LBP-14-5

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Richard F. Cole
Dr. Mark O. Barnett

In the Matter of	Docket No. 40-9075-MLA
POWERTECH USA, INC.	ASLBP No. 10-898-02-MLA-BD01
(Dewey-Burdock In Situ Uranium Recovery Facility)	April 28, 2014

MEMORANDUM AND ORDER
(Ruling on Proposed Contentions Related to the
Final Supplemental Environmental Impact Statement)

I. INTRODUCTION

This proceeding challenges the application of Powertech (USA), Inc., (Powertech) to construct and operate an in-situ leach uranium recovery (ISR) facility in Custer and Fall River Counties, South Dakota.[1] On August 5, 2010 the Board in the above-captioned matter ruled on two petitions to intervene and requests for hearing,[2] and admitted the Oglala Sioux Tribe and Consolidated Intervenors[3] as intervenors. The Board also admitted seven contentions

[1] LBP-10-16, 72 NRC 361, 375–78 (2010).

[2] Id. at 375.

[3] Although originally designated Consolidated Petitioners, we now refer to Susan Henderson, Dayton Hyde and Aligning for Responsible Mining as the Consolidated Intervenors.

proposed by the Oglala Sioux Tribe and the Consolidated Intervenors.[4] These contentions related to cultural resources (Consolidated Intervenors' Contention K and Oglala Sioux Tribe's Contention 1), baseline groundwater conditions (Consolidated Intervenors' Contention D and Oglala Sioux Tribe's Contention 2), hydrogeology (Consolidated Intervenors' Contention E/J and Oglala Sioux Tribe's Contention 3), and groundwater consumption (Oglala Sioux Tribe's Contention 4).[5] The Board rejected contentions challenging, among other issues, Powertech' s discussion of its plans for disposal of 11e.(2) byproduct material and the analysis of actions connected to the Dewey-Burdock Project.[6]

On November 15, 2012, the Nuclear Regulatory Commission Staff (NRC Staff) issued its Draft Supplemental Environmental Impact Statement (DSEIS) prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, and the agency's implementing regulations, 10 C.F.R. Part 51.[7] On January 25, 2013, both the Oglala Sioux Tribe and the Consolidated Intervenors filed proposed contentions relating to the DSEIS.[8] The Board held that, under the migration tenet, a number of the proposed contentions in response to the DSEIS were in para materia with previously admitted contentions.[9] These contentions were

---

[4] LBP-10-16, 72 NRC at 443–44.

[5] Id.

[6] Id. at 432–35.

[7] Letter from Patricia Jehle, Counsel for NRC Staff, to Administrative Judges Froehlich, Cole, and Barnett, (Nov. 15, 2012) (ADAMS Accession No. ML12320A623); see also Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Draft Report, NUREG-1910 (Supp. 4 Nov. 2012) (ADAMS Accession No. ML12312A040) [hereinafter DSEIS].

[8] See List of Contentions of the Oglala Sioux Tribe Based on the [DSEIS] (Jan. 25, 2013) [hereinafter Oglala Sioux Tribe's Proposed Contentions]; Consolidated Intervenors' New Contentions Based on DSEIS (Jan. 25, 2013) [hereinafter Consolidated Intervenors' Proposed DSEIS Contentions].

[9] LBP-13-9, 78 NRC 37, 113–15 (2013).

combined and reworded by the Board and substituted for the original admitted contentions.[10] The Board also admitted three new contentions proposed in response to the DSEIS (Oglala Sioux Tribe's Contentions 6, 9 and 14).[11] The Board rejected Oglala Sioux Tribe's proposed Contentions 5, 7, 8, 10, 11, 12, 13 and Consolidated Intervenors' proposed Contention D.[12]

On January 29, 2014 the NRC Staff issued the Final Supplemental Environmental Impact Statement (FSEIS).[13] On March 17, 2014, both the Oglala Sioux Tribe and the Consolidated Intervenors filed "Statements of Contentions" with proposed contentions relating to the FSEIS.[14] The Oglala Sioux Tribe filed 10 contentions and the Consolidated Intervenors filed five contentions. On April 4, 2014 Powertech and the NRC Staff filed answers opposing the proposed contentions.[15] Powertech argues the Intervenors have not proffered any new or amended contentions.[16] With the exception of Contention 2 (Baseline Groundwater

---

[10] Contention 1A merged previously admitted Oglala Sioux Tribe Contention 1 (OST-1) and Consolidated Intervenors Contention K (CI-K) with migrated Oglala Sioux Tribe Contention 1 regarding the DSEIS (OST DSEIS-1) and Consolidated Intervenors Contention A regarding the DSEIS (CI DSEIS-A); Contention 1B merged previously admitted OST -1 with migrated OST DSEIS-1; Contention 2 merged previously admitted OST-2 and CI-D with migrated OST DSEIS-2 and CI DSEIS-B; Contention 3 merged previously admitted OST-3 and CI-E (as merged with CI-J), with migrated CI DSEIS-C and OST DSEIS-3; Contention 4 merged previously admitted OST-4 with migrated OST DSEIS-4. See id. at 112–13.

[11] Id. at 114.

[12] Id.

[13] Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Final Report, NUREG-1910 (Supp. 4 Jan. 2014) (ADAMS Accession Nos. ML14024A477 (Chapters 1–5) and ML14024A478 (Chapters 6–11 and Appendices)) [hereinafter FSEIS].

[14] Statement of Contentions of the Oglala Sioux Tribe Following Issuance of [FSEIS] (Mar. 17, 2014) [hereinafter OST Statement]; Consolidated Intervenors' Statement of Contentions (Mar. 17, 2014) [hereinafter CI Statement].

[15] Applicant Powertech (USA) Inc's Response to Consolidated Petitioners' Request for Admission of New or Amended Contentions on NUREG-1910, Supplement 4 (April 4, 2014) [hereinafter Powertech Response]; NRC Staff's Answer to Contentions on [FSEIS] (April 4, 2014) [hereinafter NRC Staff Answer].

