



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 18, 2012

Dear THPO:

SUBJECT: REQUEST FOR A PROPOSAL WITH COST ESTIMATE; PROPOSED DEWEY BURDOCK IN-SITU RECOVERY PROJECT

The NRC staff wishes to thank the tribal representatives from the Crow Nation, Oglala Sioux Tribe, Northern Cheyenne Tribe, Rosebud Sioux Tribe, Sisseton-Wahpeton Oyate, Standing Rock Sioux Tribe, and Yankton Sioux Tribe who participated in a project meeting with Jean Trefethen (NRC) and Randy Withrow (NRC contractor) in Bismarck, North Dakota on September 5, 2012. This meeting was scheduled following a teleconference held on August 21, 2012, during which participating tribes requested an opportunity to revise the applicant's proposed Statement of Work (SOW) for completing a Tribal Survey for the Dewey-Burdock Project.

It was the U.S. Nuclear Regulatory Commission (NRC) staff's understanding that this meeting would include an opportunity for a working group composed of NRC and tribal representatives to develop a revised SOW for completion of a field survey in the fall of 2012. Instead, tribal representatives provided NRC with a revised SOW (Enclosure 1) on September 3, 2012, just in advance of the meeting. At the September 5th meeting, most of the discussion actually involved several other topics of concern to the tribes.

Tribes requested NRC's written comment on four principal matters of concern prior to finalizing a scope of work for a field survey limited to the area of direct effect. The tribes' first three concerns involve general matters of compliance with the National Historic Preservation Act (NHPA) or other laws. The NRC staff believes it has previously addressed these issues in meetings, teleconferences and written correspondence with tribal representatives. Nonetheless, the staff will respond to the tribal representatives' concerns below.

- Tribes are concerned that the scope of the tribal survey will be limited to the area of immediate direct effects (2,637 acres) and that tribes would have no assurance that future development outside this area would be subject to proper review prior to construction. Tribal representatives requested a Programmatic Agreement be developed for the Dewey Burdock project to address the need for phased identification of historic properties, including places of traditional religious and cultural significance to tribes.

Staff Response: The NRC staff agrees that a Programmatic Agreement will need to be developed to address the phased identification and evaluation of historic properties. The need for a phased approach to identification and the advantages of developing a Programmatic Agreement for the Dewey Burdock project has been discussed in previous meetings. For example, during the February 14–15, 2012, consultation meeting, the parties discussed the phased identification and evaluation of historic properties on the Dewey-Burdock site. See Meeting Transcripts at the Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML120590330 and ML120590341. Using a phased approach to comply with the NHPA is allowed by the regulations at 36 CFR § 800.14(b). The NRC staff will continue to consult with the tribes and other consulting parties as it develops a Programmatic Agreement.

- Tribes are concerned that potential indirect effects have not yet been fully addressed and requested that the NRC and Bureau of Land Management (BLM) continue consultation with tribes, the South Dakota State Historic Preservation Office (SD SHPO) and the Advisory Council on Historic Preservation (ACHP) to define the area of potential indirect effects and then determine what level of effort is needed to identify properties and assess effects in this area.

Staff Response: The NRC staff will continue to consult with BLM, SD SHPO, and the tribes on all issues arising under Section 106 of the NHPA, including potential indirect effects. The staff will also consult with ACHP as necessary. For approximately the past year, NRC staff has been involved in discussions with the tribes over how to identify historic properties that may be affected by the proposed Dewey-Burdock Project. The staff previously sent the tribes maps identifying the area of potential effect (APE) for the entire Dewey-Burdock Project. The staff also sent the tribes maps showing areas that may be affected during the first phase of the project. These maps identify the placement of buildings, potential wellfields, land application areas, and known archaeological sites (Enclosure 2). The tribes have therefore had the resources to provide input on what areas may be affected, either directly or indirectly, during the first phase of the Dewey-Burdock project. However, to date, tribal representatives have not provided input on specific areas that may be affected during the first phase of the project.

- Tribes expressed concern about the need for confidentiality of site information associated with completion of the tribal survey and the disposition of that information. Tribes requested that the NRC endorse the confidentiality provisions included in the SOW as revised on September 3, 2012.

Staff response: The NRC staff intends to keep survey information confidential to the fullest extent allowed by law. At the same time, the staff must have sufficient information to ensure that we can make an independent recommendation as to whether properties are eligible for inclusion on the National Register of Historic Places. The staff has discussed these issues with tribal representatives previously. See February 2012, Meeting Transcripts at ADAMS Accession Nos. ML110550535, ML120590330 and ML120590341. In the “Reporting” section of the information request (Enclosure 3), the staff proposes a method of reporting fieldwork intended to address the tribes’ confidentiality concerns, while at the same time meeting the staff’s information needs. We ask that you provide further input on confidentiality in your response to our information request.

In addition to these general NHPA-related concerns, the tribes requested the following action specific to NRC's request for a cost estimate to complete the survey:

- Tribes expressed concern that the daily coverage rates (acres per person/day) requested by NRC for cost estimating purposes might be incorrectly interpreted as a precedent for other survey efforts. Tribes requested that this be waived as a requirement for the purpose of estimating survey costs.

