with Humans.

Concerned w/ Uranium - do they need to have those resources?

Violation of the treaty rights (mining and removal of substances,) as well as other treaty violations.

NHPA 106 - several burials, potential to lose what was buried with them, disturbing a place (wouldn't go to a cemetery and start mining) - where prayers were made - that's sacred ground.

2013 - cultural survey - questions:

Valois:

NRC produced a report - opened up the site

Richard Thomas (was able to be on site) - likely not organized in a way

Cultural survey is still an open topic - it's in the NRC process, appeals - Court of Appeals, too early - will likely be in the Court.

Chairman Trudell:

Oglala, Standing Rock, Cheyenne River & Rosebud - If opposed, would support that opposition.

Strongly opposed - position from the council - (water injection issues) - how can we remove all of these things w/o falling in - ..

Questions about injection wells, seepage, etc. - Valois -(Class V wells - requiring continuous monitoring,

Discussion about the wells, or the injection -

Question about length of time of other Class V wells - O&G Wells - Class 5 wells have been around for a while - may not be stringent -

- If there was a shift in the earth (Valois - mag 4 or higher) - THERE ARE - THIS IS THE POSSIBILITY THAT THIS COULD LEAK

Same mining technique in WY, TX, etc. -

Some data from the mining field, that these wells do 'work', and that there are monitoring wells -

Monitor the "deep" wells - (no wells in the aquifer) - No test designed to detect the fluid movement.

ProPublic report - that the integrity of the wells are failing.

Chairman Trudell:

- With age, everything deteriorates - this is a concern for the Tribes.

It's in this place, it's safe -

Darcy:

- We operate under the SDWA - look at the analysis, can the project move forward, and can it be mined in a way that's safe and protective - what are the safeguards that can be written into the permit to protect the USDWs..

How do we also write in conditions to make sure that the wells or any leaks don't travel far.

EPA - permitting: public opposition is only one element

Technical analysis - that this isn't a 'safe' way to do this -

Current public comment period: 12/9 -

- We have the ability to receive comments at any time.

Question about the landowners - Edgemont citizens are 'for' it - ranchers are concerned b/c of water access -

People from Edgemont (USACE) -

- Always a concern about the development.

Tribal leader opposition b/c this is not a safe process.

Darcy:

Discussion about the permitting process - other demonstrations that the company must make.

Still need to secure a mining permit, theoretical for this to happen.

Even people with a technical background may not support this matter.

Secretary (joined us) -

Dewey Burdock: NE Commission of Indian Affairs (DB & Pipeline issues are primary issues and concerns)

(Discussion of the oil spills) - for the local communities.

- Along w/ concerns about the in situ mining - then there's fracking concerns - pumps the gas/water - (pavillion concerns) - how will this impact this area (references to seismic) -
- Companies, claim this is safer, etc. - the disruption of the methane pockets.

Majority of the council - especially in terms of protecting the groundnwater - Water table - getting more and more shallow, therefore needs additional consideration and protection.

- Impact to ALL the Tribes - for ritual travel, etc. -

Concerns w/ medicinal plants that may be affected (Sage, - NE Audubon society - working w/ the Tribes, they're interested in helping reintroduce and support growth)

- Sprayed chemicals) - 94-2004 - Pesticides ISSUES..

NRC: Cultural Survey:

(Valois will send the Survey -

THPO guys: Museum curator/Duane T. (?)

Meeting w/ THPO officer -

2015 - Region 7 contest - ED - Aleshia Bartling - (and Ponca) - Brought up some concerns about the Ogallala aquifer -

PPT - (is Santee Sioux within the Missouri River aquifer) - Oglala aquifer -

(Crow Butte .. NE regulates that area - but SD doesn't .. This is where EPA Permitting comes in.

Discussion about hydrologic connection to the Oglala aquifer (?) - discussion re: aquifer location -

Water Well primary source -

Valois - discussion re: the EJ analysis -

Company should be paying for the cultural survey - and with the Tribe as well.

Companies - working on these issues - HAVE THEY REACHED OUT TO THE TRIBES -

(How truthful would a company be with identifying cultural sites, as well as understanding the treaty rights -

- Economic power of the company v. the Tribe - not an even playing field. (Gold and Timber) -

Resources previously removed from the Black Hills w/o tribal consideration, sharing or consultation.

R7 - no pesticides program: - MOU - State - Feds - Tribe : pesticides issues -

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