Date: Tue Nov 03 13:58:39 EST 2020
From: EPAExecSec <EPAExecSec@epa.gov>
To: "CMS.OEX" <cms.oex@epa.gov>
Subject: FW: Tribal Consultation on the UIC permits for the Dewey-Burdock site

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-----Original Message-----
From: Jeffrey C. Parsons <wmap@igc.org>
Sent: Tuesday, November 3, 2020 1:54 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>
Cc: Bahrman, Sarah <Bahrman.Sarah@epa.gov>; president.bearrunner@oglala.org; j.spottedbear@oglala.org; ostnrrawrd@gwtc.net; wilsonrodeo@goldenwest.net; Barbara@oglala.org; gnzlaw@aol.com; Russel D. Zephier <Rdzephier@hotmail.com>; Logan, Paul <Logan.Paul@epa.gov>; Robinson, Valois <Robinson.Valois@epa.gov>; Minter, Douglas <Minter.Douglas@epa.gov>; Varilek, Kimberly <Varilek.Kimberly@epa.gov>; 'Mike Catches Enemy' <MikeCE@oglala.org>
Subject: Tribal Consultation on the UIC permits for the Dewey-Burdock site

Administrator Wheeler and Regional Administrator Sopkin,

please find attached a letter from the President of the Oglala Sioux Tribe, President Bear Runner, in response to EPA Region 8's October 21, 2020 letter from Ms. Darcy O'Connor, EPA Region 8 Water Division Director to the Oglala Sioux Tribe. President Bear Runner requests your immediate attention to this matter.

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Julian Bear Runner

November 2, 2020

Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Office of the Administrator Mail Code 1101A
Washington, DC 20460

Gregory Sopkin
Regional Administrator
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Dear Administrator Wheeler and Regional Administrator Sopkin,

As President of the Oglala Sioux Tribe, I am very concerned and provide this disheartened response to the letter dated October 21, 2020 from Ms. Darcy O'Connor, EPA Region 8 Water Division Director. In the letter, EPA Region 8 disavows any further efforts at government-to-government consultation with the Oglala Sioux Tribe regarding the EPA's permitting process under its Underground Injection Control (UIC) authorities for the proposed Dewey-Burdock in-situ leach uranium mine proposed in the Black Hills of South Dakota. We view this as a colonial tactic on your part which only displays your prejudices against my Lakota people who have adamantly opposed this project from the beginning. As you may be aware, the lands proposed for mining are still considered Lakota Country by the Lakota people, as our lands possess significant cultural significance, both in terms of site-specific cultural resources (including burials) and spiritual significance, and is within the unceded treaty territory of the Great Sioux Nation, which includes the Oglala Sioux Tribe. The Oglala Sioux Tribe requests that you intervene to ensure EPA Region 8 fulfills its federal trust responsibility to the Tribe as well as its obligations to comply with the consultation requirements of the National Historic Preservation Act and the environmental analysis requirements of the National Environmental Policy Act.

The UIC application for the Dewey-Burdock proposal was submitted to EPA in 2008. However, EPA Region 8 did not issue any draft permits for the project until 2017, which the agency substantially revised in August of 2019. The Tribe submitted comments on the project at both iterations. Despite the long-pending application, EPA Region 8 sent attached letter to Tribe requesting consultation on Draft Permits on July 8, 2019. The Oglala Sioux Tribe responded to EPA Region 8 on August 2, 2019 accepting EPA's invitation to consult on EPA's second draft permits, but could not have been able to grasp the full scope of EPA Region 8's permitting proposal until the Tribe submitted its comments on the second draft set of permits on December 9, 2019. The Tribe included specific requests for EPA Region 8 to engage in meaningful and good faith government-to-government consultation with the Tribe in accordance with the Oglala Sioux Tribe's long-standing tribal consultation Ordinance #11-10.

EPA Region 8 and the Oglala Sioux Tribe began planning for consultation in accordance with Oglala Sioux Tribe Ordinance #11-10 to occur in early 2020. The coronavirus pandemic began to affect scheduling and planning almost immediately in early 2020. In accordance with federal laws and Oglala Sioux Tribe Ordnance #11-10, the Oglala Sioux Tribal Secretary and EPA Region 8 staff scheduled an in-person meeting

between EPA Region 8 and the Oglala Sioux Tribal Council in June of 2020. However, on June 18, 2020, EPA Region 8 informed the Oglala Sioux Tribe that it would have to suspend its consultation efforts due to the federal travel restrictions associated with the coronavirus pandemic. The Oglala Sioux Tribe responded that it understood EPA Region 8's restrictions and looked forward to beginning consultation when conditions allowed. At that time, the Oglala Sioux Tribe had successfully limited the impact of the pandemic and appreciated EPA Region 8's cautious approach.