Conditions), the NRC Staff urges the Board to "dismiss the Intervenors' previously admitted contentions and reject the Tribe's new contentions."[17] On April 11, 2014 the Oglala Sioux Tribe and the Consolidated Intervenors filed replies to the NRC Staff and Powertech answers.[18]

Meanwhile, on April 8, 2014 the NRC Staff issued NRC Source Materials License No. SUA-1600 to Powertech.[19] The license allows Powertech to possess and use source and byproduct material in connection with the Dewey-Burdock Project.[20]

II. LEGAL STANDARDS

A. New and Amended Contentions

To be admissible, a new or amended contention must satisfy the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1). Namely, the contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ; (ii) Provide a brief explanation of the basis for the contention; (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding; (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue . . . ; [and] (vi) . . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.[21]

---

[16] Powertech Response at 1.

[17] NRC Staff Answer at 35.

[18] Reply of the Oglala Sioux Tribe Regarding Contentions Following Issuance of [FSEIS] (Apr. 11, 2014); Consolidated Intervenors' Consolidated Reply to Applicant and NRC Staff Answers to Contentions on [FSEIS] (Apr. 11, 2014).

[19] Materials License, NRC Form 374 (Apr. 8, 2014) (ADAMS Accession No. ML14043A392). See also, ADAMS Accession Package Number ML14043A052, which includes the license transmittal letter, the license, and the Final Safety Evaluation Report. The NRC Staff also issued its Record of Decision for the Dewey-Burdock Uranium In-Situ Recovery (ISR) Project at ADAMS Accession No. ML14066A466. The Final Programmatic Agreement was executed April 7, 2014 and is available in ADAMS Accession Package No. ML14066A344.

[20] Intervenors have filed for a stay of this license under 10 C.F.R. § 2.1213. The Board will rule on these motions in a future order.

[21] 10 C.F.R. § 2.309(f)(1).

A failure to meet any of these criteria renders the contention inadmissible.

Additionally, pursuant to 10 C.F.R. § 2.309(c),[22] if a party submits a proposed contention after the initial filing deadline announced in the applicable Federal Register notice for submitting a hearing petition, it "will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause."[23] Good cause exists when:

> (i) [t]he information upon which the filing is based was not previously available; (ii) [t]he information upon which the filing is based is materially different from information previously available; and (iii) [t]he filing has been submitted in a timely fashion based on the availability of the subsequent information.[24]

If the reason a motion to admit a new or amended contention was filed after the initial deadline does not relate to the substance of the filing itself, the standard contained in 10 C.F.R. § 2.307(a) applies in determining whether the motion can be considered timely. Section 2.307(a) provides that a filing deadline "may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer." Good cause in this section is not explicitly defined.[25] Therefore, to be admissible at this stage, a contention must not only meet contention

---

[22] The current § 2.309(c) was promulgated on August 3, 2012. Soon after this date, the Board determined that the standards set forth in the now-current § 2.309(c) would apply to new or amended contentions. Licensing Board Order (Second Prehearing Conference Call Summary and Supplemental Initial Scheduling Order) (Oct. 16, 2012) at 4 (unpublished).

[23] 10 C.F.R. § 2.309(c).

[24] 10 C.F.R. § 2.309(c)(i)–(iii).

[25] 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012) ("The NRC notes that "good cause" in § 2.307 does not share the same definition that is used for "good cause" in final § 2.309(c) . . . ."). The Federal Register notice provides as examples health issues or an unexpected weather event as reasons that might constitute good cause for purposes of requesting an extension under § 2.307.

admissibility standards of § 2.309(f)(1), but must also satisfy the timeliness requirements of § 2.309(c) or § 2.307(a).[26]

B. Migration Tenet

As this Board explained when it admitted new contentions challenging the DSEIS, "[a]dmitted contentions challenging an applicant's Environmental Report (ER) may, in appropriate circumstances, function as challenges to similar portions of the Staff's Environmental Impact Statement."[27] This "migration tenet" also applies when the information in the FSEIS is sufficiently similar to the information in the DSEIS.[28] In this circumstance, a party need not file a new or amended contention; the previously admitted contention will simply be viewed as applying to the relevant portion of the FSEIS.[29] This is appropriate, however, only when the FSEIS analysis or discussion at issue is essentially in para materia with the DSEIS analysis or discussion that is the focus of the contention.[30]

Alternatively, if attempting to raise a new issue based on new information in the FSEIS, an intervenor must file a new contention. This would be necessary, for example, if the information in the FSEIS is sufficiently different from the information in the DSEIS that

---

[26] The Board issued a scheduling order on February 20, 2014 which set a deadline of March 17, 2014 for any new or amended contentions arising from the publication of the FSEIS. Memorandum (Summarizing the February 12, 2014 Teleconference) (Feb. 20, 2014) at 6 (unpublished).

[27] LBP-13-9, 78 NRC 37, 46 (citing Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 172 n.3 (2001)); see also Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 84 (1998).

[28] Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-1, 73 NRC 19, 26 (2011); accord. Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 63–64 (2008).

[29] Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 470–71. (2012) ("The Board may construe an admitted contention contesting the ER as a challenge to a subsequently issued DEIS or FEIS without the necessity for Intervenors to file a new or amended contention.").

[30] LBP-13-9, 78 NRC at 47.

supported the original contention's admission.[31] A new or amended contention related to portions of the FSEIS that differ from the DSEIS must be timely filed under § 2.309(c) and must meet the contention admissibility standards of § 2.309(f)(1) to be admitted.[32]

In this case, perhaps out of an abundance of caution, the Intervenors repleaded their previously admitted contentions. This was an unnecessary action by the Intervenors and led the NRC Staff and Powertech to re-hash the objections raised when the contentions were first proffered. These answers, to the extent they attempt to re-argue the admissibility of previously admitted contentions, are also unnecessary. An admitted contention remains an admitted contention until it is adjudicated by the Board or eliminated prior to the hearing by the filing of a dispositive motion. To remove an admitted contention from the proceeding a party must file, and a Board must grant, a motion for summary disposition in conformance with 10 C.F.R. § 2.1205.

C. Contentions of Omission or Adequacy

There are two primary types of contentions—contentions of omission and contentions of adequacy.[33] "A contention of omission is one that alleges an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge

---

[31] Vogtle ESP, LBP-08-2, 67 NRC at 63–64.

[32] LBP-13-9, 78 NRC at 47 (citing Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002) ("While a contention contesting an applicant's environmental report generally may be viewed as a challenge to the NRC Staff's subsequent draft EIS, new claims must be raised in a new or amended contention.")); Vogtle ESP, LBP-08-2, 67 NRC at 64 (explaining that, if the portion of the ER that an admitted contention challenges is not sufficiently similar to the DEIS, "an intervenor attempting to litigate an issue based on expressed concerns about the DEIS may need to amend the admitted contention or, if the information in the DEIS is sufficiently different from that in the ER that supported the contention's admission, submit a new contention").

