

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Powertech USA, Inc.: Dewey-Burdock
in Situ Uranium Recovery Facility

Docket Number: 40-9075-ML

ASLBP Number: 10-898-02-MLA-BD01

Location: Rapid City, South Dakota

Date: Thursday, August 21, 2014

Work Order No.: NRC-1008 Pages 1171-1328

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

-----x

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

-----x

Thursday, August 21, 2014

Hotel Alex Johnson
 Ballroom
 523 6th Street
 Rapid City, South Dakota

BEFORE:
 WILLIAM J. FROEHLICH, Chairman
 DR. RICHARD F. COLE, Administrative Judge
 DR. MARK O. BARNETT, Administrative Judge

1 APPEARANCES:

2 On Behalf of Powertech USA, Inc.:

3 CHRISTOPHER S. PUGSLEY, ESQ.

4 ANTHONY J. THOMPSON, ESQ.

5 of: Thompson & Pugsley PLLC

6 1225 19th Street, N.W.

7 Suite 300

8 Washington, DC 20036

9 (202) 496-0780

10 contact@athompsonlaw.com

11

12 On Behalf of the Consolidated Intervenors:

13 DAVID FRANKEL, ESQ.

14 of: Aligning for Responsible Mining (ARM)

15 P.O. Box 3014

16 Pine Ridge, South Dakota 57770

17 (605) 515-0956

18 arm.legal@gmail.com

19 and

20 BRUCE ELLISON, ESQ.

21 of: Law Offices of Bruce Ellison

22 P.O. Box 2508

23 Rapid City, South Dakota 57709

24 (605) 348-9458

25 belli4law@aol.com

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and

2 THOMAS J. BALLANCO, ESQ.
3 945 Taraval Street
4 Suite 186
5 San Francisco, California 94116
6 (650) 296-9782
7 harmonicengineering1@mac.com

8

9 On Behalf of the Oglala Sioux Tribe:

10 JEFFREY C. PARSONS, ESQ.
11 of: Western Mining Action Project
12 P.O. Box 349
13 Lyons, Colorado 80540
14 (303) 823-5738
15 wmap@igc.org

16 and

17 TRAVIS E. STILLLS, ESQ.
18 of: Energy & Conservation Law
19 1911 Main Avenue
20 Suite 238
21 Durango, Colorado 81301
22 (970) 375-9231
23 stills@frontier.net

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On Behalf of the Nuclear Regulatory Commission:

MICHAEL CLARK, ESQ.

PATRICIA JEHLER, ESQ.

of: Office of the General Counsel

Mail Stop - O-15 D21

U.S. Nuclear Regulatory Commission

Washington, D.C. 20555-0001

(301) 415-2011 (Clark)

(301) 415-8366 (Jehle)

michael.clark@nrc.gov

patricia.jehle@nrc.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

Opening Remarks, Chairman Froehlich 1176

Procedural Matters 1176

Panel 3

Opening Statements

Mr. Parsons for the Oglala Sioux Tribe 1181

Mr. Ballanco for the

Consolidated Intervenors 1200

Mr. Clark for the NRC Staff 1203

Mr. Pugsley for Powertech 1208

Board Cross-Examination of Panel 3 1212

Adjourn

P R O C E E D I N G S

(9:01 a.m.)

1
2
3 CHAIRMAN FROEHLICH: Good morning, all.
4 We'll be on the record. Over the evening hour, I'd
5 asked if the parties would confer to, one, clarify and
6 perhaps come up with a single document which reflects
7 the discussion that was held concerning the circular
8 map and the project boundary area. Have the parties
9 had an opportunity to confer?

10 MR. PARSONS: Your Honor, Jeff Parsons on
11 behalf of the Tribe. We did confer. And the result,
12 I think -- and, Mr. Pugsley, please jump in anytime --
13 I think the result was that the parties identified
14 less of a controversy and more just of a
15 misunderstanding, I think.

16 And so I think we could clarify that for
17 you on the record. The map I think we discussed was
18 at OST-5, Page 14 of that document. That's the
19 Powertech rendition of the Gott map that shows the
20 dissolution line drawn on there.

21 And so the understanding was that, or the
22 misunderstanding was sort of what people were talking
23 about. Dr. Moran's testimony was that there are
24 markings indicating depressions below that dissolution
25 front line that's drawn on there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And Powertech's witness was indicating
2 that none of those on this map appear within the
3 permit area box. And so Dr. Moran wasn't trying to
4 say, I think, that there were some in that box just
5 below that line. And --

6 JUDGE COLE: Which is above the territory.

7 MR. PARSONS: Well, it is outside of the,
8 that is to say that the map does not show any of those
9 depressions within that box.

10 JUDGE COLE: Thank you.

11 JUDGE BARRETT: So let me make sure that
12 I understand. So Dr. Moran would say that there are
13 markings indicating breccia pipes between the red line
14 and the project site but not on the project site. Is
15 that correct?

16 MR. PARSONS: That's correct. And he was
17 just looking at the map. And that's, I think, what
18 the map shows as well.

