NHPA Categorized Comments

1 Comments on the NHPA Document			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
00565	Nick Tilsen	Thunder Valley Community Development Corporation	Unfortunately, the National Historic Preservation Act (NHPA) Review is not much better. In its current form, it is little more than an outline of a few of the relevant issues. Cultural resources are mentioned, but no analysis is done.
8252	Lilias Jarding	Clean Water Alliance Ex. 5 Deliberative Process (DP)	The Black Hills is a sacred site to many Tribal Nations and Tribal members. Tribal Nations and Tribal members describe impact by historic and present-day mining activities in the Black Hills not only with regard to environmental and other impacts to physical resources, but also based their interests in the preservation of the area for spiritual, religious and cultural purposes. While recognizing these interests, the EPA's authorities to address potential impacts from its SDWA actions are limited to the protection of underground sources of drinking water. After all that, your failure to consider these issues is in clear disdain of the National Historic Preservation Act, the environmental review process, and the many comments that you have received. It should be clear to you that water is a spiritual issue, a cultural issue, and a treaty issue. You cannot separate water from spirituality or water from culture or water from treaties and say that you will only consider one or the other. We urge you to look at these matters in more depth and to give full consideration to Tribal concerns, followed by appropriate action - the denial of these permits. Related topics that should be studied - but that are not covered in the current documents - include: • Specific measures to protect publicly-known cultural, historical, and sacred sites. • A process other than allowing non-qualified Powertech staff to self-monitor on cultural issues, determine the importance of sites as they're encountered by heavy equipment, and then perhaps have time to arrange for the protection of cultural and/or sacred sites. This is a recipe for destruction of cultural sites. Some of us have friends who are heavy equipment operators or have been heavy equipment operators, and we know the industry standard. • Protection of landscape-scale cultural and spiritual sites.
8268	Ex. 6 Personal Privacy (PP)	Individual	Therefore, when the EPA notes in its draft National Historic Preservation Act Compliance document that the NRC's review of cultural resources "appears sufficient," they are contradicting both the ASLB and the DC Court of Appeals.
00528	David Frankel	Aligning for Responsible Mining	**4. COMMENTS ON THE IDENTIFICATION OF TRADITIONAL CULTURAL PROPERTIES AT THE DEWEY-BURDOCK PROJECT SITE AREA OF POTENTIAL EFFECTS** EPA states that:

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			Based on the information we have reviewed to date, and subject to resolving concerns identified in the NRC administrative review process, the EPA believes that the level of work completed under the auspices of the NRC on the Class III Cultural Resources Survey appears thorough and comprehensive for the APE defined by the NRC, provided the PA stipulations are followed concerning the unexpected discovery of additional historical properties. EPA states that its consideration of the extent of cultural resource issues at the Dewey- Burdock site is based on "Section 3.9.3 of the NRC Supplemental Environmental Impact Statement prepared for the Dewey-Burdock Project (SEIS) and summarized in Appendix B of the NRC PA." EPA's characterization of the current status of the NRC Staff's National Environmental Policy Act and National Historic Preservation Act compliance is not consistent with the Nuclear Regulatory Commission's recent ruling.[10] In fact, the result of the Nuclear Regulatory Commission process was an express holding that the Class III archaeological study conducted at the site **failed** to satisfy any of the requirements associated with either the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA) with respect to cultural resources. Specifically, the NRC affirmed the Atomic Safety Licensing Board's express ruling that: The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources. *In the Matter of Powertech USA, Inc.*, LBP-15-16, 81 NRC 618, 708 (2015). Thus, EPA's reliance on the NRC SEIS is entirely misplaced. There has never been a cultural resources survey **The primary reliance by EPA on the Augustana study is not supportable – particularly given the testimony at the NRC hearing.** Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically"; Dr. Hannus: "And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that.").[18] Applicant witness Dr. Luhman reiterated this point, confirming that "a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn't necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves."[19]

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			OST witness Mr. Mesteth: "[w]e're the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it's not accurate. Some of the information is not accurate. And that's why we object in certain situations."[20] Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site.[21] Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey work at the site, with the exception of the three non-Sioux tribes that submitted reports.[22] Upon the Sioux Tribes' request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review.[23] However, Dr. Sabastian also testified that she also has never been involved in any kind of "actual physical on-the-ground TCP survey-kind of thing that we're talking about."[24] Lastly, Mr. Fosha testified that he worked with the applicant and Augustana "from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field."[25] Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take "throughout the process," but only related to the State of South Dakota permit, and having "nothing to do with the NRC permit or anything like that" - even remarking that "up until the point where Augustana was nearly finished I was the only review agency on this project."[26] Despite Mr. Fosha being the only person giving any direction to Dr. Hannus' Augustana team, Mr. Fosha testified that his experience and focus was solely "the field of archaeology" and not culturally as to the concerns of the Tribes.[27] The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus' testimony had confirmed that Augustana had no culturally relevant experience.[28] Dr. Luhman did testify that "in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it typically is at the same time when there is an ongoing consultative and survey process."[29]

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8196.3	Thomas Brings	OST THPO	The thoughts provided in these comments will stress the continued need and request for a hard look cultural survey. These comments will also offer reasons the people of the Oglala Sioux Tribe hold the lands and resources sacred. It is vital the Oglala Sioux Tribe is granted the opportunity to conduct a Traditional Cultural Survey of the Dewey-Burdock uranium mine project and take another look at the previous findings of the archeological survey in place. The approval of the 1992 amendments of the National Historic Preservation act established Section 101 (d) (6) (A) & (B) that allow the Indian Tribes to identify historic properties of religious and cultural significance. The Standards for developing environmental documents to comply with Section 106, Indian Tribes must be consulted on the effects of the undertakings on historical properties. The Federal agency who is taking the lead in the endeavor won't be able to make a knowledgeable decision if the Oglala Sioux Tribe is not allowed to make a class III hard look survey and identify cultural and historic properties that are important to what the tribe holds sacred. [...] The Oglala Sioux Tribe maintains they were not afforded the opportunity to discuss the effects the Dewey-Burdock project has had on the cultural and religious properties that are considered significant. The archeologist(s) who conduct the surveys for the companies of drilling and mining projects do not have the knowledge of the connection the Lakota have to the water, land, air, or the cultural environment. The archeologist(s) are not able to identify what is important to the Lakota people, they cannot identify our stone features, cultural sites, and sacred landscapes that are attached to water. The knowledge of these and the ceremonies were and are passed from one generation to the next through oral interpretations. There are no individuals in modem science or technology who have the ability to describe or interpret this knowledge. The archeologist who are doing the surveys for the Dewey-Burdock expansion and other mining projects fall into this category of the uninformed. To be able to identify and catalogue potential items of cultural, historical, and religious significance to the Oglala Sioux Tribe, a through survey needs to be conducted by person who are knowledgeable in aspects of what is important to the Tribe. The survey needs to be conducted by members of the Oglala Sioux Tribe with a methodology developed for these purposes.
07460 (5/8 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	Secondly, there is -- the entire area of the Black Hills is very, very important, and it's very -- it's a very sacred place. And in that area there's sacred sites, traditional Lakota burial sites as well as different parts of, you know, where you would find historical petroglyphs and different sacred sites like that.

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8267	Anonymous (Jeff Parsons)	Oglala Sioux Tribe Ex. 5 Deliberative Process (DP)	EPA DEWEY-BURDOCK Uranium Cumulative Impacts Report Magpie Buffalo, 7 Sacred Rites, Maka San, and Aquifer Teachings First, the Nuclear Regulatory Commission process for the proposed Dewey-Burdock project thus far has not allowed for tribal members, on and off reservations, to provide meaningful input on the cultural and spiritual significance of the proposed Dewey-Burdock site, which is an ancient winter camp area for Lakota people, and the potential for the project to desecrate, demolish, and destroy this important and sacred area. The US Court of Appeals for the District of Columbia ruled in 2018 that the NRC staff has failed to comply with the National Environmental Policy Act. The legal challenges raised by Oglala Sioux Tribe in this matter (Docket No. 40-9075-MLA) remain unresolved to date. The history of this winter camp area, which includes the proposed Dewey-Burdock site, is much older, however. Part of this history is detailed in the attached affidavits, used as testimony in the aforementioned unresolved case between the Oglala Sioux Tribe and the Nuclear Regulatory Commission. The Lakota elder testimony contained within these affidavits represents just a small percentage of the cultural and spiritual knowledge and wisdom held by Lakota people, with great relevance for the proposed Dewey-Burdock project. Relevant treaties/case law to this matter include: Johnson v. McIntosh (1823) Treaty of July 5, 1825 with the Sioune and Oglala Tribes (1825) Fort Laramie Treaty (1851) Fort Laramie Treaty (1868) Antarctica Treaty (1959) (Demonstrating colonial/imperial theft.) United States v. Sioux Nation of Indians (1980) (Docket 74, proving the theft/illegal taking of the Black Hills in violation of the 1868 Fort Laramie Treaty) City of Albuquerque v. Browner (1993) (Isleta Pueblo win against the City of Albuquerque, affirming that Isleta residents have the right to clean river water for the purposes of farming and religious ceremony.) Washington State Department of Licensing v. Cougar Den, Inc. (2019) (Affirming that the 1855 treaty between the United States and the Yakama Nation forbids the State of Washington to impose a fuel tax on Yakama Nation members.) Herrera v. Wyoming (2019) (Affirming that the Crow Tribe's hunting rights, as established in the 1868 treaty between the United States and the Crow Tribe, in exchange for lands comprising most of what is currently Montana and Wyoming, did not expire upon the establishment of the State of Wyoming.) Despite the colonial system's efforts at appropriation, including through Western disciplines such as anthropology, archaeology, and paleontology, sacred site wisdom tied to star knowledge and ongoing spiritual practice intellectually, culturally, and spiritually belongs to the Lakota people. Lakota people have ancient connections to the Black Hills, including the DeweyBurdock winter camp area: sacred sites above and below ground, caves, fault lines, and ancient migration sites. Elders and spiritual

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			practitioners have vast knowledge far beyond the comprehension of the Western education system, and this knowledge cannot be appropriated, diminished, or dismissed. [ATTACHMENTS: (1) Images from Lakota Star Knowledge: Studies in Lakota Stellar Theology, (2) Table summarizing relevant experience, (3) Testimonies regarding Oglala cultural resources]
8263	Ex. 6 Personal Privacy (PP)	Individual	The Dewey Burdock Project is located in 1868 Ft. Laramie Treaty territory, an area reserved by Constitutional law for the Oceti Sakowin, or Seven Council Fires of the Great Sioux Nation. This area is sacred ground to them, and the Oglala Sioux Tribe has been in federal court and administrative appeals over the project for years, arguing for protection of water and cultural resources threatened by what would be the first-ever mining of uranium in the aquifers of the state of South Dakota. Proper consultation was not done; there is NO Indigenous consent for the project -- and rightly so.
8232	Rebecca Terk	Dakota Rural Action	Additionally, no permits should be issued without a full cultural and historic survey of the site by teams assembled by affected area tribes. Because the EPA issued draft permits without these surveys, and without necessary tribal consultation, issues raised by the tribes were not considered in the process. This is a serious violation of treaty rights, as well as a violation of Section 106 of the National Historic Preservation Act. This process cannot move forward without consultation with and surveying by the indigenous peoples whose homelands these are, and whose future generations would be most affected by the contamination and destruction this project represents.
8181	Ex. 6 Personal Privacy (PP)	Individual	Please throw out your draft permits based on incomplete cultural information and start over now, with proper and meaningful Tribal consultation. Do a thorough, respectful and tribally-designed process for identification and protection of Native American cultural resources. It's the right thing to do and it's the law.
8050 (10/5 Hot Springs hearing)		Individual	My name is Dr. Lilias Jarding. I am, among other things, a Ph.D. in environmental policy, and I also come to you today as president of Clean Water Alliance. First things first: Cultural resources must be protected. EPA's attempts to remove consideration of cultural and spiritual issues is illegal.
07462 (Hot Springs hearing)		Individual	Number one is we need to conduct independent cultural surveys on the Dewey-Burdock area.
07462		Individual	The thing that I missed last time was, I wanted to say that what I saw at Standing Rock was nobody -- nobody looked over on the lands. Nobody respected what was there, you know.

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(Hot Springs hearing)			I want proper geographic surveys of the land that you guys are going to be putting whatever holes in. Probably shouldn't do that anyways. I'd say no to that, just for the record. But I mean, like one of the most horrible things I've ever seen is when, you know, these people were allowed to make this pipeline path or whatever, people watched bones being pushed up out of the ground. I don't know how many people heard about it or saw pictures of it, but you could see it when that ground was, you know, pulled up. There were bones sticking out of it. That was people's ancestors, family members, grandparents, mother, fathers, children. It's a horrible thing, you know, that was allowed to happen. So you know, it has to be voiced that that should be, you know, looked at, and it should definitely be looked at while under supervision of tribal members or something. Because from the sounds of it, from earlier testimonies, even if there are, you know, things found, Oh, let's just sweep it under the rug and pretend it wasn't there, you know. Oh, it's just meaningless.
07463 (Edgemont hearing)	Ex. 6 Personal Privacy (PP)	Individual	They [the Lakota people] should be consulted, and they are the ones to approve the cultural, archaeological, and religious surveys that take place, and they should have the final say about what goes on here. [...] This project should not go forward at all unless and until the old mines have been cleaned and tribal-approved cultural, religious, and archaeological surveys take place, and true, genuine consultation with the tribes happens.
07463 (Edgemont hearing)		Individual	I ask again that you have tribally approved archaeologists, tribally approved surveyors, and understand that we are fighting for the future, and we should not be going up against our own government agencies to protect our future.
07464	N/A	(mass mailer text)	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
07642 (Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	Genuine tribal consultation should occur. Tribal-approved cultural and archaeological surveys should occur. [...] The tribal sovereignty and cultural issues have not been genuinely addressed.
8050 (10/5 Hot		Individual	And even saying that the cultural protections have been served, I've heard tell that all the examination of the cultural site was done under a great deal of snow and couldn't have possibly been done.

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Springs hearing)			
07462 (Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	As a rancher, I have to have a cultural resource study done so that I can do work on my property. So I see no reason why a foreign company should be exempt from this cultural resource study. The cultural resources that you were wondering about and stuff like that, as a rancher, when I want to put a pipeline and I'm several miles away from where you're going to put this site, I have to do this study. And the reason why is because pre-historic Indians were in the area. Well, then you just follow the trail, and it goes up to Craven Canyon, where the petroglyphs are. And anyway, that's relatively close to where the mining is. So I'm quite sure all the Natives that have spoken here really know that, you know, this is a sacred ground to them.
07459 (Valentine hearing)		Individual	By allowing this permit, you're going to desecrate what was there before. We have burial grounds. We have ceremonial sites. We have campsites. And our people still trek to the Black Hills to pray, even today.
00565	Nick Tilsen	Thunder Valley Community Development Corporation	Cultural resources are mentioned, but no analysis is done. A thorough cultural analysis should be part of any consideration of an area that is of critical spiritual significance to the Lakota. These omissions are glaring and thoroughly undermine the Environmental Justice section As mentioned above, the analysis of cultural and historical resources must not ignore the current cultural importance of those resources and their modern uses. The Black Hills are sacred to the Lakota, much like Jerusalem is to the Jews or the Vatican is to Catholics. Sacred cultural and historical resources must be fully protected, and doing this relies on the involvement of knowledgeable Lakota people, plenty of time, adequate finances, and the willingness to put the sacred above the dollar. Some places should not be subjected to uranium mining. Lakota people who are sharing their ancient knowledge, which they have spent a lifetime learning, should be offered compensation for their efforts and given credit for resulting information. [...] The EPA suggests the possibility of relying on the Nuclear Regulatory Commission's NHPA analysis. This would be disastrous. The NRC has floundered for years in its feeble attempt to do a NHPA analysis. It began the analysis without taking the need for full tribal consultation seriously, and it has dragged its feet through a piecemeal and incomplete process since then, despite legal direction to do a proper analysis. The EPA can - and should - do better.