[33] Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 (2011); see, e.g., Pacific Gas And Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 442 (2011) (discussing whether a contention should properly be characterized as a contention of omission or a contention of adequacy and the ramifications of such a designation with regard to contention admissibility).

to how particular information or issues have been discussed in the application."[34] Based on its language, a contention can be characterized as a contention of omission, a contention of adequacy, or both.[35]

A contention of omission which has been admitted may be rendered moot by subsequent license-related documents filed by the NRC Staff that address the alleged omission.[36] In this circumstance, the applicant or the NRC Staff may file a motion for summary disposition or a motion to dismiss. If the motion is granted, then the party that filed the original contention of omission must file a new or amended contention if it wishes to challenge the adequacy or sufficiency of the NRC Staff's treatment of the relevant issue.[37] That new or amended contention must be timely filed and must meet the contention admissibility standards. Generalized grievances with the sufficiency of the NRC Staff's analysis or the adequacy of included documentation are not enough to raise a proposed contention to the level of admissibility.[38]

---

[34] Turkey Point, LBP-11-6, 73 NRC at 200 n.53; accord. McGuire, CLI-02-28, 56 NRC at 382–83 ("There is, in short, a difference between contentions that merely allege an 'omission' of information and those that challenge substantively and specifically how particular information has been discussed in a license application.").

[35] McGuire, CLI-02-28, 56 NRC at 383 n.45; see also Turkey Point, LBP-11-6, 73 NRC at 199–200.

[36] McGuire, CLI-02-28, 56 NRC at 383 ("Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot.").

[37] Id.

[38] PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 23 (2007); Shieldalloy Metallurgical Corp. (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 NRC 341, 352 (2007) ("'[T]he contention rule is strict by design' and does 'not permit the filing of a vague, unparticularized contention, unsupported by affidavit, expert, or documentary support.'" (footnotes omitted)); PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 303–304 (2007).

In the case of an admitted contention that challenges the adequacy of an environmental document, the inclusion of additional information in a subsequent environmental document may or may not moot the contention. If a party believes the admitted contention is mooted by the inclusion of additional information, that party may file a motion for summary disposition pursuant 10 C.F.R. § 2.1205. On the other hand, if an intervenor merely cites to additional information in the subsequent environmental document and states these are additional reasons for the intervenors' belief that the environmental document is inadequate, the contention will migrate. If intervenors make reference to new material in the FSEIS but do not address the six elements of 10 C.F.R. § 2.309(f)(1), such references to new material do not give rise to either a new or amended contention.

III. DISCUSSION

A. Contention 1A

"Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources."[39]

1. Party Positions

The Oglala Sioux Tribe claims that the protection of historical and cultural resources has been inadequately addressed in the FSEIS in the same way it was inadequately addressed in the application and DSEIS stages.[40] Consolidated Intervenors also claim the FSEIS fails to properly analyze or comply with applicable legal requirements in the same way as the DSEIS.[41] In response, the NRC Staff argues that the FSEIS contains considerable new information relevant to this contention.[42] The NRC Staff also suggests that this contention

---

[39] OST Statement at 5.

[40] Id. at 6.

[41] CI Statement at 6.

[42] NRC Staff Answer at 13.

should be dismissed or rejected by the Board.[43] Powertech ignores the migration tenet. It insists that in order to remain at issue in the case, Contention 1A must identify new information in the FSEIS which did not appear in the DSEIS, and that Intervenors have failed to do so.[44]

2. Board Ruling

With the issuance of the FSEIS, the concerns regarding the protection of historical and cultural resources have migrated because this previously admitted contention challenging the DSEIS now challenges the same information in the FSEIS. Intervenors did not need to file "statements" on this previously admitted contention. If Intervenors' "statements" were filed in an attempt to expand the scope of this contention, such an effort fails. The NRC Staff's attempt to dismiss this contention also fails.[45] A motion for summary disposition must be filed, with support, in order to dismiss a previously admitted contention.

Contention 1A, as previously admitted, remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

B. Contention 1B

"Failure to Involve or Consult all Interested Tribes as Required by Federal Law."[46]

1. Party Positions

Both the Oglala Sioux Tribe and Consolidated Intervenors allege tribal exclusion throughout the entire application/licensing process. Based on their claim that the FSEIS has

---

[43] Id. at 1, 16, 35.

[44] Powertech Response at 8.

[45] If the NRC Staff sought to dismiss the contention on the ground that the FSEIS cured the alleged defects in the DSEIS, then the NRC Staff could have filed a motion for summary disposition or a motion to dismiss. The NRC Staff did not do so. At this point, the deadline for filing motions for summary disposition has passed. In any event, if the NRC Staff asserts that the FSEIS cured the alleged defects in the DSEIS, then the NRC Staff can make this argument in its initial or rebuttal filings associated with the imminent evidentiary hearing.

[46] OST Statement at 9.

been completed without "the requisite level of Tribal participation," they maintain that the content of this contention migrates to the most current Staff review document.[47] The NRC Staff opposes migration, citing progress made in consultation since November 2012.[48] Powertech states that Intervenors' arguments fall short of what is needed to admit a contention, and that there is no new or materially different information in the FSEIS.[49]

2. Board Ruling

With the issuance of the FSEIS the concerns regarding a failure to involve or consult with Tribes have migrated because this previously admitted contention now appears in relation to information in the FSEIS. Intervenors did not need to file "statements" on this previously admitted contention. If Intervenors' "statements" were filed in an attempt to expand the scope of this contention, such an effort fails. The NRC Staff's attempt to dismiss this contention also fails. A motion for summary disposition must be filed, with support, in order to dismiss a previously admitted contention.

As previously admitted, Contention 1B remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

C. Contention 2

"Failure to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality."[50]

1. Party Positions

The intervenors argue that baseline conditions are mandated by statute and regulation, and that the FSEIS is inadequate because, in common with the ER and the DSEIS, it fails to

---

[47] Id. at 13; CI Statement at 19.

[48] NRC Staff Answer at 16.

[49] Powertech Response at 11.