19 MR. PUGSLEY: Your Honor, not breccia
20 pipes, depressions.

21 JUDGE BARRETT: Okay, thank you.

22 MR. PUGSLEY: Allow me to respond. And,
23 Mr. Parsons, please tell I'm framing this correctly,
24 that Dr. Moran's -- because I've apparently in this
25 proceeding been qualified as a geologist, hydrologist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and pretty much any other profession that I can take
2 on -- Dr. Moran's testimony is that there are markings
3 of depressions below the line labeled dissolution
4 front, the red line, but not within the permit
5 boundary.

6 And our testimony is there is not any
7 markings of depressions within the permit boundary.
8 Is that how you see it?

9 MR. PARSONS: That sounds accurate, thank
10 you.

11 MR. PUGSLEY: Then we would stipulate to
12 that.

13 JUDGE BARRETT: Okay, thank you.

14 CHAIRMAN FROEHLICH: That sounds like a
15 meeting of the minds. Thank you. I'd also asked, at
16 the conclusion of yesterday's session, if the parties
17 would take an opportunity to discuss procedures for
18 the viewing of the additional data that was the
19 subject of OST-19. I wonder if someone could report
20 on the progress, if any?

21 MR. PUGSLEY: Your honor, we have not met
22 with the other parties regarding this. However, we
23 did state for the record that Powertech would offer
24 you a report on how, a proposal on how we would do
25 this.

1 Let me say a few things if I may. One is
2 we would like, for the record, to renew our objection
3 to the finding of relevancy. We believe, based on
4 Commission precedent, that the Staff has the legal
5 ability to determine what data is relevant to an
6 initial licensing decision.

7 We believe they've made that judgment and
8 that, because of that, this data is not relevant to
9 Contention 3 and that contentions in this proceeding
10 are solely based on whether the licensing decision was
11 adequate.

12 With that said, Powertech has conferred
13 internally and notes the following two items for the
14 record. One, we certainly, as we said yesterday, will
15 make the newly acquired data, whether in paper or
16 digitized form per the Board's ruling, available.

17 Two, excuse me, Consolidated Intervenors
18 and the Oglala Sioux Tribe under the protective order
19 that is currently in this proceeding, that was put out
20 earlier for SUNSI information.

21 In addition, we'd like to note for the
22 record that, per Mr. Parsons' August 16th, 2014,
23 motion solely regarding the issue of what he
24 classified as old electronic logs, that we also will
25 stipulate to making that available to Consolidated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Intervenor and the Tribe at the same time.

2 Upon execution of the protective order, we
3 will make that data, we believe the best way to make
4 this data available for convenience of the parties is
5 to make it available for inspection and review at
6 Powertech's Edgemont office and not in Denver.
7 Because that's totally inconvenient for the parties.
8 We think that that is the most efficient way to do
9 things.

10 And under the protective order, we would
11 request that the Board say not only do we follow those
12 provisions, but the Intervenor are free to make
13 copies of items if they wish. But any such copies
14 will need to be returned to Powertech, as they are
15 proprietary.

16 We also note for the record that, upon
17 submission of our response to the remainder of Mr.
18 Parsons' motion next Tuesday, we will also offer you
19 a 10CFR 2.390(a)(4) affidavit as required by
20 Commission regulations noting that this information is
21 commonly held in confidence by ISR companies and that
22 it meets the Commission's requirements for
23 confidential business information.

24 CHAIRMAN FROEHLICH: Mr. Parsons?

25 MR. PARSONS: Yes, Your Honor. So this is

1 the first we've heard of this proposal. Hearing it in
2 oral form and not having a written copy makes it just
3 a bit of a challenge. I don't want to say that I
4 didn't hear what Mr. Pugsley said, but I think it'd be
5 helpful for us to review that, talk with our experts.

6 Two things, I guess, come to mind. The
7 first is the location. I'm not sure that we would
8 agree with Mr. Pugsley's statement that Denver is
9 utterly inconvenient for all the parties or that
10 Edgemont is the most convenient. We'd have to talk
11 with our experts about how that occurs.

12 The second is -- or, I guess, three things
13 -- the second is with regard to the copies, my
14 understanding is a lot of this data is in digital
15 form. That would not seem to be too much of a
16 challenge to disseminate.

17 I do note that the regulations at 10CFR
18 2.336 do address the issue of copies. And it does
19 give the parties "a right" to request copies of the
20 document. I think to say that we have an opportunity
21 to make our own copies, I'm not sure how that squares
22 exactly. I'd like to --

23 CHAIRMAN FROEHLICH: I think what Mr.
24 Pugsley was saying is they're not going to duplicate
25 all the materials in their possession. But after your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 experts review the materials, if they need to make
2 copies, they'll make copies available. Did I
3 understand you correctly?

4 MR. PUGSLEY: Let me offer some more
5 information to Mr. Parsons. First of all, and I
6 didn't mean to over-complicate this, the data itself
7 resides in Edgemont at this time. So it is available
8 there.

9 Secondly, yes, that's what we were saying.
10 If the experts needed copies, they can feel free to
11 make them as long as they return them as proprietary
12 information.