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00528	David Frankel	Aligning for Responsible Mining	NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes.[30] This is despite testimony from NRC Staff witness Ms. Yilma as to the NRC Staff's recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage.[31] NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements.[32] NRC Staff witness Ms. Yilma testified that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux , NRC Staff specifically de 33 liberated about conducting an ethnographic study of the site to ensure incorporation of Sioux cultural and historic perspectives, but "the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach."[34] **Despite admitting that it was "necessary" to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document.**[35] This testimony and evidence establishes NRC Staff's failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. Admissions and testimony confirm that NRC Staff deferred to the applicant's unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise. **As a result of Powertech's and NRC Staff's inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site, EPA cannot rely on the NRC's NEPA documents to assess the cultural resources impacts of the proposed mine.** **Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA.** [...] **6. Comments on measures to avoid, minimize or mitigate potential adverse effects on historic and traditional cultural properties pursuant to Section 106 of the National Historic Preservation Act and 36 CFR § 800.2(d) and § 800.6(a)(4)** The Environmental Protection Agency National Historic Preservation Act Compliance and Review for the Proposed Dewey-Burdock In-Situ Uranium Recovery Project, which is part of the Administrative Record

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			for the UIC Class III Draft Area Permit, discusses how the EPA intends to comply with Section 106 of the National Historic Preservation Act. To date, the EPA has done nothing meaningful to avoid, minimize or mitigate potential adverse effects on historic and TCPs under Section 106 other than rely on the promises of an insolvent and corrupt organization. Therefore, there has been a complete failure to provide measures required by Section 106 of NHPA and 36 CFR § 800.2(d) and § 800.6(a)(4).
00537	Nadine Padilla Travis Miller	Native Research Solutions	Cultural data, including archaeological and burial sites, need to be inventoried in order to ensure sites are protected. Making a decision on the permits and exemption now without the necessary data is unwise and premature. Proceeding with the permits before all the information is available denies the public a meaningful opportunity to participate and be heard.
00537	Nadine Padilla Travis Miller	Native Research Solutions	**III. The Federal Government Has a Legally-Recognized Federal Trust Responsibility to Protect Native American Sacred Sites.** While the necessary cultural data still needs to be collected and analyzed and the granting of the mine permits is premature without this cultural data, one thing is certain- the federal government has a trust responsibility to protect Native American sacred sites. The National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Religious Freedom Restoration Act, and Executive Order No. 13007 all offer protections for Native American sacred sites and weigh in favor of denying the permits. … The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests
00555	Dave Archambault II	Standing Rock Sioux Tribe	Section 106 of the National Historic Preservation Act establishes requirements for the identification of the impacts of a federal undertaking on cultural resources. Section 106 requires that: The head of any Federal agency ... prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. (54 U.S.C. §306108). The identification efforts of historic properties under section 106 must include identification of traditional cultural properties of Indian Tribes in the area of potential effects. Under section l01(d)(6) of the act, Native American traditional cultural properties are eligible for inclusion on the National Registry: Property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register (of Historic Places).

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			(54 U.S.C. §302706(a)). The section 106 regulations prescribe the process for identifying historic properties and traditional cultural properties; evaluating their eligibility for the National Register; determining whether there are adverse impacts and resolving or mitigating those impacts. (36 CFR Part 800). … 36 CFR §800.2(c)(ii). The role of Tribes is further delineated for the identification of traditional cultural properties in section 4 of the regulations: In consultation with the SHPO/THPO, the agency official shall: (d)etermine and document the area of potential effects ... (and) Gather information from any Indian tribe or Native Hawaiian organization ... to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them. 36 CFR §800.4(a). The consultation and identification efforts must be reasonable and in good faith: ... in consultation with the ... THPO, and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, (to include) ... consultation. 36 CFR §800.4(b).
07459 (Valentine hearing)	Ex. 6 Personal Privacy (PP)	Individual	And I'd also like to ask that there be a full cultural and historical survey of the area to determine any culturally significant or spiritually significant sites to our tribe and other local tribes.
07460 (5/8 Rapid City hearing)		Individual	We are also requesting, as someone from Standing Rock, to have true and meaningful consultation with tribes, not to just sit there and listen, but to have true, meaningful consultation with tribally approved archaeologists and tribally approved surveyors, because (Speaking in indigenous language), the Black Hills belong to us. They are historical, they are spiritually significant to our people, and we stand in opposition of the uranium mine. Mni Wiconi. Water is life.
07461		Individual	The other reason is that the He Sapa, or the Black Hills, is treaty territory. Under the 1851/1868 Fort Laramie Treaty and under law, it is mandated to consult with the tribal governments as government-to-government relations

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(5/9 Rapid City hearing)			This includes following the National Historical Preservation Act rules and regulations with the tribes. However, South Dakota and federal agencies involved in permitting this uranium mining have continuously ignored tribal nations and their expert testimony regarding cultural properties and sacred sites.
8120	Anonymous	Northern Cheyenne Tribal Historic Preservation Office	Finally, it is essential that all consulting tribes are given the opportunity to participate in the identification of cultural resources that have not been identified by tribes, as well as to address the implications this project will have on various resources of religious and cultural significance to their nation.
00523	Harold Frazier	Cheyenne River Sioux Tribe	• Historic. spiritual, and cultural resources: There are numerous sites of historic, spiritual, and cultural significance to the Tribe throughout the Tribe's large aboriginal territory, but especially within the boundaries of the lands reserved to the Tribe in the *Treaty of Fort Laramie with the Sioux, Etc.*, 11 Stat. 749 (Sep. 17, 1851).
8291	Charmaine White Face	Defenders of the Black Hills	2. Cultural Resources In their Request for Determination of Special, Exceptional, Critical or Unique Lands and Intent to Operate on Aug. 20, 2008, to the SD Department of Environment and Natural Resources regarding Cultural Resources in the land area where they wish to conduct their ISR mining operation, Powertech/ Azarga, on page 10 stated that a Level III Cultural Resources Evaluation was conducted by the Archaeology Laboratory, Augustana College, Sioux Falls, SD. The report from Archaeology Laboratory states: "The small number of Euroamerican sites documented was not unanticipated given the peripheral nature of the project area in relation to the Black Hills proper. The disparity existing between the number of historic [since 1874 -Author's note] and prehistoric sites [non-Euroamerican -Author's note] observed in 'the project area is also not unexpected; **however, the sheer volume of sites documented in the area is noteworthy.** [Author's emphasis] The land evaluated as part of the Level III cultural resources evaluation has an average site density of approximately 1 site per 8.1 acres. Even greater site densities were reported in 2000 during the investigation of immediately adjacent land parcels for the Dacotah Cement/land exchange (Winham et al., 2001). This indicates that the permit area is not unique, in regards to the number of documented sites, and is typical of the periphery of the Black Hills." The Cultural Resources that are not Euroamerican and considered prehistoric in the planned mining area belong to Indigenous peoples including members of the Sioux nation. This planned mining area was an ancient burial ground not recorded by Euroamericans but

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			passed down through the generations in oral traditions. These cultural resources would also include teepee rings, fire circles and sweat lodge areas. The Indigenous families or clans traveled to this area to bury the remains of their deceased, or place them in trees, depending on the peoples' traditions. During this process, they would also need to stay in the area a few days; hence the teepee rings and fire circles. Ceremonies were also held in certain places and our organization discovered a sacred site that is located within the mapped mining area. However, this information has not been made public due to the protection of this site from exploitation. Although our organization submitted photographs of gravesites in this planned mining area to both the Nuclear Regulatory Commission and the SD Minerals and Environment with our recommendation that the land area must not be disturbed, our recommendation was totally ignored. In addition, this author was with a group from the SD Department of Environment and Natural Resources when cultural resources were driven over by vehicles, and people walked right over cultural resources without noticing them and their locations. There is a large number of prehistoric cultural resources in this proposed mining area that must be protected as they must not be disturbed nor can they be mitigated. Many other places in the world prize their areas of ancient treasures that are irreplaceable, and those countries protect and preserve such areas to the best of their ability. This proposed mining area is a part of just such a rare treasure and must be protected and preserved. Recommendation: An extensive cultural survey needs to be completed by members of the Sioux Nation who know and practice our old traditions and can show exactly where these cultural resources are located if they are permitted to do so.
00294	Ex. 6 Personal Privacy (PP)	Individual	Direct impacts to cultural resources are a significant topic that should be discussed in the policy. According to the Tribal Energy and Environmental Information Clearinghouse, increases in human access and disturbances can result in unauthorized removal of artifacts around the site (Tribal Energy and Environmental Information Clearinghouse, 2017).
00523	Harold Frazier	Cheyenne River Sioux Tribe	**b. The Dewey-Burdock Uranium Mine Poses a Serious Threat to the Tribe's Cultural Resources** The site of the proposed Dewey-Burdock Uranium Mine is within the Tribe's 1851 territory. Specifically it is in the vicinity of the Black Hills, among the most sacred sites to the Lakota people. Our people lived in this area, hunted in this area, and made religious pilgrimages in this area from time immemorial. Our Tribal Historic Preservation Officer advises that the site of the proposed mine has the potential to contain numerous sites of cultural and spiritual significance. While it is our understanding that some efforts have been made to identify cultural resources in the project area, the EPA has not consulted with the Tribe pursuant to the National Historic Preservation Act.

2 Cultural Survey & Analysis of Cultural Resources should be done			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
00103	Ex. 6 Personal Privacy (PP)	Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00106		Individual	...to consult with the Sioux nation before any action, to conduct tribally approved archeological and cultural surveys...
00108		Individual	• A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected. • Tribally defined consultation...
00136		Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00164		Individual	I also want tribally defined consultation as well as full tribally approved archeological and cultural surveys done.
00172		Individual	Subject: Permits for Dewey-Burdock Uranium Mine [...] A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected
8050 (10/5 Hot Springs hearing)		Individual	My name is Debra White Plume. I am Oglala Lakota and Cheyenne from the beautiful Pine Ridge homeland. I am from the 1851 and 1868 treaty territory lands and waters of ancestral territory, great cultural significance. Your process wants us to identify sacred sites, but Mother Earth is a sacred site. We have sacred places here which correlate to star constellations. That's how old we are. We can't name for you a specific date. It goes back too far.
8131	Anonymous	Individual	If that's not enough, our Native friends say there has been no investigation into what could be a sacred site with graves and sacred objects buried here.
8136	Anonymous	Individual	Additionally, it is unconscionable to think of doing this without protecting areas sacred to the Lakota, and no authentic examination this area has been done to show where the areas might be. Stop this project NOW!
00031	Ex. 6 Personal Privacy (PP)	Individual	4. Consideration of legal and cultural impacts In addition to the possibility of technology failure, the cultural significance to the area must also be taken into consideration. The Black Hills have been home to the Lakota, or the Sioux tribe, for generations. Because of this, the EPA is required to comply with the National Historic Preservation Act

2 Cultural Survey & Analysis of Cultural Resources should be done			
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			under the EPA's Tribal Policy on Consultation and Coordination with Indian Tribes. These people have been interested in the potential outcomes of the Powertech operation, and as such have requested the EPA provide them with a concise and well researched identification of potential effects of the proposed project. These are historic and sacred lands, and as such the EPA continues to provide the tribe with as much information as possible, however these potential cultural impacts must be weighed against the benefits.
8050 (10/5 Hot Springs hearing)	Karen Ellison	Individual	My name is Karen Ellison. The EPA wants to disregard the cultural impact of the proposed Dewey-Burdock uranium mining project and evaluate impacts from only a technical and scientific perspective. The dictionary defines "culture" as the customs, art, history, and intellectual achievements of a people or nation. Disregarding indigenous culture in your evaluation is just a perfect reflection of what our American culture has become. Disregarding indigenous culture in your evaluation shows just how little you know about indigenous culture. Culture is so much more than arrowheads in a field somewhere or an ancient burial site. The EPA is responsible for its own cultural and scientific analysis, and you can't rely on the NRC's flawed, inadequate, and still-tied-up-in-court record on cultural impact of this project.

3 EPA should not rely on the NRC NHPA process and PA[redacted]			
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00565	Nick Tilsen	Thunder Valley Community Development Corporation	The EPA suggests the possibility of relying on the Nuclear Regulatory Commission's NHPA analysis. This would be disastrous. The NRC has floundered for years in its feeble attempt to do a NHPA analysis. It began the analysis without taking the need for full tribal consultation seriously, and it has dragged its feet through a piecemeal and incomplete process since then, despite legal direction to do a proper analysis. The EPA can - and should - do better.
8184	Anonymous	Individual	For instance, while EPA said that the NRC's review of cultural resources "appears sufficient," actually, their review was ruled "not sufficient" by a federal court. Therefore, EPA must perform a cultural resource review that follows federal law and no draft permits should be issued until meaningful consultation with the Tribes takes place. EPA must consider potential negative impacts to human health from a cultural perspective, as well as from a technical/scientific perspective.

3 EPA should not rely on the NRC NHPA process and PA[redacted]			
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8252	Lilias Jarding	Clean Water Alliance	Piggybacking on the failed NRC cultural resources process would not fulfill the EPA's responsibilities in this matter any more than it has fulfilled the NRC's responsibilities. [...]
8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	My name is Dr. Lilias Jarding. I am, among other things, a Ph.D. in environmental policy, and I also come to you today as president of Clean Water Alliance. You also should not piggyback on an insufficient Nuclear Regulatory Commission process that's been declared insufficient via federal appeals court.
8050 (10/5 Hot Springs hearing)		Individual	The second thing that is really concerning is that in these documents, you say that the Nuclear Regulatory Commission's review of cultural resources appears sufficient. The Atomic Safety Licensing Board disagrees with you. The D.C. District Court of Appeals disagrees with you. The NRC's analysis of cultural resources has been deemed illegal, and so it doesn't give me a lot of confidence in the EPA that your documentation doesn't reflect that. Response: The NHPA Document says that the historic properties identified under the Class III surveys appear to be sufficient...there is also a caveat about the outstanding tribal cultural surveys
8268		Individual	Next, **the EPA's reliance upon the Nuclear Regulatory Commission's cultural resources analysis is wholly inappropriate**, given that the NRC process remains tied up in ongoing and unresolved litigation brought by Oglala Sioux Tribe. In 2015, the Atomic Safety and Licensing Board ruled that the NRC staff had failed to comply with the National Historic Preservation Act in this matter. In 2018, the US Court of Appeals for the District of Columbia upheld that decision, ruling again that the NRC staff had failed to properly identify and consider impacts to cultural resources related to the proposed Dewey-Burdock project. Therefore, when the EPA notes in its draft National Historic Preservation Act Compliance document that the NRC's review of cultural resources "appears sufficient," they are contradicting both the ASLB and the DC Court of Appeals. The NRC Programmatic Agreement, referenced in the National Historic Preservation Act Compliance document, is not valid, because one of the conditions of the PA, that a cultural resources survey be conducted, has not yet happened.
00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	Turning to the NHPA document, EPA should not rely on the NRC's section 106 review and consultation. That process is grossly incomplete. A section 106 review should, of course, have been completed before draft permits or a draft aquifer exemption were issued. At this point, the EPA should conduct its own review to insure that different viewpoints are brought to bear on the situation and to insure that thorough work is done by the federal agencies that are involved in the Dewey-Burdock project.