[50] OST Statement at 14.

include a proper analysis of the required baselines with respect to groundwater quality.[51] The NRC Staff does not oppose migration of this contention.[52] Powertech, however, cites examples where text was added in the FSEIS in order to oppose migration of the contention.[53] Neither the NRC Staff nor Powertech moved for summary disposition of the environmental portions of this admitted contention.[54]

2. Board Ruling

The migration tenet applies and this issue migrates from a criticism of baseline ground water determinations in the Powertech ER to a criticism of baseline groundwater determinations in the NRC Staff's FSEIS. Intervenors did not need to file "statements" on this previously admitted contention. If Intervenors' "statements" were filed in an attempt to expand the scope of this contention, such an effort fails. The addition of new text to an FSEIS does not necessarily prevent a contention from migrating, especially when it is a contention of adequacy.[55] As long as the underlying issue or concern involved in the admitted contention remains (whether or not there are additional passages on the subject in the FSEIS), the contention migrates. Despite the addition of new materials in the FSEIS, Intervenors' concern over the adequacy of these materials has not been resolved.

---

[51] Id.; CI Statement at 20; Oglala Sioux Tribe's Proposed Contentions at 10–11.

[52] NRC Staff Answer at 18.

[53] Powertech Response at 12.

[54] The NRC Staff filed a timely motion for summary disposition of the safety portions of Contention 2 on April 11, 2014. See NRC Staff's Motion for Summary Disposition of Safety Contentions 2 and 3 (Apr. 11, 2014). Answers to that motion were due on or before April 25, 2014. The Board will decide all motions for summary disposition in a separate order.

[55] LBP-13-9, 78 NRC at 54 (previously indicating that this contention is a contention of adequacy).

Except for changing DSEIS to FSEIS, Contention 2, as previously admitted, remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

D. Contention 3

"Failure to Include an Adequate Hydrogeological Analysis to Assess Potential Impacts to Groundwater."[56]

1. Party Positions

Intervenors claim that "the FSEIS fails to provide sufficient information regarding the hydrologic and geological setting of the area."[57] The NRC Staff asserts that the inclusion of a new Powertech report in the FSEIS comprises significant new information that should not allow the contention to migrate to the FSEIS.[58] Powertech asserts that its application contains sufficient data, and that in its opinion, Contention 3 "should be excluded."[59] Neither the NRC Staff nor Powertech has moved for summary disposition of the environmental portions of this admitted contention.[60]

2. Board Ruling

The Consolidated Intervenors and the Oglala Sioux Tribe present the same concern that was raised regarding Powertech's ER (and that was admitted as a contention) here, as a concern regarding the FSEIS. Thus, it is not necessary to propose a new or amended

---

[56] OST Statement at 16.

[57] Id.; CI Statement at 22.

[58] NRC Staff Answer at 19.

[59] Powertech Response at 15–16.

[60] The NRC Staff filed a timely motion for summary disposition of the safety portions of Contention 3 on April 11, 2014. See NRC Staff's Motion for Summary Disposition of Safety Contentions 2 and 3 (Apr. 11, 2014). Answers to that motion were due on or before April 25, 2014. The Board will decide all motions for summary disposition in a separate order.

contention because, as the Board has explained, if the "new" contention raises the same concern admitted at the initial stage of the proceeding, its admissibility need not be relitigated and redecided at each step of the NEPA process, namely the issuances of the DSEIS and the FSEIS.[61] This contention is not new; it is merely the continuation of a previously admitted contention. To the extent the Intervenors have concerns with the adequacy of the hydrogeologic analysis necessary to show adequate confinement and potential impacts to groundwater, this is already an issue set for hearing. Contention 3 is a contention of adequacy, as the Board previously indicated,[62] and despite the inclusion of new data in the FSEIS, Intervenors' concern over the adequacy of the environmental review has not been resolved.

Except for changing DSEIS to FSEIS, Contention 3, as previously admitted, remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

E. Contention 4

"Failure to Adequately Analyze Ground Water Quantity Impacts."[63]

1. Party Positions

The Intervenors contend that the FSEIS fails to provide adequate analysis of ground water impacts of the project.[64] The NRC Staff opposes migration on the ground that the FSEIS contains substantial new relevant information which did not appear in previous ER

[61] LBP-13-9, 78 NRC at 46–47.

[62] LBP-13-9, 78 NRC at 58.

[63] OST Statement at 19.

[64] Id. at 19; CI Statement at 25.

documents.[65] Powertech posits that Contention 4 must be viewed as a new contention, and "rejected as showing no new or materially different information."[66]

2. Board Ruling

The Intervenors present the same concern that was raised by the Oglala Sioux Tribe in the initial pleading stage (and that was admitted as a contention) as a concern regarding the FSEIS. It is, therefore, unnecessary to raise a new or amended contention. To the extent the "new" contention raises the same concern admitted at the initial stage of the proceeding, it need not be repeated to remain a viable contention. Accordingly, the Oglala Sioux Tribe's concern with the adequacy of the analysis of groundwater quantity impacts is already an issue set for hearing. The addition of new text to an FSEIS does not necessarily prevent a contention from migrating, especially when it is a contention of adequacy.[67] Despite the addition of new materials in the FSEIS, Intervenors' concern over the adequacy of these materials has not been resolved. The NRC Staff's attempt to dismiss this contention fails. A motion for summary disposition must be filed, with support, in order to dismiss a previously admitted contention.[68]

Except for changing DSEIS to FSEIS, Contention 4, as previously admitted, remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

---

[65] NRC Staff Answer at 21.

[66] Powertech Response at 17.

[67] LBP-13-9, 78 NRC at 54 (previously indicating that this contention is a contention of adequacy).

[68] Supra note 45.

F. Contention 6

"Failure to Adequately Describe or Analyze Proposed Mitigation Measures."[69]

1. Party Positions

In Contention 6, the Oglala Sioux Tribe claims that the FSEIS violates 10 C.F.R. §§ 51.10, 51.70 and 51.71, and NEPA and implementing regulations and "fail[s] to include the required discussion of mitigation measures."[70] The Oglala Sioux Tribe also insists that NEPA requires the FSEIS to include and discuss means to mitigate adverse environmental impacts, but that the FSEIS does not evaluate the effectiveness of any of the mitigation measures it proposes.[71] Similar to its complaints about the DSEIS, the Oglala Sioux Tribe contends that the FSEIS "mitigation measure discussion consists of a multi-page chart which simply lists a series of proposed mitigation measure [sic], with no elaboration or other analysis of how the operator expects to accomplish these items, or the expected effectiveness/limitations of each measure, as required by NEPA."[72]

The NRC Staff opposes migration of this contention because the Staff claims the FSEIS identifies new mitigation measures and has additional discussions on previously identified mitigation measures.[73] Powertech also contends that significant new information in the FSEIS should result in the Board rejecting Contention 6.[74]

---

[69] OST Statement at 21.