In the interim, on July 28, 2020 the Bureau of Land Management (BLM) opened its permitting decision process for public comment – which required the Oglala Sioux Tribe to devote substantial resources to responding to BLM by the August 26, 2020 deadline. On August 21, 2020, in light of BLM's decision to move forward with its permitting process, the Oglala Sioux Tribe sent a letter to both federal agencies requesting joint consultation between the Oglala Sioux Tribe and EPA Region 8 and BLM.

On August 28, EPA Region 8 staff presented an introductory PowerPoint presentation regarding EPA Region 8's participation in the upcoming consultation to a limited number of members of the tribal council. On September 18, 2020 EPA Region 8 responded to the Oglala Sioux Tribe's August 21, 2020 letter, agreeing to the Tribe's request to hold joint consultation with EPA Region 8 and BLM, beginning with a scheduled Oglala Sioux Tribal Council meeting October 2, 2020. However, the tone of EPA Region 8 staff's communications in establishing the consultation took an unexpected and abrupt turn, from cooperative to combative, as the September 18, 2020 letter from Darcy O'Conner, Director Water Division revealed that "EPA plans to make its final decisions on the UIC permit applications shortly after that October 2, 2020 date," regardless of the status of consultation or the pandemic.

Unfortunately, just prior to the scheduled October 2, 2020 Oglala Sioux Tribal Council meeting, the Oglala Sioux Tribe's Pine Ridge Reservation began experiencing an alarming increase in COVID-19 infections and the Oglala Sioux Tribe's COVID-19 task force began issuing quarantine requirements for Oglala Sioux Tribal Council and Tribal Staff along with proposals for reservation-wide lock downs. On September 28, 2020, the Oglala Sioux Tribe sent notice to EPA Region 8 and BLM informing the agencies of the dramatic increases in COVID-19 infections on the Pine Ridge Reservation, with documents attached confirming the seriousness of the infection issues - and of the need to reschedule the October 2, 2020 meeting due to the Oglala Sioux Tribal Council's need to quarantine and address the preeminent health issues on the reservation.

On October 14, 2020, the Oglala Sioux Tribe again sent an update to EPA Region 8 and BLM about the still-increasing infection rate on the Pine Ridge Reservation, the ongoing quarantines, and the continued risks of complete lockdown on the reservation. Needless to say, this rapidly evolving situation made concrete scheduling efforts extremely difficult. On October 21, 2020, instead of working with the Tribe as the Tribe had previously around EPA's constrictions related to COVID-19, EPA sent a terse and oppressive letter cancelling any future tribal consultation meetings despite the lack of any meetings with a quorum of the Oglala Sioux Tribal Council or any substantive meetings with Oglala Sioux Tribal technical staff to discuss and provide information on issues of great importance to the Tribe and its members. As stated above, this is a colonial tactic, to disregard and disrespect our Tribe's sovereignty.

The Oglala Sioux Tribe contends that EPA Region 8's unilateral and arbitrary cancellation of all discussions with the Tribe, its staff, and its members violates EPA's trust responsibility to the Tribe as well as EPA's legal obligations to involve the Tribe under the National Historic Preservation Act (NHPA) and to analyze the impacts of its permitting decisions under the National Environmental Policy Act (NEPA).

Given the facts and timeline presented throughout this response, as well as the extreme importance of these issues to the Oglala Sioux Tribe, EPA Region 8 should immediately rescind the letter and commit to meaningful government-to-government consultation with the Tribe once the Pine Ridge Reservation's ongoing, serious COVID-19 related health emergencies have abated. Just as the Oglala Sioux Tribe agreed to suspend its efforts at consultation while the EPA Region 8 staff was under restrictions due to the COVID-19 infection levels, the Oglala Sioux Tribe would expect the same from EPA Region 8 staff. The Oglala Sioux Tribe remains optimistic that EPA Region 8 staff, if supported by EPA leadership, will reevaluate its unilateral, arbitrary decision to terminate consultation before it could even begin in earnest. The Oglala Sioux Tribe remains committed to the technical meetings that are an integral part of the consultation and must precede informed government-to-government consultation between Oglala Sioux Tribe leadership and appropriate BLM and EPA leadership.

Respectfully,

Julian R. Bear Runner
Itacan (President)
Oglala Sioux Tribe

CC: Oglala Sioux Tribal Council
Darcy O'Connor, Water Division Director, US EPA Region 8
Douglas Minter, UIC Permitting Section Chief, US EPA Region 8