Staff response: Since February 2012, the staff has been trying to facilitate the development of an SOW under which the applicant would contract with the tribes for a survey of the proposed Dewey-Burdock site. The initial SOW from the applicant, which the staff sent to the tribes on May 7, 2012, included coverage rates. At the end of this letter, the staff renews our request for certain information from the tribes. If the tribes object to using coverage rates to estimate survey costs, NRC invites tribes to substitute an alternative means of estimating survey cost.

As we have stated previously, the staff's schedule for completing our NHPA review is tied to our schedule for completing our review under the National Environmental Policy Act (NEPA). Because our schedule calls for issuing our final NEPA document no later than May 2013, it is imperative that we proceed with identifying any NHPA-eligible properties before the end of the 2012 field season (*i.e.*, in the fall 2012).

The staff respectfully requests that the participating tribes designate a preferred contractor to complete a cultural resources survey on their behalf and provide NRC with a written proposal with cost estimate based on the 2,637-acre area that may be disturbed during the first phase of the proposed Dewey Burdock project. For your convenience, the staff is enclosing a detailed request for information with this letter (Enclosure 3). This request repeats and consolidates the staff's prior requests for information from the tribes. See, *e.g.*, ADAMS Accession Nos. ML12143A185, ML12261A375, ML12261A429, and ML12261A476. The staff is also forwarding maps showing the location of the entire proposed project area and the proposed initial disturbed area (2,637-acre) to be surveyed. These maps were sent to you previously. See ADAMS Accession No. ML 12261A326.

The NRC staff requests that you submit the proposal with cost estimate stated above to Ms. Kellee Jamerson, NRC Project Manager, or Mr. Randy Withrow, NRC contractor, no later than close of business on October 1, 2012. The proposal can be submitted by email to

Kellee.Jamerson@nrc.gov or rwithrow@louisberger.com. Following the receipt of this information or after October 1, 2012, NRC and BLM will determine the path forward for identifying any NHPA-eligible properties before the end of the 2012 field season (*i.e.*, in the fall 2012).

Sincerely,



Kevin Hsueh, Branch Chief
Environmental Review Branch
Environmental Protection and Performance
Assessment Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. Tribes Revised SOW from
September 3, 2012
2. Powertech's Map Depicting Project
Boundary and Proposed Known
Disturbance (ML12261A326)
3. Detailed Request for Information
(Request for Proposal w/Cost Estimate)

**Request for Proposal with Cost Estimate
Tribal Survey for the Proposed Dewey Burdock Project
September 18, 2012**

The U.S. Nuclear Regulatory Commission (NRC) staff requests a written proposal with cost estimate for a survey to identify places of traditional religious and cultural significance to tribes that may be affected by the first phase of the proposed Dewey Burdock Project. This request consolidates prior requests for information that the staff has made in emails, letters, teleconferences, and meetings with tribal representatives. See, e.g., ADAMS Accession Nos. ML12143A185, ML12261A375, ML12261A429, and ML12261A476.

The tribes' proposal with cost estimate should include a brief description of the work that will be completed for both field investigations and reporting. Please include the following specific information in your written proposal.

Fieldwork:

- Describe the size and composition of the survey crew (number of individuals and their titles).
- Provide a proposed start date and estimated duration of fieldwork (number of field days).
- Cost assumptions (including, for example, the estimated number of cultural features that will be recorded).

Reporting:

- Provide a schedule for completion of the following work products or deliverables.
 1. A non-confidential summary of fieldwork including a map showing where survey work was completed (this should not include specific site locations).
 2. A confidential final eligibility report that provides the location of all identified sites, a description of where each site is located in relationship to areas that will be directly impacted by planned operations, and recommendations regarding the eligibility of each site for listing in the National Register of Historic Places. The assessment of eligibility should include references to the appropriate eligibility criteria (36 CFR 60.4) and an assessment of how the site's integrity will be affected directly or indirectly by the proposed undertaking.
 3. A confidential report for use by the applicant showing the location of any eligible sites identified within the proposed Dewey Burdock license area. This report will be prepared once final determinations of eligibility have been completed and will only be shared with the applicant after tribes receive a confidentiality agreement signed by the applicant that limits use to appropriate personnel.

Enclosure 3

Cost Estimate:

Please provide a line-item budget that lists costs for estimated labor and related expenses for both fieldwork and reporting. For labor estimates, please include labor categories or titles, estimated number of hours for each category, and the associated hourly rates. For related expenses such as per diem or equipment rental, please include both the number of days and associated rates used to estimate total costs.

Schedule:

NRC requests that all field investigations be completed by the end of the 2012 field season (i.e., in fall 2012), and that a confidential eligibility report be completed no later than 60 days following completion of the field survey.

Access and Safety:

The applicant, Powertech (USA), will provide access to the properties, and a representative of Powertech (USA) will coordinate with Tribal preferred contractor in terms of access to land. The Powertech (USA) representative will utilize a GPS survey unit to identify all map locations selected by the Tribal preferred contractor for ground examination and will guide the Tribal personnel to the locations they select in the field. The Powertech (USA) representative will also serve as liaison with the local landowners.

Insurance:

All Tribal representatives who will be present during field work will be required to provide proof of liability insurance in the amount of \$500,000 or more, or sign an indemnification statement that will hold harmless both the landowner and Powertech (USA) from any accidents that may occur in the field.

Contracting:

NRC will not contract directly with the preferred contractor selected by participating tribes. NRC will forward the proposal to the project applicant for their consideration and contracting.