[70] Id. at 21.

[71] Id. at 21–22.

[72] Id. at 25.

[73] NRC Staff Answer at 23.

[74] Powertech Response at 18–19.

2. Board Ruling

Concerns regarding a failure to adequately describe or analyze proposed mitigation measures have migrated because this previously admitted contention now appears in relation to information in the FSEIS. Intervenors did not need to file "statements" on this previously admitted contention. If Intervenors' "statements" were filed in an attempt to expand the scope of this contention, such an effort fails. The NRC Staff's attempt to dismiss this contention also fails. A motion for summary disposition must be filed, with support, in order to dismiss a previously admitted contention.[75]

Except for changing DSEIS to FSEIS, Contention 6, as previously admitted, remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

G. Contention 9

"Failure to Consider Connected Actions."[76]

1. Party Positions

The Oglala Sioux Tribe contends that the same issues surrounding the NRC's failure to consider connected actions in the DSEIS continue in the FSEIS, and that no significant new information is provided.[77] The Oglala Sioux Tribe contends that "[l]ike the DSEIS, the FSEIS repeatedly relies upon EPA analyses to require appropriate mitigation measures to lessen impacts, and uses those permitting processes to simply defer analysis of impacts to EPA."[78] The NRC Staff claims that the migration tenet does not apply because updates have been made to the FSEIS analysis and because the "FSEIS's discussion of environmental impacts is

---

[75] Supra note 45.

[76] OST Statement at 26.

[77] Id.

[78] Id. at 27.

not "essentially the same" as that in the DSEIS."[79] Powertech states that "contention 9 should not be admitted due the [sic] fact that NRC Staff has thoroughly addressed the use of Class III and V wells at the proposed Dewey-Burdock ISR site."[80] Powertech also contends that the "[T]ribe also does not attempt to show how the FSEIS differs from the impact analyses offered by Powertech in previously submitted documents or by NRC Staff in the DSEIS."[81]

2. Board Ruling

The Oglala Sioux Tribe asserts that NEPA requires the agency to include an analysis of actions "connected" to the project under review as well as an evaluation of the "cumulative impact" of permits and other authorizations from other federal and State agencies.[82] The NRC Staff maintains that the FSEIS's discussion of environmental impacts is not "essentially the same" as that in the DSEIS. The Staff asserts it has "updated its analysis in Chapter 4 of the SEIS, the chapter where the Staff specifically discusses the impacts of the Dewey-Burdock Project.[83] Nonetheless, this contention now migrates because the concern or issue raised and admitted has not changed from the DSEIS to the FSEIS.

The factual question remains as to whether or not the FSEIS adequately addresses the impacts of other licensing actions. Intervenors did not need to file "statements" on this previously admitted contention. If Intervenors' "statements" were filed in an attempt to expand the scope of this contention, such an effort fails. If the Staff believed its updates to Chapter 4 fully address and resolve the question as to the adequacy of the analysis of connected actions, it should have filed a motion for summary disposition, with support, in order to dismiss a

---

[79] NRC Staff Answer at 25.

[80] Powertech Response at 19.

[81] Id. at 19–20.

[82] OST Statement at 26–27.

[83] NRC Staff Answer at 25.

previously admitted contention.[84] Otherwise, the contention remains in the case and proceeds on to the hearing.[85] Powertech's request for the Board to reject Contention 9 similarly fails given that Contention 9 has already been admitted and is now migrating to encompass the FSEIS.

Except for changing DSEIS to FSEIS, Contention 9, as previously admitted, remains unchanged and will be adjudicated in the evidentiary hearing. For convenience, it is reproduced in Appendix A to this Order.

H. Contention 14 and FSEIS Contention 1

"Whether an Appropriate Consultation was Conducted Pursuant to the Endangered Species Act and Implementing Regulations."[86]

"Whether the DSEIS's Impact Analyses Relevant to the Greater Sage Grouse, the Whooping Crane and the Black-Footed Ferret are Sufficient."[87]

"Failure to Adequately Review Impacts on Wildlife and Fails to Comply with Migratory Bird Treaty Act and Bald and Golden Eagle" (sic).[88]

1. Party Positions

The Oglala Sioux Tribe alleges that "the FSEIS violates 10 C.F.R. §§ 51.10, 51.70, 51.71, the National Environmental Policy Act and implementing regulation failing to conduct the required "hard look" analysis of impacts of the proposed mine on species of birds and bats receiving special protection by the Bald and Golden Eagle Protection Act (Eagle Protection Act)

---

[84] Supra note 45.

[85] While the Board rejected a contention concerning the consideration of Cumulative Impacts, a contention concerning the consideration of Connected Actions was admitted. LBP-13-9, 78 NRC at 78–79, 85–86.

[86] LBP-13-9, 78 NRC at 101.

[87] Id.

[88] OST Statement at 29.

(16 U.S.C. § 668–668c) and Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 703–711."[89] The Oglala Sioux Tribe further alleges that NRC Staff correspondence presented for the first time in the FSEIS regarding Endangered Species Act (ESA) consultation duties confirms that MBTA and Eagle Protection Act consultation with U.S. Fish and Wildlife Service (U.S. FWS) has not taken place, even though U.S. FWS alerted NRC Staff to these consultation requirements during correspondence regarding ESA requirements.[90] The Oglala Sioux Tribe argues the "NRC Staff completed the NEPA process without the procedural and substantive protections afforded these species by NEPA, MBTA, and the Eagle Protection Act."[91]

Regarding contention 14A, the NRC Staff maintains that the FSEIS contains information showing U.S. FWS concurrence with the Staff's finding and that as a result, Contention 14A should not migrate.[92] For Contention 14B the NRC Staff asserts that additional information provided in the FSEIS on the greater sage grouse, whooping crane, and the black-footed ferret prevents migration of this contention.[93] The NRC Staff also opposes admission of new FSEIS Contention 1 for lack of supporting information.[94]

Powertech states that all of the issues in Contention 14 and FSEIS Contention 1 are dealt with in its mitigation plan, and that the Oglala Sioux Tribe draws inaccurate and improper conclusions on the effect of the various species protection acts.[95]

---

[89] Id. at 29–30.