3 EPA should not rely on the NRC NHPA process and PA			
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00528	David Frankel	Aligning for Responsible Mining	Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented. […] conducted on the Dewey-Burdock site that took into account any Sioux cultural resources. **EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey**. Further, the NRC affirmed the Board's ruling that "Meaningful consultation as required by [the NHPA] has not occurred." Id. This ruling was made despite the existence of the Programmatic Agreement, ("PA") which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations. However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. **Not a single Tribe has agreed to be a signatory on the PA meaning the PA has been literally shoved down the Tribes' collective throats.** The critique of the terms of the PA from the Tribes was severe.[11] In these letters, the Oglala Sioux Tribe identifies specific terms in the PA that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts.[12] The Standing Rock Sioux Tribe raised similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the PA.13 Unfortunately, NRC Staff did not provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes' concerns. These failures to comply with NEPA and NHPA are being highly scrutinized by federal courts. See *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, (D.C. Cir., slip. op. June 14, 2017).14 In that case, the Court ruled that the agency failed to include a large enough area in its analysis (similar to the comments herein that Buffalo Gap, SD, should be included in the EJ Analysis) and also that an EIS should have been done. These same failures are present in this EPA UIC permit decision. This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources.

3 EPA should not rely on the NRC NHPA process and PA			
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			In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. *See* May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation). As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council.[15] Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property. Even the Augustana Class III archaeological survey upon which EPA attempts to rely recognizes that "the sheer volume of sites documented in the area is noteworthy."[16] Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site. The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners…." Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject."17 The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources.
00546	Troy S Weston	Oglala Sioux Tribe	[…] Specifically, the NRC affirmed the Atomic Safety Licensing Board's express ruling that: The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources. *In the Matter of Powertech USA, Inc.*, LBP-15-16, 81 NRC 618, 708 (2015). Thus, EPA's reliance on the NRC SEIS is entirely misplaced. Indeed, there has never been a cultural resources survey conducted on the

3 EPA should not rely on the NRC NHPA process and PA			
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			Dewey-Burdock site that took into account any Sioux cultural resources. Moreover, NRC has divided its project approval into segments rendering the scope of NRC's consultation inapplicable to EPA's UIC analysis and approvals. As such, EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey. Further, the NRC affirmed the Board's ruling that "Meaningful consultation as required by [the NHPA] has not occurred." Id. This ruling was made despite the existence of the Programmatic Agreement, which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations. However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. Indeed, not a single Tribe has agreed to be a signatory on the PA. The critique of the terms of the PA from the Tribes was severe. See attached February 5, 2014 Letter from Oglala Sioux Tribe President Bryan Brewer to NRC Staff; February 20, 2014 email from Standing Rock Sioux Tribe Historic Preservation Officer to NRC Staff (marked Exhibit NRC-016). In these letters, the Oglala Sioux Tribe identifies specific terms in the Agreement that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts. Id. at 2. The Standing Rock Sioux Tribe raises similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the Agreement. Id. at 7-20. Unfortunately, NRC Staff did not provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes' concerns. This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources. In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. *See* attached May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation). As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe, that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council. See Ordinance No. 11-10 of the Oglala Sioux Tribal Council

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			of the Oglala Sioux Tribe. Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property. Even the Augustana Class III archaeological survey upon which EPA attempts to rely recognizes that "the sheer volume of sites documented in the area is noteworthy." Report at page 7.8. Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site. The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech-produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners…. Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject." See attached Powertech Opening Statement at 34. The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources. The primary reliance by EPA on the Augustana study is not supportable - particularly given the testimony at the NRC hearing. Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically and there will be probably sites that need to be addressed as traditional cultural properties." See attached August 19, 2014 Transcript at p. 858, lines 4-8; 12-20. See also August 19, 2014 Transcript at p. 859, lines 18-24 (Dr. Hannus) ("And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that."). Applicant witness Dr. Luhman reiterated this point, confirming that "a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn't necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves." August 19, 2014 Transcript at p. 762, line 24 to p.763, line 6. See also, August 19, 2014 Transcript at p. 764, lines 14-18 (OST witness Mr. Mesteth) ("[w]e're the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it's not accurate. Some of the information is not accurate. And that's why we object in certain situations."); p. 765, line 25 to p. 766, line 9 (Mr. Mesteth). Indeed, Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site. August 19, 2014 Transcript at p. 843, lines 4-7. Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey

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			work at the site, with the exception of the three non-Sioux tribes that submitted reports. August 19, 2014 Transcript at p. 818, lines19-22. Upon the Sioux Tribes' request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review. August 19, 2014 Transcript at p. 784, lines 20-25 (Dr. Sabastian). However, Dr. Sabastian also testified that she also has never been involved in any kind of "actual physical on-the-ground TCP survey-kind of thing that we're talking about." August 19, 2014 Transcript at p. 846, lines 9-21. Lastly, Mr. Fosha testified that he worked with the applicant and Augustana "from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field." August 19, 2014 Transcript at p. 865, lines 3-6. Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take "throughout the process," but only related to the State of South Dakota permit, and having "nothing to do with the NRC permit or anything like that" - even remarking that "up until the point where Augustana was nearly finished I was the only review agency on this project." August 19, 2014 Transcript at p. 865, line 23 to p. 866, line 5. Despite Mr. Fosha being the only person giving any direction to Dr. Hannus' Augustana team, Mr. Fosha testified that his experience and focus was solely "the field of archaeology" and not culturally as to the concerns of the Tribes. August 19, 2014 Transcript at p. 867, lines 14-20. The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus' testimony had confirmed that Augustana had no culturally relevant experience. August 19, 2014 Transcript at p. 818, lines19-22 (Dr. Luhman). Dr. Luhman did testify that "in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it typically is at the same time when there is an ongoing consultative and survey process." August 19, 2014 Transcript at p. 836, line 18 to p. 837, line 2. Consistent with the admitted lack of any culturally relevant experience or focus by any of the prior analysts in reviewing sites for cultural resource impacts, at the live hearing NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes. August 19, 2014 Transcript at p. 821, lines 3-7; *id.* at p. 875, lines 6-11. This is despite testimony from NRC Staff witness Ms. Yilma as to the Staff's recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage. August 19, 2014 Transcript at p. 774, line 21 to p. 775, line 1. See also,

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			August 19, 2014 Transcript at p. 771, lines 1-7 (Ms. Yilma). NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements. August 19, 2014 Transcript at p. 776, line 22 to p. 777, line 3; p. 790, lines 1-17. Indeed, NRC Staff witness Ms. Yilma testified that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux (see August 19, 2014 Transcript at p. 810, lines 16-22), NRC Staff specifically deliberated about conducting an ethnographic study of the site to ensure incorporation of Sioux cultural and historic perspectives, but "the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach." August 19, 2014 Transcript at p. 846 line 22 to 847, lines 8. Despite admitting that it was "necessary" to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document. August 19, 2014 Transcript at p. 821, lines 3-7 (Ms. Yilma); id. at p. 875, lines 6-11 (Ms. Yilma). Taken together, this testimony and evidence establishes NRC Staff's failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. In answering a follow-up question by Chairman Froehlich to Dr. Hannus asking whether, as Dr. Sabastian had testified, did Dr. Hannus believe that identification of Sioux traditional sites "depends on the knowledge and traditional culture practitioners," Dr. Hannus responded: "Yes, I mean, I absolutely would have to, because there isn't any other way the framework that I work within functions." August 19, 2014 Transcript at p. 860, lines 1-8. In short, admissions and testimony confirm that NRC Staff deferred to the applicant's unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise. As a result of Powertech's and NRC Staff's coordinated inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site before approvals are given and the aquifers are impacted, EPA cannot rely on the NRC's NEPA documents to assess the cultural resources impacts of the proposed mine. Instead, the scope of EPA's consultation must match the scope of the UIC duties, which apply to the full life of the proposed mine, not the initial set of NRC-approved segments. Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA. Rather, EPA must delay any permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources. Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal

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			Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented.
00555	Dave Archambault II	Standing Rock Sioux Tribe	(2) The Nuclear Regulatory Commission failed to conduct a good faith identification of traditional cultural properties in the project area, in violation of National Historic Preservation Act section 106 and 36 CFR §800.2(C)(2)(ii); and
00555	Dave Archambault II	Standing Rock Sioux Tribe	2. The Nuclear Regulatory Commission Failed to Properly Identify Traditional Cultural Properties Section 106 of the National Historic Preservation Act establishes requirements for the identification of the impacts of a federal undertaking on cultural resources. Section 106 requires that: The head of any Federal agency ... prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. (54 U.S.C. §306108). The identification efforts of historic properties under section 106 must include identification of traditional cultural properties of Indian Tribes in the area of potential effects. Under section l01(d)(6) of the act, Native American traditional cultural properties are eligible for inclusion on the National Registry: Property of traditional reiigious and cultural importance to an Indian Tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register (of Historic Places). (54 U.S.C. §302706(a)). The section 106 regulations prescribe the process for identifying historic properties and traditional cultural properties; evaluating their eiigibiiity for the National Register; determining whether there are adverse impacts and resolving or mitigating those impacts. (36 CFR Part 800). The statute requires consultation with Indian Tribes on the identification of the traditional cultural properties which may be impacted by a federal undertaking: ... a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property (54 U.S.C. §302706(a)). The regulations explain: Section 10l(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking.... The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including

3 EPA should not rely on the NRC NHPA process and PA			
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			those of traditional, religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. 36 CFR §800.2(c)(ii). The role of Tribes is further delineated for the identification of traditional cultural properties in section 4 of the regulations: In consultation with the SHPO/THPO, the agency official shall: (d)etermine and document the area of potential effects ... (and) Gather information from any Indian tribe or Native Hawaiian organization ... to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them. 36 CFR §800.4(a). The consultation and identification efforts must be reasonable and in good faith: ... in consultation with the ... THPO, and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, (to include) ... consultation. 36 CFR §800.4(b). To the contrary, the NRC, as lead agency, in cooperation with PowerTech, refused to consult in good faith with the Tribes as required by the section 106 regulations. 36 CFR §800.3(f)(2). Early discussions about Tribal participation in the identification of traditional cultural properties went nowhere. NRC and PowerTech refused to establish a meaningful area of potential effects (APE) in consultation with the Tribes. They were uncooperative and unresponsive in the limited discussions on a scope of work and funding for Tribal traditional cultural properties surveys. As a result, the NRC failed to properly identify traditional cultural properties that are directly or indirectly impacted by the proposed Dewey Burdock UIC wells in the APE, in violation ofNHPA section l0l(d)(6)(B), and 36 CFR §§800.2(c)(ii) & 800.4(a) & (b). The Standing Rock Sioux Tribe THPO documented our Tribe's fruitless efforts for the requisite section 106 consultation and Tribal role in the survey of traditional cultural properties in the sacred Black Hills. The Standing Rock Sioux Tribal Historic Preservation Office sent correspondence dated February 4, 2014 to provide comments on a draft Programmatic Agreement. None of the comments were incorporated into the Final PA, and the stated concerns with the section 106 process were totally ignored. Correspondence from our THPO dated November 5, 2012 and August 30, 2011 likewise received no response. There was no consultation on the identification of TCPs. As stated above, the Black Hills are sacred Treaty lands of the Standing Rock Sioux Tribe under the 1868 Fort Laramie Treaty. The NRC actually attempted to rely on consultations with the Three Affiliated Tribes of Fort Berthold and Turtle Mountain Band of Chippewa Indians for the consultation on TCPs of the Oceti

3 EPA should not rely on the NRC NHPA process and PA[redacted]			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
			Sakowin Oyate. The consultation requirement applies to "any Indian tribe that attaches religious and cultural significance to historic properties" (36 CFR §800.2(c)(2)(ii)) or "located on ancestral, (or) aboriginal. .. lands." (36 CFR §800.2(c)(2)(ii)). For the Black Hills, that applies to the Oceti Sakowin Oyate and Northern Cheyenne Nation. The NRC cannot simply select any Indian Tribe willing to consult on its project. That is what occurred with Dewey Burdock.

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Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
00555	Dave Archambault II	Standing Rock Sioux Tribe	The EPA administrative record does not demonstrate compliance with these [NHPA] requirements.
8252	Lilias Jarding	Clean Water Alliance	After all that, your failure to consider these issues is in clear disdain of the National Historic Preservation Act, the environmental review process, and the many comments that you have received. It should be clear to you that water is a spiritual issue, a cultural issue, and a treaty issue. You cannot separate water from spirituality or water from culture or water from treaties and say that you will only consider one or the other. We urge you to look at these matters in more depth and to give full consideration to Tribal concerns, followed by appropriate action - the denial of these permits. … Piggybacking on the failed NRC cultural resources process would not fulfill the EPA's responsibilities in this matter any more than it has fulfilled the NRC's responsibilities. […]
00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	Note that both EJ and NHPA analysis should have been completed as part of a full tribal government-to-government consultation before the draft permits or aquifer exemption were released. There has, at this point, already been a violation of trust by the EPA that will be difficult or impossible to remedy. The EPA must also do thorough tribal consultation. The existing documents indicate that this process has barely begun, and yet draft permits have been issued. This makes a mockery of the consultation process, which should be completed well before draft permits are issued, so that the resulting information can be analyzed. The EPA must halt all further action until mutually-satisfactory, government-to-government

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			consultation is completed. All cultural and historical properties must be identified by Lakota experts, who should be paid if they so desire, and given complete protection.
8252	Lilias Jarding	Clean Water Alliance	Unfortunately, these steps in the right direction [acknowledging the cultural, spiritual, and legal ties that the Lakota and other indigenous nations have to the Black Hills in the EJ analysis] are followed by EPA's complete dismissal of indigenous cultural and spiritual issues … "The Black Hills is a sacred site to many Tribal Nations and Tribal members. Tribal Nations and Tribal members describe impact by historic and present-day mining activities in the Black Hills not only with regard to environmental and other impacts to physical resources, but also based their interests in the preservation of the area for spiritual, religious and cultural purposes. While recognizing these interests, the EPA's authorities to address potential impacts from its SDWA actions are limited to the protection of underground sources of drinking water." After all that, your failure to consider these issues is in clear disdain of the National Historic Preservation Act, the environmental review process, and the many comments that you have received. It should be clear to you that water is a spiritual issue, a cultural issue, and a treaty issue. You cannot separate water from spirituality or water from culture or water from treaties and say that you will only consider one or the other. We urge you to look at these matters in more depth and to give full consideration to Tribal concerns, followed by appropriate action - the denial of these permits. Related topics that should be studied - but that are not covered in the current documents - include: • Specific measures to protect publicly-known cultural, historical, and sacred sites. • A process other than allowing non-qualified Powertech staff to self-monitor on cultural issues, determine the importance of sites as they're encountered by heavy equipment, and then perhaps have time to arrange for the protection of cultural and/or sacred sites. This is a recipe for destruction of cultural sites. Some of us have friends who are heavy equipment operators or have been heavy equipment operators, and we know the industry standard. • Protection of landscape-scale cultural and spiritual sites.
00036	Ex. 6 Personal Privacy (PP)	Individual	4. Meaningful involvement and consultation Adequate attention to this history would further require the EPA revisit its existing approach to meaningful involvement and tribal consultation with regard to the proposed Dewey-Burdock project. While the EPA docket detailing the draft Class III and Class V permits for the project contains a draft document detailing plans for compliance with the National Historic Preservation Act (NHPA), including plans for tribal consultation, these plans do not feature as part of the EJ analysis, which we strongly feel they should. In this draft NHPA compliance document, the EPA details its plans to first conduct "inform and educate" sessions with tribes prior to beginning government-to-government consultation. The EPA

