SUMMARY OF MEETING WITH THE OGLALA SIOUX TRIBE REGARDING THE DEWEY-BURDOCK IN SITU URANIUM RECOVERY PROJECT

Date: May 19, 2016

Location: Pine Ridge, South Dakota

Meeting Participants and Affiliation:

James Red Willow, Oglala Sioux Tribe, Executive Committee 5th Member
Trina Lone Hill, Oglala Sioux Tribe, Tribal Historic Preservation Officer
Jeff Parsons, Oglala Sioux Tribe, Counsel
Lillias Jarding, Clean Water Alliance
Craig Erlanger, Division Director, U.S. Nuclear Regulatory Commission
Christopher Hair, Attorney, U.S. Nuclear Regulatory Commission
Kellee Jamerson, Project Manager, U.S. Nuclear Regulatory Commission
Diana Diaz-Toro, Project Manager, U.S. Nuclear Regulatory Commission

Summary:

The U.S. Nuclear Regulatory Commission (NRC) staff met with representatives of the Oglala Sioux Tribe on May 19, 2016, in Pine Ridge, South Dakota. The purpose of the meeting was twofold: (i) to introduce the NRC's new management team responsible for the consultation process with the Oglala Sioux Tribe and the Tribe's new Tribal Historic Preservation Office staff, and (ii) to start the dialogue, on a Government-to-Government basis, regarding a path forward for consultation with the Oglala Sioux Tribe to address the Atomic Safety and Licensing Board's (ASLB's) findings regarding the NRC's environmental review conducted under the National Environmental Policy Act and Section 106 review conducted under the National Historic Preservation Act of 1966.[1] This meeting constituted the first step and building block for moving forward with the consultation process to gather information about historic and cultural resources of significance to the Oglala Sioux Tribe that could be affected by the construction and operation of the Dewey-Burdock in situ uranium recovery (ISR) project located in Fall River and Custer Counties, South Dakota.

The NRC discussed the re-organization of the Office of Nuclear Material Safety and Safeguards (NMSS)[2] including the management changes that occurred within the last two years. The NRC also provided an update of the Dewey-Burdock ISR project. The NRC published the supplemental environmental impact statement[3] in January 2014, executed the programmatic agreement (PA) (in accordance with the Section 106 process) in April 2014, and issued the Record of Decision and license in April 2014.[4] The licensee, Powertech (USA) Inc., has not begun construction activities. Prior to the start of construction and operations, the licensee

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[1] Atomic Safety and Licensing Board Order dated April 30, 2015 (LBP-15-16). ML15120A299
[2] NMSS is responsible for regulating activities which provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors (including uranium recovery activities); the safe storage, transportation and disposal of high-level radioactive waste and spent nuclear fuel; and the transportation of radioactive materials regulated under the Atomic Energy Act.
[3] NUREG-1910, Supplement 4, "Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota." ML14024A477, ML14024A478
[4] 79 Federal Register 21302. ML14043A392, ML14066A466

Enclosure

would need to obtain additional permits from the U.S. Environmental Protection Agency for disposing liquid waste through the underground injection control program and the State of South Dakota for mining activities before proceeding with construction and operation activities. In response to inquiries from the Oglala Sioux Tribe, the NRC confirmed that neither NRC nor the licensee has conducted any additional activities or surveys at the site.

The Oglala Sioux Tribe explained that Tribal Treaties and their Tribal laws and ordinances are the law of the land. The Oglala Sioux Tribe noted that Tribal ordinances prohibit nuclear activities within Treaty lands and asked that these be taken into consideration, even if the project site is beyond the borders of the Tribe's reservation. The Oglala Sioux Tribe, Tribal Historic Preservation Officer will provide specific citations to the ordinances regarding the prohibition of nuclear activities. The NRC noted it will consider these laws and ordinances as part of this consultation process.

The Oglala Sioux Tribe also noted its objection to both the PA and the continued effectiveness of the license in light of the ASLB ruling finding the Record of Decision for the license incomplete. The Tribe also stated that the PA would need to be revisited and strengthened based, in part, due to the inadequacies of the surveys of the Dewey-Burdock ISR project site conducted in 2013. Additionally, the Oglala Sioux Tribe noted that the process described in the PA lacks meaningful opportunities for Tribes to provide input or raise objections about the management of historic and cultural resources. The NRC clarified that, although the PA has been executed, certain activities related to the identification of historic properties, and assessment and resolution of adverse effects still need to be carried out to fully implement the PA. Accordingly, the NRC noted that revisiting the PA could be one of the avenues available to address the ASLB's findings regarding historic and cultural resources. The Tribe requested that the NRC consider staying the effectiveness of the license until the ASLB findings can be addressed.

With respect to the survey, the Oglala Sioux Tribe noted that the tribal survey conducted in 2013 was incomplete and the survey methodology lacked scientific integrity. The Oglala Sioux Tribe asked that additional comprehensive and meaningful surveys be conducted and that other Tribes should also be involved. The NRC discussed the possibility of another survey opportunity and clarified that coordination with the licensee would be necessary to gain access to the project site.