[90] Id. at 33 citing FSEIS at A-157.

[91] Id. at 33.

[92] NRC Staff Answer at 28.

[93] Id. at 29.

[94] Id. at 30–31.

[95] Powertech Response at 20–21.

2. Board Ruling

Previously admitted contentions 14A and 14B migrate to the FSEIS. In LBP-13-9 the Board found portions of Contention 14 were admissible as to the completion of the section 7 consultation process and the adequacy of the NRC Staff's impact analyses relevant to three named species.[96] The Board admitted as Contention 14A—Whether an appropriate consultation was conducted pursuant to the ESA and implementing regulations; and admitted as Contention 14B—Whether the DSEIS's impact analyses relevant to the Greater Sage Grouse, the Whooping Crane, and the Black-Footed Ferret are sufficient. The Board noted specifically that Powertech and the NRC Staff may respond to this contention with an appropriate motion for summary disposition if documentation or other information exists that would moot the reformulated Contention 14.[97] The Board also previously noted that each contention is a contention of adequacy.[98] As a result, as long as Intervenors' concerns over the adequacy of the FSEIS remain, whether or not it contains new information, the contention may migrate.

The NRC Staff's argument that Contention 14A does not migrate to the FSEIS and its observation that the Tribe provides no new basis for keeping this contention in the hearing is rejected.[99] The NRC Staff has it backwards—there is no necessity to file anything to keep an admitted contention in the proceeding. There is only an opportunity to move for summary disposition if new evidence is presented which moots an admitted contention.[100] Neither the

---

[96] LBP-13-9, 78 NRC at 98–101.

[97] LBP-13-9, 78 NRC at 101 n.449.

[98] LBP-13-9, 78 NRC at 98, 101.

[99] NRC Staff Answer at 28.

[100] A motion for summary disposition must contend that there are facts on which "there is no genuine issue to be heard." 10 C.F.R. § 2.710(a). Such facts must necessarily have come to light since LBP-13-9, 78 NRC 37 was issued and the Board found that all admitted contentions

NRC Staff nor Powertech has filed a motion for summary disposition as to Contention 14A or Contention 14B. Contention 14A and Contention 14B migrate because the underlying issue and concern raised in response to the DSEIS remains, and because a motion for summary disposition has not been filed.

Except for changing DSEIS to FSEIS, Contention 14A and Contention14B, as previously admitted, remain unchanged and will be adjudicated in the evidentiary hearing. For convenience, they appear in Appendix A to this Order.

To the extent FSEIS Contention 1 was submitted by the Oglala Sioux Tribe to expand Contention 14 or to the extent it proposes a new or amended contention, the attempt fails. The Oglala Sioux Tribe has filed nothing materially different from what has already been admitted as to Contentions 14A and 14B, nor has it supported its proposed FSEIS Contention 1 with alleged facts or expert opinion, required by § 2.309(f)(1)(iii). Insofar as the Oglala Sioux Tribe is making additional claims related to the MBTA, the Board finds it has not provided a sufficient explanation of its concern nor has it provided a concise statement of the alleged facts supporting its position, as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v). This Board has previously rejected these arguments as a basis for a contention concerning the MBTA and the BGEPA.[101]

Although the Oglala Sioux Tribe again claims that the MBTA and BGEPA require the NRC to consult with U.S. FWS, the Oglala Sioux Tribe cites only to the statutes themselves, which contain no such requirement. 10 C.F.R. § 2.309(f)(1)(vi) requires a petitioner to provide

---

contained a 10 C.F.R. § 2.309(f)(iv) "genuine dispute" on a material fact. See generally Nuclear Innovation North America LLC (South Texas Project, Units 3 and 4), 75 NRC 227, 248 (2012) ("Applicant had an opportunity to move for summary disposition of the contention based on the FEIS's new analyses mooting the contention. It did not do so.").

[101] LBP-13-9, 78 NRC at 101.

a citation to the section of law or regulation which sets forth the requirement alleged to be violated. The Oglala Sioux Tribe's contention does not do so, and thus, lacks a legal basis.

I. FSEIS Contention 2

"Inadequate Analysis of Direct, Indirect, and Cumulative Impacts of Disposal of Solid 11e2 Byproduct Material or the Reasonable Alternatives to Transportation and Disposal at the White Mesa Facility."[102]

1. Party Positions

The Oglala Sioux Tribe proposes a new contention based on what it claims is new information in the FSEIS that the waste disposal site for the project has been selected without a review of alternatives.[103] The NRC Staff argues that the Oglala Sioux Tribe has not supplied material new information since the DSEIS listed the White Mesa site as a possible site, and the proposed contention does not meet the requirements for a new contention.[104] Powertech states that no new information exists to support a new contention, as the waste disposal site chosen in the FSEIS was also selected in the DSEIS.[105]

2. Board Ruling

In FSEIS Contention 2 the Oglala Sioux Tribe argues that the FSEIS violates NEPA because it does not include a reviewable plan for disposal of byproduct material resulting from ISR operations. This contention has twice been rejected by this Board, once as a challenge to the Powertech ER,[106] and once as a challenge to the DSEIS.[107]

---

[102] OST Statement at 33.

[103] Id. at 33–34.

[104] NRC Staff Answer at 32–33.

[105] Powertech Response at 22.

[106] LBP-10-16, 72 NRC at 432–35.

[107] LBP-13-9, 78 NRC at 69–72.

As the NRC Staff correctly notes, given that the Board rejected the contention originally, the migration tenet does not apply and the Oglala Sioux Tribe must meet the requirements applicable to new contentions.[108] Among these requirements, the contention must be based on information materially different than the information previously available.[109]

A petitioner must demonstrate that the proposed contention is based on new or materially or significantly different information. Here, the Oglala Sioux Tribe does not identify any information that differs materially from the information available when the DSEIS was issued. The possible use of the White Mesa site in Utah for disposal of solid byproduct material appears in the DSEIS.[110] The change in White Mesa's designation from a possible disposal site to the site Powertech assumes it will use is not materially different information.[111] The Oglala Sioux Tribe does not even attempt to make this showing, as its argument does not identify where the FSEIS differs in any way from either Powertech's initial license application or subsequently filed documents identified by NRC Staff in monthly hearing file updates. Thus, the Oglala Sioux Tribe's arguments do not support admitting the proposed contention, and do not comply with 10 C.F.R. § 2.309(c)(2)(ii).