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			notes in this document that after meeting with Oglala Sioux Tribal leaders, the EPA "was informed that the Tribe considered these meetings to be "inform and educate" meetings rather than government-to-government consultation." Such a difference in interpretation cannot characterize a legitimate consultation process, and we are left wondering why it is that meetings which the EPA considered to be consultative were instead considered to be informational by the Tribe. … At the hearings in May, Ms. Valois Shea reassured all those present that the EPA permits in question would not be issued until the tribal consultation process was completed. We hope the EPA takes this promise seriously and soon embarks upon a meaningful tribal consultation process which stands up not just to the standards of Lakota and other Native EJ scholars and activists, but indeed the stated standards of the EPA itself.
07461 (5/9 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	I find the EPA's acknowledgement of the cultural importance of the Black Hills to, quote, "many Native American tribes" and associated consultation processes inadequate and disappointing, as many people have noted today. In the -- from the National Historic Preservation Act document that was offered on the website, the -- the -- it was noted that the Oglala Sioux Tribe considered government-to-government consultation attempts to be inform-and-educate meetings. So when you have one side considering meetings to be government-to-government consultation and another side seeing those meetings as being inform-and-educate from one side, that's a problem. And therefore, when developing the National Historic Preservation Act draft compliance and Environmental Justice draft analysis documents, **the EPA's analysis is already flawed in saying that the site in question is not located on tribal lands.**
00039		Individual	PowerTech/Azarga must formally consult under Section 106 of NHPA with First Nations of the 1851 and 1868 Fort Laramie Treaties. The Oglala Sioux Tribe currently stands against, in opposition to uranium mining in the Black Hills. Indigenous people know it is not worth the risk!
00493		Individual	Regarding the identification of traditional cultural properties at the Dewey-Burdock Project site. Formal consultation under Section 106 of NHPA with First Nations of the 1851 and 1868 Fort Laramie Treaties must be completed. See attached documents for listing.
00523	Harold Frazier	Cheyenne River Sioux Tribe	The federal government has further obligations to tribes under the National Historic Preservation Act ("NHP A") and the Religious Freedom Restoration Act ("RFRA"). The NHPA was enacted to preserve historic resources in the midst of modern projects and requires agencies to fully consider the effects of its actions on historic, cultural, and sacred sites. Section 106 of the NHP A requires that prior to issuance of any federal funding, permit, or license, agencies must take into consideration the effects of that "undertaking" on historic properties. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. The Section 106 process also requires consultation between agencies and Indian Tribes on federally-funded or authorized "undertakings" that could affect sites that are on, or could be eligible for, listing in the National Register, including sites that are culturally significant to Indian Tribes. 54 U.S.C. § 302706. An agency official must "ensure" that

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			the process provides Tribes with "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties ... articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(H)(A). This requirement imposes on agencies a "reasonable and good faith effort" by agencies to consult with Tribes in a "manner respectful of tribal sovereignty." *Id.* 36 C.F.R. § 800.2(c)(2)(ii)(B); *see also id.* § 800.3(-f) (any Tribe that "requests in writing to be a consulting party shall be one").
00546	Troy S Weston	Oglala Sioux Tribe	Under section 106 of the National Historic Preservation Act, the EPA must consult with the Oglala Sioux Tribal Historic Preservation Office in the identification, evaluation and determination of potential impacts to historic properties by the proposed DeweyBurdock injection wells. (54 U.S.C. §306108). Under Executive Order 13175, the EPA must also engage in government-to-government consultation with the Oglala Sioux Tribal Council on the proposed UIC permit. (65 Fed. Reg. 67249). The attempt by EPA to combine Section 106 consultation meetings with government-to-government consultation resulted in confusion and lack of compliance with either consultation requirement.
00546	Troy S Weston	Oglala Sioux Tribe	EPA FAILED TO COMPLY WITH THE CONSULTATION REQUIREMENTS OF NHPA SECTION 106 Under Section 106 of the National Historic Preservation Act, "The head of any Federal agency ... prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property." (54 U.S.C. §306108). In the administrative record, EPA has acknowledged that the need to comply with this requirement. However, EPA's *National Historic Preservation Act Draft Compliance and Review Document* fails to demonstrate compliance with NHPA Section 106. The lack of NHP A Section 106 consultation is evidenced by the failure to address the OST THPOs concerns with the Programmatic Agreement, as discussed in the May 19, 2016 meeting between the Tribe and NRC. The lack of government-to-government consultation is evidenced by EPA's failure to comply with OST Ordinance No. 11-10 (*Ordinance Establishing Procedures for Government-to-Government Consultation Between the Oglala Sioux Tribe and the United States).* Ultimately, EPA failed to comply with the consultation requirements of federal law, and the Dewey-Burdock UIC permit applications must be denied accordingly. I further express my support for the related concerns of the consolidated intervenors in this docket, as well as the testimonies of the Tribal Historic Preservation Officers of the *Oceti Sakowin Oyate*. The concerns of the Oglala Sioux Tribe must be fully considered and acted upon by EPA. Approval of the Dewey-Burdock injection well application would violate the 1851 and 1868 Fort Laramie Treaties. Consequently, it violates federal and international law. It poses extreme risk to the waters of the Oglala Sioux Tribe, reserved under the Winters Doctrine. The EPA has given no consideration to these valuable property rights of our Tribe. Important consultation requirements under NHPA Section 106 and E.O. 13175 have been avoided and confused. EPA has failed to comply with these important consultation requirements. Further, the EPA has failed to consider the cumulative impacts of its actions on water

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			quality and impact on the Pine Ridge Indian Reservation. For these reasons and as further described in the attached addendum, the Dewey-Burdock Class V UIC permit application must be denied. Additional comments of the Oglala Sioux Tribe providing more detail are attached in the addendum hereto and incorporated herein. [...] **ADDENDUM TO OGLALA SIOUX TRIBE COMMENTS** [for Mike to review] The federal courts have addressed the strict mandates of the National Historic Preservation Act: Under the NHPA, a federal agency must make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a); determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8[c], 800.9(c). The [federal agency] must confer with the State Historic Preservation Officer ("SHPO") and seek the approval of the Advisory Council on Historic Preservation ("Council"). *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9th Cir. 1999). See also 36 C.F.R. § 800.8(c)(1)(v)(agency must "[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA."). The Advisory Council on Historic Preservation ("ACHP"), the independent federal agency created by Congress to implement and enforce the NHPA, determines the methods for compliance with the NHPA's requirements. See *National Center for Preservation Law v. Landrieu*, 496 F. Supp. 716, 742 (D.S.C.), *aff'd per curiam*, 635 F.2d 324 (4th Cir. 1980). The ACHP's regulations "govern the implementation of Section 106," not only for the Council itself, but for all other federal agencies. *Id*. See also *National Trust for Historic Preservation v. U.S. Army Corps of Eng'rs*, 552 F. Supp. 784, 790-91 (S.D. Ohio 1982). NHPA § 106 ("Section 106") requires federal agencies, prior to approving any "undertaking," such as the UIC permits for the proposed Dewey-Burdock Project, to "take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470(f). Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. See *Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 provides a mechanism by which governmental agencies may play an important role in "preserving, restoring, and maintaining the historic and cultural foundations of the nation." 16 U.S.C. § 470. If an undertaking is the type that "may affect" an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties in the area of potential effect. 36 C.F.R. § 800.4(d)(2). See also *Pueblo of Sandia*, 50 F.3d at 859-863 (agency failed to make reasonable and good faith effort to identify historic properties). The NHPA also requires that federal agencies consult with any "Indian tribe ... that attaches religious and cultural significance" to the sites. 16 U.S.C. § 470(a)(d)(6)(B). Consultation must provide the tribe "a

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			reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii). Apart from requiring that an affected tribe be involved in the identification and evaluation of historic properties, the NHPA requires that "[t]he agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." 36 C.F.R. § 800.1(c) (emphasis added). The ACHP has published guidance specifically on this point, reiterating in multiple places that consultation must begin at the earliest possible time in an agency's consideration of an undertaking, even framing such early engagement with the Tribe as an issue of respect for tribal sovereignty. ACHP, Consultation with Indian Tribes in the Section 106 Review Process: A Handbook (November 2008), at 3, 7, 12, and 29. Regarding respect for tribal sovereignty, the NHPA requires that consultation with Indian tribes "recognize the government-to-government relationship between the Federal Government and Indian tribes." 36 C.F.R. § 800.2(c)(2)(ii)(C). See also Presidential Executive Memorandum entitled "Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994), 59 Fed. Reg. 22951, and Presidential Executive Order 13007, "Indian Sacred Sites" (May 24, 1996), 61 Fed. Reg. 26771. The federal courts echo this principle in mandating all federal agencies to fully implement the federal government's trust responsibility. See *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981) ("any Federal Government action is subject to the United States' fiduciary responsibilities toward the Indian tribes"). Whenever there is ambiguity interpreting or applying NHPA, or other laws, the federal agency staff is not entitled to "deference to an agency interpretation of an ambiguous statutory provision involving Indian affairs. In the usual circumstance, '[t]he governing canon of construction requires that 'statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.' This departure from the [normal deference to agencies] arises from the fact that the rule of liberally construing statutes to the benefit of the Indians arises not from the ordinary exegesis, but 'from principles of equitable obligations and normative rules of behavior,' applicable to the trust relationship between the United States and the Native American people." *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) *quoting Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991); *Cobell v. Norton*, 240 F.3d 1081, 1101 (D.C. Cir. 2001) (*quoting Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, (1985)). […] Specifically, the NRC affirmed the Atomic Safety Licensing Board's express ruling that: The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources. *In the Matter of Powertech USA, Inc.*, LBP-15-16, 81 NRC 618, 708 (2015). Thus, EPA's reliance on the NRC SEIS is entirely misplaced. Indeed, there has never been a cultural resources survey conducted on the Dewey-Burdock site that took into account any Sioux cultural resources. Moreover, NRC has divided its

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			project approval into segments rendering the scope of NRC's consultation inapplicable to EPA's UIC analysis and approvals. As such, EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey. Further, the NRC affirmed the Board's ruling that "Meaningful consultation as required by [the NHPA] has not occurred." Id. This ruling was made despite the existence of the Programmatic Agreement, which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations. However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. Indeed, not a single Tribe has agreed to be a signatory on the PA. The critique of the terms of the PA from the Tribes was severe. See attached February 5, 2014 Letter from Oglala Sioux Tribe President Bryan Brewer to NRC Staff; February 20, 2014 email from Standing Rock Sioux Tribe Historic Preservation Officer to NRC Staff (marked Exhibit NRC-016). In these letters, the Oglala Sioux Tribe identifies specific terms in the Agreement that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts. Id. at 2. The Standing Rock Sioux Tribe raises similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the Agreement. Id. at 7-20. Unfortunately, NRC Staff did not provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes' concerns. This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources. In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. *See* attached May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation). As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe, that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council. See Ordinance No. 11-10 of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe. Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property. Even the Augustana Class III archaeological survey upon which EPA attempts to

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			rely recognizes that "the sheer volume of sites documented in the area is noteworthy." Report at page 7.8. Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site. The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech-produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners…. Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject." See attached Powertech Opening Statement at 34. The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources. The primary reliance by EPA on the Augustana study is not supportable - particularly given the testimony at the NRC hearing. Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically and there will be probably sites that need to be addressed as traditional cultural properties." See attached August 19, 2014 Transcript at p. 858, lines 4-8; 12-20. See also August 19, 2014 Transcript at p. 859, lines 18-24 (Dr. Hannus) ("And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that."). Applicant witness Dr. Luhman reiterated this point, confirming that "a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn't necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves." August 19, 2014 Transcript at p. 762, line 24 to p.763, line 6. See also, August 19, 2014 Transcript at p. 764, lines 14-18 (OST witness Mr. Mesteth) ("[w]e're the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it's not accurate. Some of the information is not accurate. And that's why we object in certain situations."); p. 765, line 25 to p. 766, line 9 (Mr. Mesteth). Indeed, Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site. August 19, 2014 Transcript at p. 843, lines 4-7. Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey work at the site, with the exception of the three non-Sioux tribes that submitted reports. August 19, 2014 Transcript at p. 818, lines19-22. Upon the Sioux Tribes' request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review. August 19, 2014 Transcript at p. 784, lines 20-25 (Dr. Sabastian). However, Dr. Sabastian also testified that she

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			also has never been involved in any kind of "actual physical on-the-ground TCP survey-kind of thing that we're talking about." August 19, 2014 Transcript at p. 846, lines 9-21. Lastly, Mr. Fosha testified that he worked with the applicant and Augustana "from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field." August 19, 2014 Transcript at p. 865, lines 3-6. Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take "throughout the process," but only related to the State of South Dakota permit, and having "nothing to do with the NRC permit or anything like that" - even remarking that "up until the point where Augustana was nearly finished I was the only review agency on this project." August 19, 2014 Transcript at p. 865, line 23 to p. 866, line 5. Despite Mr. Fosha being the only person giving any direction to Dr. Hannus' Augustana team, Mr. Fosha testified that his experience and focus was solely "the field of archaeology" and not culturally as to the concerns of the Tribes. August 19, 2014 Transcript at p. 867, lines 14-20. The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus' testimony had confirmed that Augustana had no culturally relevant experience. August 19, 2014 Transcript at p. 818, lines19-22 (Dr. Luhman). Dr. Luhman did testify that "in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it typically is at the same time when there is an ongoing consultative and survey process." August 19, 2014 Transcript at p. 836, line 18 to p. 837, line 2. Consistent with the admitted lack of any culturally relevant experience or focus by any of the prior analysts in reviewing sites for cultural resource impacts, at the live hearing NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes. August 19, 2014 Transcript at p. 821, lines 3-7; *id.* at p. 875, lines 6-11. This is despite testimony from NRC Staff witness Ms. Yilma as to the Staff's recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage. August 19, 2014 Transcript at p. 774, line 21 to p. 775, line 1. See also, August 19, 2014 Transcript at p. 771, lines 1-7 (Ms. Yilma). NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements. August 19, 2014 Transcript at p. 776, line 22 to p. 777, line 3; p. 790, lines 1-17. Indeed, NRC Staff witness Ms. Yilma testified that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux (see August 19, 2014 Transcript at p. 810, lines 16-22), NRC Staff specifically deliberated about conducting an ethnographic study of the site to

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			ensure incorporation of Sioux cultural and historic perspectives, but "the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach." August 19, 2014 Transcript at p. 846 line 22 to 847, lines 8. Despite admitting that it was "necessary" to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document. August 19, 2014 Transcript at p. 821, lines 3-7 (Ms. Yilma); id. at p. 875, lines 6-11 (Ms. Yilma). Taken together, this testimony and evidence establishes NRC Staff's failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. In answering a follow-up question by Chairman Froehlich to Dr. Hannus asking whether, as Dr. Sabastian had testified, did Dr. Hannus believe that identification of Sioux traditional sites "depends on the knowledge and traditional culture practitioners," Dr. Hannus responded: "Yes, I mean, I absolutely would have to, because there isn't any other way the framework that I work within functions." August 19, 2014 Transcript at p. 860, lines 1-8. In short, admissions and testimony confirm that NRC Staff deferred to the applicant's unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise. As a result of Powertech's and NRC Staff's coordinated inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site before approvals are given and the aquifers are impacted, EPA cannot rely on the NRC's NEPA documents to assess the cultural resources impacts of the proposed mine. Instead, the scope of EPA's consultation must match the scope of the UIC duties, which apply to the full life of the proposed mine, not the initial set of NRC-approved segments. Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA. Rather, EPA must delay any permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources. Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented.

