Message

From: Chin, Lucita [Chin.Lucita@epa.gov]
Sent: 2/12/2018 5:47:34 PM
To: Boydston, Michael [Boydston.Michael@epa.gov]
Subject: FW: article
Attachments: NRC Oct 23 letter.pdf; NRC Jan 25 letter.pdf; Tribe Feb 8 letter.pdf

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From: Denawa, Mai
Sent: Monday, February 12, 2018 9:38 AM
To: Chin, Lucita <Chin.Lucita@epa.gov>
Subject: RE: article

Ex. 5 Attorney Work Product (AWP)

From: Chin, Lucita
Sent: Monday, February 12, 2018 8:16 AM
To: Denawa, Mai <Denawa.Mai@epa.gov>
Subject: FW: article

FYI – Ex. 5 Attorney Work Product (AWP)

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From: Matsumoto, Kimi
Sent: Monday, February 12, 2018 7:21 AM
To: Chin, Lucita <Chin.Lucita@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Perkins, Erin <Perkins.Erin@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Joffe, Brian <Joffe.Brian@epa.gov>; Castelli, Matthew <castelli.matthew@epa.gov>
Subject: article

SD Tribe Blasts NRC's Take On Standing To Dispute Mine
Share us on: By Chris Villani
Law360 (February 9, 2018, 8:26 PM EST) -- The Oglala Sioux Tribe pushed back Thursday in the D.C. Circuit against a letter by the U.S. Nuclear Regulatory Commission, claiming a recent circuit decision buoys its case, not the NRC's, in its fight over a South Dakota uranium mine permit.

The tribe says the D.C. Circuit's Jan. 19 unanimous ruling in Natural Resources Defense Council v. NRC asserts that the license issued in 2014 by the NRC approving Powertech (USA) Inc.'s plan to mine 13,000 acres of land in western South Dakota took immediate effect, giving the tribe necessary standing to challenge the project over its potential impact to the tribe's cultural and historic resources in the area.

"The failure to gather required information necessary to analyze and mitigate cultural resource impacts formed the basis of NRC's NEPA violation," the tribe said. "Here, the license remains effective, yet that necessary information has never been gathered, reviewed or analyzed."

The tribe claims Powertech secured the license by skirting regulations set forth by the National Environmental Policy Act and the National Historic Preservation Act. It appealed the matter directly to the circuit court.

The Oglala have claimed that the NRC failed to adequately assess the effects of storing, moving and disposing radioactive waste, require the collection of baseline water quality data and mandate a requisite discussion over mitigating the impact on cultural sites and the environment.

The tribe also called this situation "significantly different" from the NRDC case, noting the previous case had been resolved when the agency provided missing information from the administrative review process.

In its own letter to the court on Jan. 25, the NRC, which allowed Powertech to conduct uranium mining and processing operations and dispose of radioactive waste, has argued the NRDC case supported its argument that the tribe's claims were premature and that the tribe is asking to review an order that is not final.

But the tribe's argument is that the decision rejected the notion that the license was provisional, as it takes effect immediately, supporting the case that the tribe has jurisdiction.

The tribe has been fighting Powertech's mining efforts for years and argues the NRC's environmental analysis did not follow the NEPA or the National Historic Preservation Act.

Counsel for the tribe and Powertech did not respond to requests for comment Friday.

The Oglala Sioux is represented by Jeffrey C. Parsons of the Western Mining Action Project and Travis E. Stills of Energy & Conservation Law.

The NRC is represented by senior attorney James E. Adler of the U.S. Department of Justice.

Powertech is represented by Anthony J. Thompson and Christopher S. Pugsley of Thompson & Pugsley PLLC.

The case is Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission et al., case number 17-1059, in the U.S. Appeals Court for the District of Columbia Circuit.

--Additional reporting by Michael Phillis and Juan Carlos Rodriguez. Editing by Richard McVay and Bruce Goldman.

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