Further, the Oglala Sioux Tribe fails to challenge relevant sections of the environmental analysis. Although the Oglala Sioux Tribe makes general reference to the Generic Environmental Impact Statement (GEIS),[112] it does not challenge specific sections addressing

---

[108] NRC Staff Answer at 32.

[109] 10 C.F.R. § 2.309(c)(ii).

[110] DSEIS at 4-196–4-212.

[111] Compare DSEIS Page 3-105, with FSEIS 3-116.

[112] OST Statement at 38.

waste disposal.[113] The Oglala Sioux Tribe also fails to challenge comment responses where the NRC Staff provides information relevant to this contention.[114]

Finally, the Board notes that Powertech's March 19, 2014 Draft License, License Conditions 9.9 and 12.6 requires Powertech to have a 11e.(2) byproduct material disposal contract in place prior to the commencement of operations. This Board has already found that 10 C.F.R. § 40.31(h) applies to uranium mills, and not to ISR facilities.[115] Thus, the Oglala Sioux Tribe's allegation that 10 C.F.R. § 40.31(h) and 10 C.F.R. Part 40, Appendix A, Criterion 1 require further analysis of this issue will, again, not be admitted. Because the Tribe fails to meet the requirements for a new contention, the Board must reject FSEIS Contention 2.

J. FSEIS Contention 3

"Failure to Provide NEPA Comment Opportunity for Impacts Associated with Air Emissions."[116]

1. Party Positions

The Oglala Sioux Tribe contends that significant new information on impacts from air emissions was provided in the FSEIS, but no opportunity was provided for the Tribe or the public to comment on the data and analysis.[117] The Oglala Sioux Tribe alleges this is a contention of omission and inadequate NEPA analysis.[118] The NRC Staff responds that the FSEIS only needs to be circulated for comment if the air emission impacts data was significantly different from impacts already studied, and that the Oglala Sioux Tribe did not

[113] GEIS Sections 4.2.12, 4.3.12, 4.4.12.

[114] FSEIS at Appendix E, Section E5.29.2.

[115] LBP-10-16, 72 NRC 434.

[116] OST Statement at 39.

[117] Id. at 39.

[118] Id.

make a claim that the new data met this standard.[119] Powertech claims that an ambient air quality emission protocol was created in July 2013, and that the Oglala Sioux Tribe did not comment at this stage of the process.[120] Powertech also claims that the air quality effects have shown smaller potential impacts than the conclusions reached in the DSEIS.[121]

2. Board Ruling

The new air emissions data do not point to any impacts materially different from those identified in the DSEIS. In the DSEIS the NRC Staff anticipated that Powertech would update its air emissions data.[122] The NRC Staff used a bounding analysis in the DSEIS to assess impacts from air emissions.[123] The emissions data presented in the FSEIS fall within the NRC Staff's bounding analysis.[124] As the Staff explains in its comment response on page E-165 of the FSEIS:

> The updated information considered when developing the final SEIS does not significantly change the staff's analysis of air impacts as presented in the draft SEIS. To the contrary, as described in final SEIS Table C-19, the draft analysis bounds the final NRC analysis. Peak year, construction phase, and cumulative impact magnitudes in the draft and final SEISs were the same (i.e., SMALL to MODERATE). For the operations, aquifer restoration, and decommissioning phases, the draft SEIS impact magnitude of SMALL to MODERATE was reduced to SMALL in the final SEIS.

---

[119] NRC Staff Answer at 34.

[120] Powertech Response at 23–24.

[121] Id. at 24.

[122] NRC Staff Answer at 34 n.57.

[123] FSEIS at C-26 ("The draft SEIS presented a conservative or bounding analysis relative to the final SEIS.").

[124] FSEIS at C-26, Table C-18.

In other words, rather than presenting a "seriously different picture of the environmental impact of the proposed project,"[125] the updated air emissions data confirmed the Staff's assessment of the Dewey-Burdock Project's impact.[126]

In sum, the Oglala Sioux Tribe fails to show the FSEIS' air emissions data represents new or materially different information required for admitting a new contention. The Oglala Sioux Tribe has not met the standard required by 10 C.F.R. § 2.309(f)(1)(iv), (v) or (vi).

K. Consolidated Intervenors' Contentions

1. Position of the Consolidated Intervenors

The Consolidated Intervenors' Statement of Contentions addresses previously admitted Contentions 1A, 1B, 2, 3, and 4.[127] Consolidated Intervenors note that "none of the issues identified in the DSEIS Contentions have been addressed in the FSEIS . . . ."[128] Consolidated Intervenors further "contend that the FSEIS discussion of each of the already-admitted contentions is in para materia with the analysis from the DSEIS."[129] In an abundance of caution the Consolidated Intervenors incorporate by reference the detailed discussion of contentions in the [Oglala Sioux] Tribe's Statement of Contentions dated March 17, 2014.[130]

2. Board Ruling

The Board has already addressed the substance of each of the Consolidated Intervenors' statement of contentions, supra. Nothing in the statements of contentions filed by

---

[125] Hydro-Resources, Inc. (2929 Coors Road, Suite 101, Albuqerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999).

[126] FSEIS at C-26, Table C-18.

[127] CI Statement at 6, 14, 20, 22, 25.

[128] CI Statement at 2.

[129] CI Statement at 5.

[130] Id.

either the Oglala Sioux Tribe or the Consolidated Intervenors expands the previously admitted contentions. Each of the contentions admitted by LBP-13-9 migrates as an issue in the upcoming August 2014 adjudication. The only modification to the previously admitted contentions is that the contentions are now criticisms of the FSEIS instead of the DSEIS.

The scope of that adjudication may, however, be narrowed by the grant of a motion for summary disposition. Such motions for summary disposition were filed on April 11, 2014[131] and will be addressed by the Board in a separate order.

[131] NRC Staff's Motion for Summary Disposition on Safety Contentions 2 and 3 (Apr. 11, 2014); Oglala Sioux Tribe's Motion for Summary Disposition National Environmental Policy Act Contentions 1A and 6 – Mitigation Measures (Apr. 11, 2014).