*5*Draft Permits should not have been issued until Tribal Consultation had taken place			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
8181	Ex. 6 Personal Privacy (PP)	Individual	Please throw out your draft permits based on incomplete cultural information and start over now, with proper and meaningful Tribal consultation. Do a thorough, respectful and tribally-designed process for identification and protection of Native American cultural resources. It's the right thing to do and it's the law.
8232	Rebecca Terk	Dakota Rural Action	Because the EPA issued draft permits without these surveys, and without necessary tribal consultation, issues raised by the tribes were not considered in the process.
8286	Ex. 6 Personal Privacy (PP)	Individual	I submit the following comments regarding the proposed Dewey-Burdock ISL uranium mine and deep disposal wells in South Dakota along the southwest edge of the sacred Black Hills. 1. The EPA has acknowledged that the Lakota and other indigenous nations have important cultural. spiritual, and legal ties to the Black Hills. Draft permits should not have been issued until meaningful Tribal consultation was completed pursuant to the National Historic Preservation Act, so that the public can consider and comment on the issues raised by the Tribes as part of this review process.
8268		Individual	First, required engagement with Tribal Nations, in the form of govt-to-govt consultation per Executive Order 13175 and in compliance with Section 106 of the National Historic Preservation Act, has barely begun. **These draft permits should not have been issued before proper and meaningful Tribal consultation takes place**, especially given that the EPA is explicitly seeking comments on "the identification of traditional cultural properties at the Dewey-Burdock Project Site." [...] If the EPA is interested in the cultural significance of the Dewey-Burdock area, it must meaningfully consult with Indigenous peoples who have been the caretakers of these lands since time immemorial.
8199		Individual	First, It is completely inappropriate that the tribes have not been consulted prior to formulation of the draft plan. I would be in support of their concerns for this project in their unceded homeland of the Black Hills. There are many resources of environmental and cultural importance that must be protected for their benefit as sovereign nations.
8050 (10/5 Hot Springs hearing)		Individual	My name is Julie Santella. I have a bunch of things to say because I have a lot of concerns about the hundreds of pages of these draft permits. One important thing to say is that the EPA's requesting information on traditional cultural properties, on potential adverse effects to traditional cultural properties, per Section 106 of the National Historic Preservation Act.

*5*Draft Permits should not have been issued until Tribal Consultation had taken place			
		Ex. 5 Deliberative Process (DP)	If that is true, then these draft permits should not have been issued prior to meaningful tribal consultation taking place, period. Period. So I can't believe that you're actually concerned about that because -- because that's the case. So the last thing I want to do is just read out to you a few regulations under your own system of law that requires you to consider issues of treaty and issues related to culture and spiritual significance. The National Historic Preservation Act, Section 101(d)(6)(B) requires any federal agency, that includes the EPA, to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. That is this project. Executive Orders 13007 and 13175 require the federal government to honor treaty rights and avoid any action that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites. That also applies to this project, and the EPA is bound by those orders. National Historic Preservation Act, executive orders, the U.S. Constitution, Supreme Court law, the NRC's decision, the D.C. Court of Appeals, these -- you can't -- the EPA is not allowed to ignore -- this is your own system of law that holds you to these things. So I wanted to remind you today that you all have obligations and that if you continue to fail to fulfill those obligations, then we will be here to remind you of them.
00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	The NHPA document also indicates that tribal consultation is in its infancy. Tribal leaders from the two reservations that are most likely to experience impacts from the Dewey-Burdock project, the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe, have not yet started consultation. Yet draft permits and a draft aquifer exemption have already been issued. This is a travesty, and it's difficult to see how the EPA can rectify the situation.
00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	As for tribal consultation more generally, first, the original draft permits should not have been issued until proper and meaningful Tribal consultation had taken place. Second, tacking on consultation late in the process does not give Tribal issues sufficient consideration. And third, holding meaningless consultation when you have already said you'll ignore issues that are likely to be raised during that consultation is disingenuous and violates the spirit and the letter of the law.
00528	David Frankel	Aligning for Responsible Mining	EPA must delay any permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources.
00519	Lilias Jarding, Ph.D. Jim Woodward Cathe Meyrick Bonnie Gestring	Black Hills Clean Water Alliance	As part of the new process, the EPA should do thorough tribal consultation. The existing documents indicate that this process has barely begun, and yet draft permits have been issued. This makes a mockery of the consultation process, which should be completed well before draft permits are issued, so that the resulting information can be analyzed. The EPA must halt all further action until mutually-satisfactory consultation is completed. All cultural and historical properties must be given adequate protection.

*5*Draft Permits should not have been issued until Tribal Consultation had taken place			
	Lori Andresen Geoffrey H. Fettus Susan Gordon Randi Spivak Lawrence Novotny Beth Burkhart Rick Bell		[...] The undersigned respectfully request that the EPA stop the permitting processes for the proposed Dewey-Burdock project. At the very least, tribal consultation and a de novo NEPA process are required. At best, the permits and the exemption should be denied.
00537	Nadine Padilla Travis Miller	Native Research Solutions	Cultural data, including archaeological and burial sites, need to be inventoried in order to ensure sites are protected. Making a decision on the permits and exemption now without the necessary data is unwise and premature. Proceeding with the permits before all the information is available denies the public a meaningful opportunity to participate and be heard.

6 Comments on the NRC Programmatic Agreement			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
00555	Dave Archambault II	Standing Rock Sioux Tribe	The Final Programmatic Agreement acknowledges but mis-portrays and attempts to minimize the significance of the lack of good faith efforts in identifying TCPs. It states on page 3: ... the parties were unable to reach agreement on the scope and the cost of the Tribal survey. That does not obviate the need for compliance with the section 106 regulations. Nevertheless, the NRC refused to engage in the good faith consultation and identification efforts that are required. Ultimately, the NRC failed to adequately consult with the Standing Rock Sioux Tribe THPO in the identification and evaluation of Traditional Cultural Properties in the Dewey Burdock project area. Consequently, the EPA must deny the PowerTech UIC permit application. The Standing Rock Sioux Tribe THPO documented our Tribe's fruitless efforts for the requisite section 106 consultation and Tribal role in the survey of traditional cultural properties in the sacred Black Hills. The Standing Rock Sioux Tribal Historic Preservation Office sent correspondence dated **February 4, 2014** to provide comments on a draft Programmatic Agreement. None of the comments were incorporated into the Final PA, and the stated concerns with the section 106 process were totally ignored. Correspondence from our THPO dated November 5, 2012 and August 30, 2011 likewise received no response. There was no consultation on the identification of TCPs.
00546	Troy S Weston	Oglala Sioux Tribe	The lack of NHP A Section 106 consultation is evidenced by the failure to address the OST THPOs concerns with the Programmatic Agreement, as discussed in the May 19, 2016 meeting between the Tribe and NRC.
8286	Ex. 6 Personal Privacy (PP)	Individual	The current plan to identify and protect cultural resources is totally inadequate. It allows unqualified Powertech employees to self-monitor and determine the locations of cultural sites during mining activities. This creates a situation in which cultural resources are very likely to be destroyed. A thorough, tribally-designed process for cultural resources identification and protection must be undertaken prior to the issuance of any permit or any earth moving activities.
8149		Individual	[...] The current plan to identify and protect cultural resources is totally inadequate. It allows unqualified Powertech employees to self-monitor and determine the locations of cultural sites when they think they encounter one using heavy equipment. This creates a situation in which cultural resources are very likely to be destroyed. A thorough, tribally-designed process for cultural resources identification and protection should be undertaken and completed before any permit is issued or any earth is moved.

6 Comments on the NRC Programmatic Agreement			
8268	Ex. 6 Personal Privacy (PP)	Individual	The NRC Programmatic Agreement, referenced in the National Historic Preservation Act Compliance document, is not valid, because one of the conditions of the PA, that a cultural resources survey be conducted, has not yet happened.
	Bryan Brewer Letter referenced in & provided with OST 2017 comments	OST President	February 5, 2014 Letter from OST President Bryan Brewer This is in response to the NRC's request for comment on the draft Programmatic Agreement (PA) for the proposed Powertech Dewey-Burdock in situ leach (ISL) uranium mine. As you know, the Oglala Sioux Tribe has attempted to maintain a high level of involvement in the National Historic Preservation Act (NPHA) Section 106 consultation process through our Tribal Historic Preservation Office (OSTHPO), as well as the preparation of the National Environmental Policy Act (NEPA) environmental impact statement. Unfortunately, these processes have not been conducted in a manner that complies with the letter or spirit of either the NHPA or NEPA, resulting in the effective exclusion of several of the most impacted Tribes to which ascribe this proposed project area as traditional homelands. As such, the Oglala Sioux Tribe, as part of the Great Sioux Nation, continues to have serious unresolved concerns with the proposed project, and cannot concur in the Programmatic Agreement as drafted. We request that NRC revisit its NEPA and NHPA compliance on this proposed project in order to fulfill its prior commitments, and legal obligations, to provide meaningful opportunities for the OSTHPO participation within both the NHPA consultation and NEPA review. Principal among the Tribe's concerns are those raised previously regarding the lack of a credible cultural resources survey that includes the entire project area of 101580 acres. As repeatedly communicated in prior correspondence by the Oglala Sioux Tribe and others, while the Tribe remains willing and able to participate in such a process, it must be done in a credible manner, using proper methodologies and expertise. In addition, it states on page 3 of the draft PA indicates that the Tribe has "participated in the preparation of this PA", which is incorrect. On the contrary, representatives of the Tribe were merely on a November 15, 2013 webinar hosted by NRC for interested parties to review the draft PA prepared by the NRC, not with the OST. This is very misleading to anyone who reads this PA. To date these cultural resources surveys, as well as the ones completed prior by archaeologists are not complete and the NRC and Powertech efforts to date have not provided sufficient resources nor incorporated sufficient THPO involvement to result in a credible product. The PA's repeated strong reliance on a prior "Class III" cultural survey is misleading at best, as that survey was conducted by Powertech consultants in 2008 and has been repeatedly criticized by the Tribe as incomplete, and even recognized by NRC Staff as insufficient. As the Staff explained when it issued the DSEIS, "it is working to facilitate a field survey of the Dewey-Burdock site in order to obtain additional information on historic properties. When the survey is complete, the Staff will supplement its analysis in the DSEIS and circulate the new analysis for public comment." NRC Staff's Answer to Contentions on Draft

6 Comments on the NRC Programmatic Agreement			
			Supplemental Environmental Impact Statement, at 13. Indicative of the process thus far, this supplement to the draft SEIS never occurred. Instead, NRC Staff simply published a Final SEIS, with a selection of a proposed action and a purportedly complete cultural resource impact analysis, without providing the promised draft analysis in a NEPA context. It is a poor excuse for NRC to provide the Tribes and public an after-the-fact opportunity to comment on any cultural reviews outside of the NEPA process. NRC should rescind its statements in the PA that all effect determinations are considered "final" until all necessary information is collected and meaningfully reviewed within both the NEPA and NHPA processes. In addition, the cultural resources survey findings conducted by the seven (7) participating Tribes have not been afforded to our Tribe for review. As we are to understand, only three (3) Tribes (Northern Arapaho Tribe, Northern Cheyenne Tribe, Cheyenne and Arapaho Tribes of Oklahoma) submitted their findings; however we have not seen those results for review. Additionally, there is a "Table. 1 Summary of Tribal Cultural Survey Activity and Participation during April-May 2013" received as an attachment that the field survey participating Tribes "examined approximately 95 percent of the entire project area within the license boundary". This brings to question how that claim can be true when only certain days were surveyed by those Tribes, and some for only three (3) days for the entire 10,580 acres. Further compounding these problems is the PA's reliance on future analysis of the project area for cultural resources impacts and potential mitigation measures. Indeed, even the methodologies to be used for these future surveys and mitigation measure development are left without any specificity or clarification. Unspecified promises for Powertech to "provide funding to tribal representatives" to participate in future surveys is precisely the type of tactic that is partly to blame for the current problems with NRC's NHPA and NEPA processes. While some NHPA processes may be staged under certain circumstances, there is no compelling need to do so here, where proper surveys and analyses could be conducted and completed, albeit probably not on the applicant's preferred accelerated schedule. The applicant's preferred timeline for license approval should not supplant the need to ensure all data collection and analysis at the earliest possible time, as contemplated and required by both NEPA and the NHPA. The PA should not be finalized absent agreement with the Tribe on the methods and practices to be employed, and only those matters that truly cannot be accomplished beforehand should be left for the staged, future study and analysis. We also remind you that there are two pending applications to the Environmental Protection Agency for underground injection control and plan for disposal of treated ISR processed fluids. Overall, the PA is not a document that the Tribe is comfortable signing at this stage. It fails to take account of the lack of a complete cultural resource survey to date and improperly and needlessly leaves significant data collection and analysis to future unspecified efforts, outside of the NEPA process. We continue to express our interest in fully engaging in the cultural resource analysis and protection processes related to this Project, and ask that NRC Staff abandon its current approach of prematurely finalizing its NEPA and NHPA documents until the proper steps can be taken to ensure a competent cultural resource impact review, as well as consideration for environmental concerns are met.

6 Comments on the NRC Programmatic Agreement			
	Waštė Wiŋ Young Email referenced in & provided with OST 2017 comments	SRST THPO	February 20, 2014 Email from SRST THPO It has come to my attention reading through the proposed programmatic agreements for Ross and Dewey Burdock how much tribal information, suggestions and critical issues raised by the tribes are purposefully being ignored and omitted. Initially, I did not want to bother you guys again because you are all aware of my sentiments but the gnawing disappointment of how you all have handled the Section 106 process under the NHPA is too overwhelming. (On another note, I seen a job opening for a Native American specialist to assist the NRC with Section 106 NHPA. That's such great news! I mean… In the meantime, 3 areas of historical, cultural and spiritual significance to our tribe will have been destroyed by NRC projects, but hey! At least you guys will get some guidance :) I have attached comments for the proposed Dewey-Burdock PA to this email. I am cautious to submit these knowing full well that the NRC has repeatedly ignored tribes who have historic, cultural and spiritual properties in proposed project areas. Yesterday our office was told by Haimanot that other tribes are too scared to speak up in meetings or feel that their voice is not heard when Sioux tribes are present. I do not know which Sioux tribes she is referring to but I work for the Standing Rock Sioux Tribe—THPO. We will continue to hold federal agencies and call them out—including other tribes who attempt to bypass the federal regulations and smooth things over with false promises. For us, this is not about a ten thousand dollar pay check for three, five or ten days of work as what overwhelmingly happened on Dewey Burdock. Another troubling incident is that the SD SHPO already received the letter to concur on eligibility determinations for Dewy Burdock in December 2013. In the meantime, tribes were sent a letter seeking comments on eligibility determination at that same time and tribal comments were due January 7, 2014. The SD SHPO issued their concurrence on Jan 14 2014. This was all done without tribe's knowledge. When SD state legislators hosted a meeting in Rapid City two weeks ago staff from the Oglala Sioux Tribe said that tribes were still involved in the Section 106 process. A SD legislator said that SD had already signed off on it, tribal concerns were fixed and that the NRC was issuing their permit for Dewey Burdock shortly. This timeline was confirmed yesterday with the SD SHPO via telephone. If Section 106 is a federal process between agencies and tribes—why was the SD SHPO given a concurrence letter on eligibility determinations the same date that tribes were asked for comments on those determinations? Why would the NRC issue a permit for an incomplete process based on incomplete Section 106 identification results? Why would it base those results off of 3 reports issued from tribes out of 23 the NRC claims to consult with—although only 7 tribes went out? This is not majority rules. It does not take an environmental or cultural resource manager to see that this is wrong. This also needs to be clarified in the PA.

6 Comments on the NRC Programmatic Agreement			
			Yesterday Haimanot told our staff that there will be no new identification efforts for Dewey Burdock—which is contrary to what Commissioner Bill Magwood told the Oglala Sioux Tribe and the SRST last summer in Kyle, SD. [I have the exact date. Our legal department and a Tribal councilperson was present]. The PA for Dewey Burdock needs to be accurate. It needs to document tribal concerns. It needs to detail the unbalanced, unfair process that the tribes were up against. It needs to detail the incestuous relationship between the NRC and applicant Powertech. Powertech is calling the shots and because the NRC does not know how to implement Section 106 or has no clue how to work with tribes, it is responsible for the destruction of this spiritual, cultural and historical landscape. It has been made very clear to us that the NRC wants these projects over and done with. They will continue to operate haphazardly to accomplish this. YOUR PA NEEDS TO TELL THE TRUTH. The NRC did not consult with 23 tribes. That is like me saying that I sat down and met with the 500 NRC employees in Rockville last January when actually I sat in a room with 7 of you. Why would you willfully lie? Just to make your PA and efforts look good and faithful? Dewey Burdock is an incomplete catastrophe that has an incomplete Section 106 process. Your sentiments are, "Why are you guys the only tribe speaking up?" We have a spiritual, cultural and historical tie to this area. We are not one to take the money and move onto the next project. The SRST THPO tried to meet with the NRC in good faith and offer our comments. Yet you decided to listen to the applicant and offer $10,000.00 per tribe because the applicant didn't like the idea of paying over $100,00.00 for the tribal identification survey. Our suggestions were ignored and instead, we were given pacifying promises of future collaboration. The SRST is not your trustee. The tribal THPO's are the Section 106 experts, more so than the applicants and their cultural resource contractors who are hired to write documents that you think fulfills your regulatory responsibility. If you think we were going to take your $10,000.00 for an inept survey tantamount to a payoff and not fight for what is right and what is ours then I guess what you have heard from other tribes is true. We are overbearing when it comes to protecting our future generations' land and water. Thank you for your invitation to the Standing Rock Sioux Tribe inviting us to participate in Section 106 Consultation under the NHPA for Reno Creek. Due to the complete lack of confidence, bad faith and ill will that the Nuclear Regulatory Commission has shown towards the SRST as well as other tribes we will have to decline to participate in this consultation. Please see our attached comments for the Dewey Burdock PA.
Specific comments on the NRC Draft Final PA from the Standing Rock Sioux Tribe THPO			

6 Comments on the NRC Programmatic Agreement	
WHEREAS #4 the …proposed project area consists of approximately 10,580 acres (4,282 ha)	**TC1** This "project area" conflicts with statements made throughout the consultation process that the project area would be confined to the area of direct impacts (2k acres). The tribes were specifically told they could not survey the license boundary (10k acres) during meetings between June 2011 and August 2012 even though this was what the tribes felt was the proper area of potential effects (APE). Why is the project area now suddenly the entire license boundary when that was a major stumbling block during consultation for over one year? The NRC switched gears at the last moment and allowed for the tribes to access the entire 10,000+ acres with the caveat that they only had 10k dollars to work with and a restricted timeline of 1 month. There is no way a proper tribal survey could be conducted with those caveats but this is the ultimatum that was forced upon the tribes.
WHEREAS #8 disposal of treated ISR process fluids	**TC3** Has the disposal method been determined? This was also a matter of contention in determining the APE for this project based on only surveying the direct effects
WHEREAS #9 phased process for compliance with Section 106	**TC4** 36CFR800.14 (a) (1) requires the federal agency to consult with the public in the development of alternate procedures for Section 106 compliance. This allows for the public to have their input into the development of alternate procedures. Where is the documentation that this was ever conducted? 36CFR800.4 (2) also requires the federal agency to take into account the views of the tribes for a phased approach. The SRST- THPO has disagreed with the actions of the NRC since September of 2012. We disagree with the determinations of non-eligibility (TABLE 1) for any sites containing stone features. How is the NRC accounting for this in this PA and in their phased approach?
WHEREAS #9 APPENDIX A	**TC5** Appendix A is not attached to any email for this PA. The SRST-THPO would like copies off all appendixes for this PA. It is impossible to make fully informed comments without the proper information being given to the tribes.
WHEREAS #10 the area of potential affects (APE) for the undertaking is the area at the Dewey-Burdock Project site and its immediate environs, which may be directly or indirectly impacts by construction and operations activities associated with the proposed project, as described in Appendix A; and	**TC6** This conflicts with the project area being licensed as pointed out in precious comment Why is the NRC not considering the entire license boundary as the APE?
WHEREAS #11 Project activities may occur on lands outside the license boundary for the installation of electrical transmission lines, and will be addressed in accordance with Stipulations 3 and 4 of this PA; and	**TC7** A proper survey of the entire license boundary as the APE would have eliminated the need to develop this PA. The tribes pushed for this throughout 2011 and 2012 and were denied. The identification effort that was forced upon the tribes to accept could in no way property document the sites given the time and money that was forced upon the tribe.
WHEREAS #18	**TC8** The applicant and their third-party consultant decided not to continue discussions with the tribes by stating that further discussion would not be fruitful in an erroneous attempt to "move the project

6 Comments on the NRC Programmatic Agreement	
the NRC worked with consulting Tribes between November 2011 and October 2012 to develop an approach for identifying historic properties of cultural and religious significant to Tribes; the NRC conducted face-to-face consultation focused on the identification of these properties in February 2012. Although several work plans for a Tribal survey were prepared and discussed by the consulting parties throughout 2012, the parties were unable to reach agreement on the scope and the cost of the Tribal survey (see Appendix B for details)· and	forward" in the 106 process. The applicant was unwilling to fund the project to a level that would have been acceptable to the tribes for proper identification efforts yet they funded all of the archaeological survey and evaluative testing with apparently no complaints. One of the mean stumbling blocks was the definition of the APE between the tribes and federal agency and applicant.
WHEREAS #19, in October 2012, the NRC requested alternative approaches to conduct a field survey by a group representing all consulting Tribes and subsequently proposed opening the project area to all interested Tribes to complete the survey according to needs and interests, and with payments made to participating Tribes (see Appendix B for details); and	**TC9** This request only came to the tribes due to the tribes no being intimidated by the NRC and their ultimatums. The NRC stated in September that is the tribes did not respond by s specified date that they would just move the process forward - echoing the words of the applicant and their and their third party consultant. the tribes pointed out that there is not provision for this within the regulation during the identification phase and that precipitated the "alternative approach" comments.
WHEREAS #20 the NRC offered all 23 consulting Tribes the opportunity to participate in a tribal field survey to identify properties of religious and cultural significance to them for the proposed Dewey-Burdock project ISR facility by letter dated February 8, 2013; and	**TC10** The tribes were offered an ultimatum to either accept the proposal that would in no way properly identify sites of significance to them or be left out of the identification process. This is not a good faith effort to identify sites of significance to tribes. The proposal ignored the information gathered under 36CFR800.4 as to what is actually required to identify and instead the proposal required to identify and instead the proposal amounted to just saying go drive around
WHEREAS #21 the following seven Tribes participated in the tribal field survey: the Norther Arapaho Tribe, the Northern Cheyenne tribes, The Cheyenne and Arapaho Tribes of Oklahoma, the Crow Nation, the Santee Sioux Tribe, the Crow Creek Sioux Tribe, and the Turtle Mountain Band of Chippewa Indians as discussed in details in Appendix A; and	**TC11** This statement alone indicated that the identification process is incomplete for this project. The SRST-THPO objected to the approach adopted by the NRC as it in no way would properly document the sites in the license boundary in a manner consistent with Section 106.

6 Comments on the NRC Programmatic Agreement	
WHEREAS #22 surveys to identify historic properties have been completed for the project including Class III Archeological Surveys and tribal surveys to identify properties of religious and cultural significance; and	**TC12** The SRST-THPO and other tribes have never been given the opportunity to identify sites of significance with their tribal identification efforts.
WHEREAS #23 the NRC received tribal survey reports with eligibility recommendations from the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma, as well as field notes from the Crow Nation as discussed in Appendix A; and	**TC13** 4 tribes providing comments on survey work somehow meets the standards of good faith effort? Almost three time that many were actively consulting since 2100 and their concerns for their sites are continuing to be ignored.
WHEREAS #24 the NRC staff has reviewed and evaluated the results fo the applicant's Class III archaeological surveys and tribal surveys in the development of its initial recommendations concerning eligibility of properties identified within the APE for the undertaking for inclusion on the National Register of Historic Places (NRHP) as presented in Appendix B; and	**TC14** The SRST-THPO disagrees with the recommendations made for the sites listed in Table 1. How will the NRC address our concerns as they are currently being ignored.
WHEREAS #25 the NRC has received concurrence from the SD SHPO on these eligibility determinations as discussed in Appendix B, eligibility determinations were also sent to the Tribes and requested a 30-day review and comment periods; and	**TC15** The SRST-THPO is aware that the NRC submitted their eligibility determinations to the SD SHPO for concurrence on the same day that the tribes were asked to provide comments on eligibility in the 30 day window. How can the NRC imply that this was conducted in good faith? The SD SHPO issued their concurrence on Jan 14th, 2014.The SRST-THPO did not even receive the documents until January 7th, 2014 and the comment review period was barely a week old. This rush to complete the PA and SEIS to issue a license is not being conducted in good faith. The SRST-THPO has no confidence that our concerns would have been addressed by the NRC as they did not even wait to recieve any comments from tribes before asking for concurrence from SD SHPO. This amounts to token checkmarks by the federal agency and not good faith consultation. The SRST-THPO would require field visits to the sites to properly assess their eligibility per our tribal expertise.
WHEREAS #28 each of the 23 consulting tribes will be invited to sign the PA as a Concurring Party; and	**TC16** Why are the tribes not signatory parties?

6 Comments on the NRC Programmatic Agreement	
STIPULATION Measure 1) **Conditions for Federal Approval**: c) The NRC shall not grant a license to Powertech until all required signatories have executed this PA. Upon receipt of a fully executed PA, the NRC will issue the license provided that all other requirements for the license have been met.	**TC18** The whole PA appears to be developed for this entire purpose. The NRC is well beyond its stated timelines for issuance of the Dewey-Burdock license. This is documented by the fact that they stripped their Section 106 compliance out of their NEPA process due to not being able to conduct both within their stated timelines.
STIPULATION Measure 2) **Identification and Evaluation of Historic Properties within the License Boundary**: a) Appendix B provides information on the archaeological and Tribal cultural resource surveys and describes the historic properties identified within and adjacent to the boundary of the 10,590 acre project site. More than 300 cultural resources were identified.	**TC19** The SRST-THPO has not been provided with this information. Once again, the definition of the APE has changed from the direct effects to the licensed boundary.
STIPULATION Measure 3**) Protection and Evaluation of Unevaluated Properties within the APE**: a) Powertech will protect all unevaluated properties until an NHPA-eligibility determination is complete, in accordance with 36CFR800.4(c).	**TC21** How will Powertech be conducting this? Who will be conducting this evaluation. In particular, if the site is a site of significance to the tribes what assurances do the tribes have that they well be consulted for their expertise on their sites? The SRST-THPO is unagreeable with a private entity protecting our sites.
STIPULATION Measure 3)b) If changes in the design or operation of the Project, including wellfield configurations, result in ground disturbance that could affect unevaluated properties, Powertech shall sponsor necessary supplemental research and/or field investigations prior to commencing any ground-disturbance activities.	**TC22** Who exactly will participate in this additional survey work? Will it just be the seven tribes who accepted the NRC forced identification requirements while ignoring the other 16 tribes who disagreed with this process?
STIPULATION Measure 3)c) Powertech must provide a written plan of its investigation methodology at least four months	**TC23** This PA will take the tribes completely out of the consultation process according to this statement. Tribes have a right to comment on identification efforts per 36CFR800.2 yet this PA will take that right out of the tribes' hands. This was attempted by the applicant in the initial identification

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prior to commencement of work, to enable the NRC and BLM to allocate staff resources for Section 106 reviews; additional review time may be necessary if NRC and BLM staff resources are limited or due to conditions beyond the staff's control.	effort in August of 2011 when the NRC asked them to develop a plan for identification. That plan was unanimously disagreed to by every tribe.
STIPULATION Measure 3)e) Upon receipt of the Powertech investigation plan, the NRC, the BLM, consulting Tribes and the SD SHPO will have 30 days to review the proposed plan. If revision to the plan are necessary, Powertech will circulate the revised investigation plan to the NRC, the BLM, consulting Tribes and the SD SHPO.	**TC24** This didn't work the last time this was planned and once again it is being proposed. It resulted in the NRC dividing the tribes against each other and this will be the case again for this project. The NRC attempted to mislead some tribes into accepting their proposal by misconstruing the participation level of other tribes. There has been no good faith effort for identification on this project for the tribes who did not accept the powertech handout forced upon them by the NRC. An ultimatum is not good faith.
STIPULATION Measure 3)f) Upon approval of the investigation plan, Powertech will conduct supplemental research and/or field investigation. Testing will be conducted under the supervision of individuals meeting the Secretary's of the Interior's Professional Qualifications Standards. The report shall follow documentation standards outline in 36 CFR § 800.11.	**TC25** The SRST-THPO is opposed to any testing of our sites of significance. We have stated this multiple times in consultation yet our expertise for evaluating our sites is being ignored by this PA.
STIPULATION Measure 3)j) When the NRC, BLM, and SD SHPO agree evaluated properties are NRHP-eligible, avoidance of the properties will be the preferred option.....	**TC26** Include "in consultation with the tribes" as the SRSP-THPO currently disagrees with the eligibility determinations made thus far and since the PA is made to supplant the requirements of Section B of 36CFR800.
STIPULATION Measure 3)k) When the NRC, BLM, and SD SHPO make the determination that identified historic properties are not eligible for listing on the NRHP, no further review of consideration of the properties will be required under this PA.	**TC27** Include "in consultation with the tribes" as the SRSP-THPO currently disagrees with the eligibility determinations made thus far and since the PA is made to supplant the requirements of Section B of 36CFR800.