Table of Admitted Contentions

Dewey-Burdock In-Situ Recovery Facility

Topic[132]	Oglala Sioux original-2010	Oglala Sioux DSEIS-2013	Consolidated Intervenors original- 2010	Consolidated Intervenors DSEIS-2013	Admitted for Adjudication
Historical & Cultural resources	1	1	K	A	1A
Failure to consult	1	1	-	-	1B
Ground water quality	2	2	D	B	2
Hydrogeological information	3	3	E and J	C	3
Ground water quantity impacts	4	4	F*	D*	4
Mitigation measures	-	6	-	-	6
Connected actions	-	9	-	-	9
Consultation on Endangered Species Act	-	14	-	-	14A
Sufficiency of impact analyses	-	14	-	-	14B

*Contentions rejected by the Board

[132] The statement of the admitted contention going forward is contained in the Board's Order, infra and in Appendix A to this Order.

VI. BOARD ORDER

A. The Board finds the following previously admitted contentions migrate and now refer to the FSEIS instead of the DSEIS:

Contention 1A: Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources.

Contention 1B: Failure to Involve or Consult All Interested Tribes as Required by Federal Law.

Contention 2: The FSEIS Fails to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality.

Contention 3: The FSEIS Fails to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration and Assess Potential Impacts to Groundwater.

Contention 4: The FSEIS Fails to Adequately Analyze Ground Water Quantity Impacts.

Contention 6: The FSEIS Fails to Adequately Describe or Analyze Proposed Mitigation Measures.

Contention 9: The FSEIS Fails to Consider Connected Actions.

Contention 14A: Whether an appropriate consultation was conducted pursuant to the Endangered Species Act and implementing regulations.

Contention 14B: Whether the FSEIS's impact analyses relevant to the greater sage grouse, the whooping crane, and the black-footed ferret are sufficient.

B. The NRC Staff's conclusion that "the Board should dismiss the Intervenors' previously admitted contentions"[133] is denied.

C. The Board finds inadmissible the Oglala Sioux Tribe's contentions FSEIS 1, FSEIS 2, FSEIS 3 for failure to meet 10 C.F.R. § 2.309(f)(1) and/or § 2.309(c).

D. No specific section of the Commission's regulations, including 10 C.F.R. § 2.311, permits appeals from an order ruling on the admission of new or amended

[133] NRC Staff Answer at 35.

contentions. Nonetheless, interlocutory review of decisions and actions of a presiding officer may be available pursuant to § 2.341(f)(2) of the Commission's regulations.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chair
ADMINISTRATIVE JUDGE

/RA/

Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/

Mark O. Barnett
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 28, 2014

APPENDIX A

Contention 1A: Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources.

Contention 1B: Failure to Involve or Consult All Interested Tribes as Required by Federal Law.

Contention 2: The FSEIS Fails to Include Necessary Information for Adequate Determination of Baseline Ground Water Quality.

Contention 3: The FSEIS Fails to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration and Assess Potential Impacts to Groundwater.

Contention 4: The FSEIS Fails to Adequately Analyze Ground Water Quantity Impacts.

Contention 6: The FSEIS Fails to Adequately Describe or Analyze Proposed Mitigation Measures.

Contention 9: The FSEIS Fails to Consider Connected Actions.

Contention 14A: Whether an appropriate consultation was conducted pursuant to the Endangered Species Act and implementing regulations.

Contention 14B: Whether the FSEIS's impact analyses relevant to the greater sage grouse, the whooping crane, and the black-footed ferret are sufficient.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
POWERTECH (USA) INC.	)	Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility	)	
Source Materials License Application)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Ruling on Proposed Contentions Related to the Final Supplemental Environmental Impact Statement)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk*.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLB)
Mail Stop T-3F23
Washington, DC 20555-0001

William J. Froehlich, Chair
Administrative Judge
william.froehlich@nrc.gov

Richard F. Cole
Administrative Judge
richard.cole@nrc.gov

Mark O. Barnett
Administrative Judge
mark.barnett@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov

Nicholas Sciretta, Law Clerk
nicholas.sciretta@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001
OCAA Mail Center
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Rulemakings & Adjudications Staff
Mail Stop O-16C1
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15 D21
Washington, DC 20555-0001
Mary Spencer, Esq.
mary.spencer@nrc.gov
Michael Clark, Esq.
michael.clark@nrc.gov
Brett Klukan, Esq.
brett.klukan@nrc.gov
Patricia Jehle, Esq.
patricia.jehle@nrc.gov
Sabrina Allen, Law Clerk
sabrina.allen@nrc.gov
OGC Mail Center:
OGCMailCenter@nrc.gov

Counsel for the Applicant (Powertech)
Thompson & Pugsley, PLLC
1225 19th Street, NW, Suite 300
Washington, DC 20036
Christopher Pugsley, Esq.
cpugsley@athompsonlaw.com
Cynthia L. Seaton, Paralegal
cseaton@athompsonlaw.com
Anthony J. Thompson, Esq.
ajthompson@athompsonlaw.com
Alison Bimba, Legal Assistant
abimba@thompsonlaw.com

Counsel for the Oglala Sioux Tribe
Western Mining Action Project
P. O. Box 349
Lyons, CO 80540
Jeffrey C. Parsons, Esq.
wmap@igc.org

Counsel for the Oglala Sioux Tribe
Energy & Conservation Law
1911 Main Avenue, Suite 238
Durango, CO 81301
Travis E. Stills, Esq.
stills@frontier.net

Counsel for the Oglala Sioux Tribe
Gonzalez Law Firm
522 Seventh Street, Suite 202
Rapid City, SD 57701
W. Cindy Gillis, Esq.
cindy@mariogonzalezlaw.com

Counsel for Consolidated Intervenors
(Susan Henderson and Dayton Hyde)
David Frankel, Esq.*
P.O.B. 3014
Pine Ridge, SD 57770
arm.legal@gmail.com

Counsel for Consolidated Intervenors
(Susan Henderson and Dayton Hyde)
Law Office of Bruce Ellison
P.O. Box 2508
Rapid City, SD 57709
Bruce Ellison, Esq.*
belli4law@aol.com
Roxanne Andre, Paralegal*
roxanneandre@yahoo.com

Counsel for Consolidated Intervenor
(Dayton Hyde)
Thomas J. Ballanco, Esq.*
945 Traval Street, #186
San Francisco, CA 94116
harmonicengineering1@mac.com

Consolidated Intervenor
Aligning for Responsible Mining (ARM)
P.O.B. 3014
Pine Ridge, SD 57770
David Frankel, Esq., Legal Director*
arm.legal@gmail.com

[Original signed by Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of April 2014.