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STIPULATION Measure 3) l) When the NRC, BLM, and SD SHPO disagree on NRHP-eligibility for a cultural resource, the cultural resource cannot be avoided, or the disagreement is not resolved by further consultation, the NRC will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility, in accordance with 36 CFR § 800.4(c)(2). The ACHP may also request referral of an NRHP-eligibility determination to the Keeper.	**TC28** What provisions exist within this document if the tribes disagree with the determinations? This is never addressed throughout the entire document and since the RA will fulfill the NRC responsibilities for Section 106 compliance, the SRST-THPO would like the explained further.
STIPULATION Measure 4) **Assessments of Effects** a) As part of its consideration of the effects of construction and operations on the landscape, the NRC conducted a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within three miles of the tallest buildings on both the Dewey and Burdock facilities.	**TC29** Please provide the details of how this will be conducted. The tribes might have concerns not addressed by non-tribal personnel.
STIPULATION Measure 4)b) The NRC and BLM consulted with SD SHPO and consulting Tribes in making its determination that eligible or unevaluated archaeological sites and properties of religious and cultural significance will be adversely affected by the undertaking. The effects determination is presented in Appendix B Table 1.	**TC30** Please provide the documentation for this statement.
STIPULATION Measure 5) **Resolution of Adverse Effects** a) The NRC will solicit suggestions from consulting parties concerning potential measures to avoid, minimize, or mitigate adverse effects on historic properties described in Appendix B after the PA is executed.	**TC31** This will require an amendment to the PA. The SRST-THPO is concerned that an agreement is not binding if it is not included in this PA. The NRC should resubmit the PA with the proposals included so that no additional amendments or agreements are necessary. This further enforces the view that this PA is not a good faith effort but is rather a rush to issue the license.
STIPULATION Measure 5)b) The NRC and BLM, in consultation with consulting parties, will determine what treatment measures	**TC32** This should be developed currently within this PA and not at some future date. Concerns for this are outlined in TC 27.

6 Comments on the NRC Programmatic Agreement	
are appropriate to each adversely affected historic property.	
STIPULATION Measure 5)c) Treatment measures can include, but are not limited to the following:	**TC33** These treatment plans do not take into account any specialized expertise of the tribes for evaluating our sites of significance which can also be eligible under Criteria A-D. The SRST-THPO objects to this treatment plan as currently planned as it over emphasizes the use of archaeologists and not tribal expertise.
STIPULATION Measure 5)d) Following the development of potential treatment measures by consulting parties, to avoid, minimize or mitigate adverse effects, Powertech shall prepare a treatment plan for each affected historic property.	**TC34** Why is Powertech developing this for the Federal agency? This was attempted before and it failed to address tribal concerns. Why does the NRC keep relying on applicants to fulfill their Section 106 responsibilities?
STIPULATION Measure 5)e) In conjunction with the submission of their Plan of Activities, which detail construction and operations activities, for each year, Powertech will submit one or more draft treatment plans. A draft plan will identify properties that will be affected that year and measures that will be taken to avoid, minimize, or mitigate those effects. A draft treatment plan will be submitted for NRC and BLM review and approval four months prior to construction, so the NRC and BLM can appropriately allocate staff resources to the extent possible; additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.	**TC35** This statement contradicts the statements concerning avoidance previously in the document. It doesn't sound like avoidance is the preferred option with such a statement.
STIPULATION Measure 5)e) iii If monitoring by a qualified archaeologist and/or Tribal monitor is part of the strategy for resolving or preventing adverse effects, the treatment plan shall include a Monitoring Plan.	**TC36** Who decides when a tribal monitor is necessary? Powertech does according to this document. Once again the NRC is letting the applicant call the shots for Section 106 compliance for this project.
STIPULATION Measure 5)e) iv If data recovery is part of the strategy for resolving adverse effects, the treatment plan	**TC37** The SRST-THPO will reiterate that testing should not occur on any stone feature site.

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shall specify all details of STIPULATION Measure 5,e, the research design, field and laboratory work methodology (including mapping, geomorphological or other specialized studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation as appropriated), and report preparation.	
STIPULATION Measure 5)f) Upon receipt of a draft treatment plan, the NRC will submit the draft treatment plan to all signatories and consulting Tribes for a 45 day review and comment period. The NRC will consider any comments received in writing from consulting parties within the specified review period.	**TC38** The SRST-THPO has submitted numerous comments to the NRC that were subsequently ignored. Other tribes have also submitted comments that were ignored by the federal agency. The fact that only 7 of 23 tribes participated in the NRC ultimatum for identification is proof of this. What assurances do the tribes have that their comments won't just be used to document " good faith " consultation without addressing them as is currently the case with the NRC for all of their projects
STIPULATION Measure 6) **Future Identification of Cultural Resources for Installation of Power Transmission Lines in Areas to be Determined:** a) Powertech will notify the NRC and BLM in writing, if it determines that ground-disturbing activities will be required for the installation of electrical transmission lines outside the license boundary. Powertech must provide written notification at least four months prior to commencement of work, to enable the NRC and BLM to allocate staff resources for Section 106 reviews; additional review time may be necessary if NRC and BLM staff resources are limited or due to conditions beyond the staff's control.	**TC39** These surveys should be conducted now so that a federal tie is maintained to the project. The SRST-THPO is more than a little concerned that the applicant will argue against having to involve the federal agency if their is no demonstrable tie to the transmission lines for the issuance of the NRC permit or no BLM involved land and therefore no tribal involvement due to no Section 106 tie. Keystone XL utilized this same maneuver. This represents a complete lack of understanding of the definition of APE according to the 36CFR800.16 (d) and was a huge stumbling block in the scope of work process throughout 2011 and 2012. The NRC's own failures at properly defining the APE helped to create the impasse so that they would attempt to move the process forward in their own words.
STIPULATION Measure 6) b) Powertech must provide the- NRC, the BLM, and the SD SHPO a proposed work plan for an archaeological survey as part of the written notification. The plan will include methods for identification of all kinds of cultural properties within the transmission line corridor, including identification of properties of religious and	**TC40** The tribes did not accept the Powertech proposal for the initial survey at Dewey-Burdock yet this PA puts the onus on them again to develop this portion of it. This will result in the same failures occurring once again with the vast majority of the tribes unable to participate in the identification efforts because it will not meet our required standards for identification efforts. Should a PA really be used to circumvent the 106 process with a flawed methodology that did not already work and enforce it? The SRST-THPO submits that it should not.

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cultural significance with the involvement of the Tribes. The proposed plan should also include report preparation requirements and schedules for the identification efforts.	
STIPULATION Measure 6) g) The NRC will consult with the 23 consulting Tribes on identification of properties of religious and cultural significance. This consultation could include using an open site approach to identify and evaluate places of religious and cultural significance to the Tribes.	**TC41** The SRST-THPO and other tribes opposed this approach and continue to do so. It should not be SRST THPO acceptable as the preferred option as will be the case. It has been demonstrated by the NRC that th SRST THPO ey will use it regardless of the protestations by the tribes furthering the disharmony among the tribes and the federal agency. The NRC used this approach for the Crow Butte facility without consulting the tribes for their feedback on such an approach. The disharmony created by the NRC in dividing the tribes continues to be felt across the Indian Country today but the NRC does not care about the results of their actions as long as they can issue their permit and be done with the tribes they are happy to create this disharmony. Other federal agencies have followed this practice as well now that the NRC has created it.
STIPULATION Measure 6) l) If the NRC, BLM, and SD SHPO make the determination that identified historic properties are not eligible for listing on the NRHP, no further review or consideration of the properties will be required under this PA.	**TC42** Will the process be the same flawed process that involved submitting the eligibility for sites for concurrence to the SD SHPO on the same day as the request for comments on eligibility determinations to the tribes?
STIPULATION Measure 6) m) When the NRC and the SD SHPO disagree on NRHP-eligibility of cultural resource and the cultural resource cannot be avoided, and the disagreement cannot not be resolved by further by consultation, the NRC will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility, in accordance with 36 CFR § 800.4{c)(2). The ACHP may also request referral of an NRHP-eligibility determination to the Keeper. The decision of the Keeper is final.	**TC43** What provisions will be in place if the tribes disagree on the eligibility?
STIPULATION Measure 7) Coordination with Other Federal Reviews In the event that the Powertech applies for additional approvals or other assistance from federal agencies for the undertaking and the undertaking remains unchanged, the approving agency may comply with Section 106 by agreeing	**TC44** This is highly subjective as the impacts from a new federal undertaking might be taken. A blanket statement such as this is inappropriate.

6 Comments on the NRC Programmatic Agreement	
in writing to the terms of this PA and notifying and consulting with SHPO and ACHP. Any necessary modifications to this PA will be in accordance with the amendment process in Stipulation 15.	
STIPULATION Measure 9) Unanticipated Discoveries: In the event a previously unknown cultural resource is discovered during the implementation of the Dewey-Burdock Project, all ground disturbance activities shall halt within 150 feet of the area of discovery to avoid or minimize impacts until the property is evaluated for listing on the NRHP by qualified personnel. The following additional steps shall be taken: a) Powertech will notify the NRC the BLM (if the site is on BLM land), and the SD SHPO of the discovery within 48 hours. Unanticipated discoveries may include artifacts, bone, features, or concentrations of these materials outside previously identified sites or in and adjacent to previously identified eligible and not eligible sites. Discoveries may also include stones and groups of stones that are out of place in their sedimentary contexts and may be parts of stone features. A "discovery" may also include changes in soil color and texture or content suspected to be man-made, such as burned soil, ash, or charcoal fragments.	**TC45** Included "but are not limited to,"
STIPULATION Measure 9, c) Powertech will have the discovery evaluated for NRHP eligibility by a professional who meets the Secretary of the Interior's Professional Qualifications Standards in Archaeology (36 CFR § 61).	**TC46** What provision well be included in this evaluation for site of significance to tribes? The SRST-THPO has repeatedly commented about not testing sites of significance to the tribes.
STIPULATION Measure 9, e) The NRC and/or BLM, in consultation with signatories and consulting Tribes, shall evaluate	**TC47** What provisions will be put in place for the tribes to properly identify these properties that might have significance to them to ensure that we can make informed decision regarding the

6 Comments on the NRC Programmatic Agreement	
the cultural resources to determine whether they meet the NRHP criteria and request concurrence of the SD SHPO. Evaluation will be carried out as expeditiously as possible in accordance with 36CFR § 800.13(b).	properties' eligibility? Currently this PA process cuts the tribes from the process which has been the intent of the NRC and the applicant since September of 2012.
STIPULATION Measure 9, f) When the NRC, BLM, and SD SHPO agree evaluated properties are NRHP-eligible, avoidance of the properties will be the preferred option. When avoidance is unavoidable and adverse effects will result, adverse effects will be resolved in accordance with Stipulation 6.	**TC48** This statement is redundant. Change the first avoidance to property or change unavoidable to not an option. The SRST-THPO believes that sites will not be avoided as the preferred option as the applicant is once again calling the shots as it were for the federal agency.
STIPULATION Measure 9) g) If the NRC, BIM, and SD SHPO make the determination that identified cultural resources are not eligible for listing on the NRHP, no further review or consideration of the properties will be required under this PA.	**TC49** Include "in consultation with the tribes" as we are being ignored throughout this PA. **TC50** What provision will be in place if the tribes disagree with the agencies and SHPO determinations? None currently.
STIPULATION Measure 9) h) Human remains identified during ground disturbance activities will be treated in accordance with Stipulation 10 and Appendix D.	**TC51** Please forward this appendix to the SRST-THPO. This document should not be signed until such time as all appendices are attached.
STIPULATION Measure 10) Human Remains: d) Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable state law.	**TC52** Who will be making the determination that remains are non-native? All remains should be considered to be Native American until such time as they are proven otherwise.
STIPULATION Measure 12) Qualifications In recognition of the special expertise Tribal experts have concerning properties of religious and cultural significance the standards of 36 CFR §§ 61 will not apply to knowledgeable, designated tribal representatives carry our identification and evaluation efforts for properties of religious and cultural significance to tribes.	**TC53** Include "and eligibility determinations"

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STIPULATION Measure 13) Compliance Monitoring NRC affirms avoidance of adverse effects to historic properties remains the preferred course of action. b) Prior to initiating construction activities, Powertech will develop Monitoring Plan specific to the project, identifying specific areas, activities, and if appropriate, historic properties that require monitoring during development of the Project...	**TC54** The plans developed thus far by Powertech have not been acceptable to the consulting tribes. Why does the NRC allow them to essentially make their decisions for them? This further enforces the widely held belief that Powertech is deciding the 106 process and not the federal agency. **TC55** This statement allows for the applicant to decide which areas need monitoring for the tribes. I'm unaware of any action from our chairman which allows Powertech to decide for the Standing Rock Sioux Tribe which sites we require monitoring on. Please provide this documentation to the SRST-THPO so that we may discuss the issue with our chairman. This statement alone demonstrates the lack of good faith consultation which the NRC has embarked upon with this and all of their projects. The SRST-THPO and all tribes shoudl be involved in this process as our concerns for our sites are certainly different than that of an applicant who refused to negotiate with the tribes after August 2012.
STIPULATION Measure 13) c) Powertech will engage the services of a Monitor with specific responsibilities to coordinate the requirements of the monitoring plan, the treatment plans, and this agreement during project construction.	**TC56** So Powertech is once again deciding who can monitor sites of significance to the Standing Rock Sioux Tribe. By tribal resolution that decision rests solely with the SRST-THPO office and not with an outside agency or entity. We can provide this resolution.
STIPULATION Measure 13) c)i) The Monitor will meet the Secretary of the Interior's Professional Qualifications for Archaeology. Preference will be given to individuals meeting those qualifications who are employed by tribal enterprises, especially during phases of the monitoring program where sites with religious and cultural significance to the Tribes might be affected. In the case of an unanticipated discovery or imminent threat to an avoided historic property, the Monitor shall have authority to stop certain construction activities.	**TC57** Currently, there are very few archaeologists in the Great Plains who would meet those criteria and short of Powertech hiring Ben Rhodd there is not a single one that can properly address Standing Rock Sioux Tribe concerns for our sites of significance. The SRST-THPO would have no confidence in any other archaeologist currently working on the Great Plains. Tribal monitors utilizing our specialized expertise must be employed in addition to any Secretary of the Interior Standards qualified personnel. We will accept monitors from the following tribes to address our concerns in addition to our own: Oglala Sioux Tribe, Cheyenne River, Rosebud Sioux Tribe, and Sisseton Wahpeton Oyate.
STIPULATION Measure 14) Dispute Resolution: Should any signatory to this PA object in writing to any actions proposed or to the manner in which terms of the PA are implemented, the NRC shall consult with the party to resolved the objection. When the NRC determines an objection cannot be resolved, the NRC will: c) Prior to making a final decision of the dispute, the NRC will prepare a written response that	**TC58** Will this be the same timely comments that were utilized in the eligibiliy determinations in which the tribes were given the information on the sites on the same day that the SD SHPO was asked to concur on the eligibility determination by the NRC?

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addresses timely comments from signatories and consulting Tribes to the PA.	
STIPULATION Measure 14) d) The NRC will consider recommendations and comments made by the ACHP that are related to the objections.	**TC59** Will the NRC be considering any comments made by the tribes in any disputes according to section 14?
STIPULATION Measure 15) Amendment: A signatory to this agreement may request that it be amended, whereupon the signatory parties will consult to reach a consensus on the proposed amendment. Concurring parties will be provided an opportunity to consult and comment on the proposed amendment. An amendment will be effective on the date the amended PA is signed by all of the signatories to this PA. If a required signatory does not sign the amended PA, the amendment will be void. The amendment shall be appended to this PA as an Appendix.	**TC60** So basically, if one signatory decides the amendment does not fit into their plans they can refuse to sign it and the amendment is voided. Who wrote this statement? This greatly favors the applicant in all amendment decisions. If they disagree with a proposed amendment that would impact their practices all they have to do is not sign it and it doesn't pass. This does not surprise the SRST-THPO as the NRC has been favoring the applicant and their timeline since the inception of this project.
STIPULATION Measure 15) Amendment: (continued) Any federal agency, including the EPA, may in the future decide to rely on this agreement in connection with satisfying its Section 106 responsibilities and, may join the agreement by adding its signature and circulating the amended agreement to the appropriate parties.	**TC61** The SRST-THPO opposes this statement being included as each undertaking must follow through its own Section 106 process and not adopt the incorrect and consistently terrible policies of the NRC to complete their Section 106 process. I'm surprised the ACHP would even consider this!
1 STIPULATION Measure 6) Termination b) In the event the PA is terminated, the signatories will comply with any applicable requirements of 36 CFR ss 800.4 through 800.7 with regard to the original undertaking covered by this PA.	**TC62** These sections were not followed in the original undertaking. What provisions will be in place to ensure that the same bad policies initiated by the NRC which continues to this day will not just continue.
STIPULATION Measure 17) Duration: Implementation of the stipulations in this agreement must begin within five years from the date of its execution. During that time, the NRC may consult with the signatories and concurring	**TC63** So what exactly will be followed during the intervening 5 years? There is no mention of what stipulation will be issued between the time the NRC licensed this project which will be the very same day they get this PA signs and 5 years from now when if must be enforced? Once again who wrote this section? It leans heavily in the favor of the applicant.

6 Comments on the NRC Programmatic Agreement	
parties to amended the agreement in accordance with Stipulation 16. The agreement will be in place until ten years from the day of execution or the termination of the license.	
STIPULATION Measure 18) Anti-Deficiency Act: Execution of this PA by the NRC, BLM, SD SHPO, ACHP, and Powertech and the implementation of its terms is evidence the NRC and BLM have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.	**TC64** This statement is an outright fallacy and insulting to all of the tribes who participated in consultation with this project. In particular, with the tribes who objected to the ultimatum enforced identification effort endorsed by the NRC at the urging of third party consultants. The tribes who did not accept the forced ultimatum approach have never been afforded the opportunity to address our sites of significance within the license boundary in a manner consistent with the needs of our acceptable identification efforts even though Commissioner Magwood assured the SRST-THPO officer that they would be. PA's should not be used to circumvent responsibilities within the Section 106 process as they are being used in this project. It is extremely premature of the NRC and the ACHP to embark upon execution of a PA when there are still so many questions surrounding the original identification effort and eligibility determinations. The NRC has and continues to ignore the tribes by stating they will not reopen identification under any circumstances. We had our chance according to them. That chance would not have resulted in a meaningful identification process being employed. The consulting tribes sent their objections to the NRC. The NRC chose to adopt it as the only solution anyway further enforcing the view that this project is run by the applicants timeline and not any meaningful good faith effort. By endorsing this PA; the ACHP is agreeing that a process whereby 4 tribes totaling 8 people were given two weeks to survey over 10,000 acres is a process that is acceptable under Section 106. This is unacceptable and unconscionable of the ACHP to agree to the execution of this PA knowing full well the issues that the tribes continue to have for this project and its identification and eligibility determination process.

Specific comments on the NRC Final PA from the Northern Arapaho Tribe THPO	
A definition section should be included before Stipulations on page 4. Definitions should include the following:	**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.
	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 8,5) e) iii. Last paragraph	should include the language "with culturally sensitive information".

Page 8, 5) j)	Why aren't the tribes a part of agreed terms or appropriate terms? Tribes left out for a reason?
Page 9, 6) 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.
Page 9, 6) g)	The NRC will consult with the 23 consulting tribes on identification of "TCPs" with religious and cultural significance.
Page 9, 6) 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?)
Page 10, 8) Confidentiality	2nd paragraph historic property/tcp
Page 10, 9) a) Anticipated Discoveries	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.
Page 11, 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.
Page 11, 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.

7 EPA Should Comply with the NHPA

Letter ID	Commenter Name	Commenter Org.	Text
07461 (5/9 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	Today, like we said, you know, the chairman before me, he said the NEPA, NHPA, all the federal laws that your government is supposed to protect for the people is not happening. So today, for the record, and your record, I'm going to say that there was never no true meaningful consultation on these issues.

7 EPA Should Comply with the NHPA			
8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	So the last thing I want to do is just read out to you a few regulations under your own system of law that requires you to consider issues of treaty and issues related to culture and spiritual significance. The National Historic Preservation Act, Section 101(d)(6)(B) requires any federal agency, that includes the EPA, to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. That is this project. Executive Orders 13007 and 13175 require the federal government to honor treaty rights and avoid any action that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites. That also applies to this project, and the EPA is bound by those orders. National Historic Preservation Act, executive orders, the U.S. Constitution, Supreme Court law, the NRC's decision, the D.C. Court of Appeals, these -- you can't -- the EPA is not allowed to ignore -- this is your own system of law that holds you to these things. So I wanted to remind you today that you all have obligations and that if you continue to fail to fulfill those obligations, then we will be here to remind you of them.
07459 (Valentine hearing)		Individual	And I'd also like to ask that the EPA comply with the Section 106 of the National Historic Preservation law, which is the NHPA law, which also defines and clearly states that there must be formal consultation with local tribes
00044		Individual	Other Reasons I object are: The HeSapa, or Black Hills, is Treaty Territory under both the 1851 and 1868 Ft. Laramie and under Law it is mandated to consult with tribal governments as Government to Government Relations. This includes following National Historic Preservation Act rules and regulations with the tribes. However, South Dakota and federal agencies involved in permitting this uranium mining have continuously ignored tribal nations and their expert testimony regarding cultural properties and sacred sites in the target area.
00031		Individual	4. Consideration of legal and cultural impacts In addition to the possibility of technology failure, the cultural significance to the area must also be taken into consideration. The Black Hills have been home the The Lakota, or the Sioux tribe, for generations. Because of this, the EPA is required to comply with the National Historic Preservation Act under the EPA's Tribal Policy on Consultation and Coordination with Indian Tribes. These people have been interested in the potential outcomes of the Powertech operation, and as such have requested the EPA provide them with a concise and well researched identification of potential effects of the proposed project. These are historic and sacred lands, and as such the EPA continues to provide the tribe with as much information as possible, however these potential cultural impacts must be weighed against the benefits.
00304		Individual	If the EPA were to not consult and coordinate with tribes during the public comment period, then they would be in violation of the National Historic Preservation Act and the Tribal Policy on Consultation and

7 EPA Should Comply with the NHPA			
			Coordination with Indian Tribes; but EPA has been involving the tribes throughout the process (McClain-Vanderpool, 2017).

8 Environmental Impacts to Cultural Resources			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
8120	Anonymous	Northern Cheyenne Tribal Historic Preservation Office	The Northern Cheyenne Tribal Historic Preservation Office is writing in regards to the permit request for aquifer exemption for the Dewey-Burdock uranium in-situ project. The aquifer's are essential to the wellbeing and continued cultural connection area tribes and tribes with ancestral ties to the area continue to maintain. A decision to approve this permit would cause irreparable harm to the cultural landscapes and quality drinking water that is pertinent to the livelihood of humans, plant and wildlife resources of the land. It is inevitable that the waste fluids will eventually seep into the soil and contaminate the aquifers. Additionally, cultural resources located on the landscapes where mining activities occur are in danger and are threatened by a foreseeable adverse impact to all elements that define the cultural landscape. Finally, it is essential that all consulting tribes are given the opportunity to participate in the identification of cultural resources that have not been identified by tribes, as well as to address the implications this project will have on various resources of religious and cultural significance to their nation.
00525	Harold Frazier	Cheyenne River Sioux Tribe	As the Chairman of the Cheyenne River Sioux Tribe (“Tribe”), I am contacting the U.S. Environmental Protection Agency (“EPA”) to submit the Tribe’s official comments on the EPA’s Region 8 Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for Dewey-Burdock Uranium In-Situ Recovery Site. • Historic. spiritual, and cultural resources: There are numerous sites of historic, spiritual, and cultural significance to the Tribe throughout the Tribe's large aboriginal territory, but especially within the boundaries of the lands reserved to the Tribe in the *Treaty of Fort Laramie with the Sioux, Etc.*, 11 Stat. 749 (Sep. 17, 1851). Furthermore, the Tribe's reserved water 1ights themselves constitute a spiritual and cultural resource in light of the primary role that water plays in Lakota religious sacraments, which require environmenta1ly and ritually pure water. (A map showing the Tribe's 1851 territory is enclosed herewith.) *Tribe's Requests Concerning the Underground I11jection Control Draft Area Permit and Proposed Aquifer Exemption decision for Dewey-Burdock Uranium In-Situ Recovery Site* 1. The Dewey-Burdock Uranium In Situ Recovery Site Poses a Serious Threat to Tribal Rights that the EPA Must Thoroughly Evaluate

8 Environmental Impacts to Cultural Resources			
			The Dewey-Burdock Uranium Mine is proposed to be sited within the Tribe's 1851 territory and in areas that impact aquifers and tributaries that affect Cheyenne River Sioux Reservation lands and waters. As such, the Dewey-Burdock Uranium Mine will have serious impacts on (a) the Tribe's treaty rights and reserved water rights, (b) the Tribe's cultural resources; and (c) the Tribe's religious exercise, as set forth in further detail below.

9 EPA Should Deny the Permits based on a number of laws protecting Native Americans spiritual and cultural sites, including NHPA			
Letter ID	**Commenter Name**	**Commenter Org.**	**Text**
00396	N/A	Sicangu Lakota Treaty Council	SICANGU LAKOTA TREATY COUNCIL RESOLUTION NO. 2017-02 … WHEREAS, the Sicangu Lakota Treaty Council to consider and protect the Sicangu Lakota Way of Life pertaining to cultural practices and sacred sites within the treaty boundaries makes the following recommendation, and … WHEREAS, the National Historic Preservation Act (NHPA) Regulations Implementing Section 106 (36 CFR Part 800) The regulations implementing Section 106 of the NHPA require consultation with Indian tribes throughout the historic preservation review process. Federal agencies are required to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of tribal sovereignty. The regulations require federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are of religious and cultural significance to them, and WHEREAS, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 , et. seq.) NAGPRA requires consultations with Indian tribes, traditional religious leaders and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects and other items. Under the Act, consultation is required under certain circumstances, including those identified in Sections 3002(c), 3002(d), 3003, 3004, and 3005, and … THEREFORE, BE IT RESOLVED, that the Sicangu Lakota Treaty Council hereby strongly urges and requests the EPA to deny both permits and any future permit applications relating to Uranium mining or the extraction of minerals or rare earth elements. CERTIFICATION

9 EPA Should Deny the Permits based on a number of laws protecting Native Americans spiritual and cultural sites, including NHPA			
			This is to certify that the above Resolution No. 2017-02 was duly passed by the Sicangu Lakota Treaty Council on May 2, 2017, Motion to approve by Shane Red Hawk. Second by Delano Clairmont with a vote of Four (4) in favor, Zero (0) opposed, and One (1) not voting. The said resolution was adopted pursuant to authority vested in the Sicangu Lakota Treaty Council under the laws of the Rosebud Sioux Tribe. A quorum was present. ATTEST: Fremont Fallis - Chairman Sam High Crane - Vice-Chairman

Legal Citations

Reg	Purpose	Comments
36 CFR § 800.2(d) § 800.6(a)(4)		**6. Comments on measures to avoid, minimize or mitigate potential adverse effects on historic and traditional cultural properties pursuant to Section 106 of the National Historic Preservation Act and 36 CFR § 800.2(d) and § 800.6(a)(4)** Therefore, there has been a complete failure to provide measures required by Section 106 of NHPA and 36 CFR § 800.2(d) and § 800.6(a)(4).
(36 CFR Part 800).		The section 106 regulations prescribe the process for identifying historic properties and traditional cultural properties; evaluating their eligibility for the National Register; determining whether there are adverse impacts and resolving or mitigating those impacts. (36 CFR Part 800).
36 CFR §800.2(c)(ii).		36 CFR §800.2(c)(ii). The role of Tribes is further delineated for the identification of traditional cultural properties in section 4 of the regulations:
36 CFR §800.4(a).		In consultation with the SHPO/THPO, the agency official shall: (d)etermine and document the area of potential effects ... (and) Gather information from any Indian tribe or Native Hawaiian organization ... to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them. 36 CFR §800.4(a).
36 CFR §800.4(b).		The consultation and identification efforts must be reasonable and in good faith: ... in consultation with the ... THPO, and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, (to include) ... consultation. 36 CFR §800.4(b).
36 CFR §800.2(C)(2)(ii);		(2) The Nuclear Regulatory Commission failed to conduct a good faith identification of traditional cultural properties in the project area, in violation of National Historic Preservation Act section 106 and 36 CFR §800.2(C)(2)(ii);
36 CFR §800.3(f)(2)		To the contrary, the NRC, as lead agency, in cooperation with PowerTech, refused to consult in good faith with the Tribes as required by the section 106 regulations. 36 CFR §800.3(f)(2). Early discussions about Tribal participation in the identification of traditional cultural properties went nowhere. NRC and PowerTech refused to establish a meaningful area of potential effects (APE) in consultation with the Tribes. They were uncooperative and

		unresponsive in the limited discussions on a scope of work and funding for Tribal traditional cultural properties surveys.
36 CFR §§800.2(c)(ii) & 800.4(a) & (b).		As a result, the NRC failed to properly identify traditional cultural properties that are directly or indirectly impacted by the proposed Dewey Burdock UIC wells in the APE, in violation of NHPA section l0l(d)(6)(B), and 36 CFR §§800.2(c)(ii) & 800.4(a) & (b).
(36 CFR §800.2(c)(2)(ii))		The consultation requirement applies to "any Indian tribe that attaches religious and cultural significance to historic properties" (36 CFR §800.2(c)(2)(ii)) or "located on ancestral, (or) aboriginal. .. lands." (36 CFR §800.2(c)(2)(ii)).
36CFR800.14 (a) (1)		36CFR800.14 (a) (1) requires the federal agency to consult with the public in the development of alternate procedures for Section 106 compliance. This allows for the public to have their input into the development of alternate procedures.
36CFR800.4 (2)		36CFR800.4 (2) also requires the federal agency to take into account the views of the tribes for a phased approach.
36CFR800.4(c)		STIPULATION Measure 3**) Protection and Evaluation of Unevaluated Properties within the APE:** a) Powertech will protect all unevaluated properties until an NHPA-eligibility determination is complete, in accordance with 36CFR800.4(c).
36CFR800.2		Tribes have a right to comment on identification efforts per 36CFR800.2 (SRST)
Section B of 36CFR800		The purpose of this PA is to supplant Section B of 36CFR800 (SRST)
36 CFR § 800.4(c)(2)		the NRC will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility, in accordance with 36 CFR § 800.4(c)(2).
36CFR800.16 (d)		This represents a complete lack of understanding of the definition of APE according to the 36CFR800.16 (d)
36 CFR § 61		Secretary of the Interior's Professional Qualifications Standards in Archaeology (36 CFR § 61).
36CFR § 800.13(b)		STIPULATION Measure 9, e) The NRC and/or BLM, in consultation with signatories and consulting Tribes, shall evaluate the cultural resources to determine whether they meet the NRHP criteria and request concurrence of the SD SHPO. Evaluation will be carried out as expeditiously as possible in accordance with 36CFR § 800.13(b)
36 CFR §§ 800.4 through 800.7		1 STIPULATION Measure 6) Termination b) In the event the PA is terminated, the signatories will comply with any applicable requirements of 36 CFR ss 800.4 through 800.7 with regard to the original undertaking covered by this PA
36 CFR § 800.2(d) and § 800.6(a)(4).		Therefore, there has been a complete failure to provide measures required by Section 106 of NHPA and 36 CFR § 800.2(d) and § 800.6(a)(4).