13 Third, with respect to the digitized data,
14 that is available on a CD, a disk. And that is, yes,
15 that's fine. You can take that. I mean, you can have
16 it as soon as you sign the protective order.

17 MR. PARSONS: Which gets to my third point
18 with respect to the protective order. We would like
19 an opportunity, based on the affidavit that appears to
20 be forthcoming, to review that. We're not, at this
21 point, willing to stipulate that this falls within the
22 requirements or the conditions for a protective order.

23 MR. PUGSLEY: I would respectfully
24 disagree with that. Because when the Board issued the
25 Federal Register notice regarding SUNSI information,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I believe a representative of the Tribe signed that
2 protective order. So it was deemed adequate for the
3 sensitive information. I see no difference here.

4 MR. PARSONS: I wasn't -- I'm sorry.

5 CHAIRMAN FROEHLICH: Are you suggesting
6 that we need to make any additions or changes to the
7 protective order that we already have in place?

8 MR. PARSONS: I think we were wishing to
9 further investigate whether this data falls within,
10 that is to say that the protective order is needed for
11 this information.

12 As we heard testimony, a lot of this data
13 is already submitted to NRC Staff. It's included, the
14 same logs, the same information's included in the
15 testimony. It's included in the FSEIS. So the idea
16 that additional data would be subject to a protective
17 order, I'm just not willing to stipulate at this point
18 that it falls under that category.

19 MR. PUGSLEY: Your Honor, I find this
20 argument intriguing. Because it seems to me that if
21 Mr. Parsons would like an opportunity to review our
22 affidavit, that's fine. That's not a problem. And
23 the regulations state that the Board will review the
24 affidavit and determine whether or not it's
25 confidential.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But I see no reason why the protective
2 order could not be executed to expedite the disclosure
3 of this data, the availability of this data. And then
4 if Board determines that it does not meet the
5 regulation's definition of confidential information,
6 then the protective order can be rescinded for that.

7 MR. PARSONS: I'm not sure that that's a
8 strategy we're interested in pursuing, necessarily.

9 MR. PARSONS: I wasn't aware there was a
10 strategy here. I thought it was about looking at the
11 data.

12 MR. PARSONS: It is about looking at the
13 data. But it requires our experts to make time to
14 review it. I'm not sure that that can happen in such
15 an expedited fashion as you say.

16 I'll further note that, according to
17 Powertech's testimony and their pleadings, there's
18 substantial additional data that's likely to come in
19 by the end of next month. And so it seems to me that
20 we've got additional data that would be subject to the
21 same relevancy ruling that will be in Powertech's
22 possession in the coming weeks.

23 And so it's not clear to me why we would
24 be expediting a review of part of it and not all of it
25 when you're to have most of it or some of it no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 earlier than next month.

2 CHAIRMAN FROEHLICH: Mr. Parsons, the
3 Board found that this material is relevant. And
4 Powertech, at this stage, has listed its conditions,
5 its concerns with making it available to you as
6 quickly as possible. This is consistent with the
7 Board's ruling that these are relevant, appear to be
8 relevant to the case and may be helpful to you.

9 I would like you to consider, and speak
10 with your clients and come up with a way to expedite
11 your review of this material and report to me if there
12 any concerns.

13 The fact that Powertech has, in their
14 press release, paid substantial sums of money to
15 acquire this data leads me to believe that it may be
16 commercially sensitive and proprietary in nature.

17 You're welcome, you know, to look at his
18 affidavit. But on its face, it seems like that
19 shouldn't be an impediment to reviewing this material
20 in short order. So I would ask that you confer with
21 your experts and come up with convenient times or
22 sessions where they would be able to review this
23 material.

24 And you can see whether it supports your
25 position, leads to new contentions, or whatever might

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be in there. Let's not worry about forthcoming
2 documents. Powertech is aware that we consider this
3 type of material relevant. However, they can only
4 show it to you once they are in possession and control
5 of it.

6 MR. PARSONS: I understand that, Your
7 Honor. Thank you. I guess my last question would be
8 with regard to NRC Staff review of this data. It
9 seems to that that's a component of this as well.

10 CHAIRMAN FROEHLICH: Staff will also have
11 access to this material. This material is now
12 available for the parties to review. And Staff is
13 welcome to have its experts review the data for
14 whatever purpose, for whatever use they might make of
15 it.

16 MR. CLARK: Judge Froehlich, if I could
17 just clarify one point. The Staff doesn't have
18 existing well log data, except for that which was
19 included in Powertech's application. It doesn't have
20 separate past data, otherwise it would have identified
21 that data and claimed that it's privileged in one of
22 its hearing file updates.

23 CHAIRMAN FROEHLICH: I'll leave it to you,
24 Mr. Clark, if you want to review these. But the Staff
25 would have access to these as well.

1 MR. CLARK: Okay. Thank you.

2 MR. ELLISON: Judge, two questions, if I
3 may.

4 CHAIRMAN FROEHLICH: Please, Mr. Ellison.

5 MR. ELLISON: First, I would assume would
6 the Staff then have to come to wherever our experts
7 have to come? I mean, if we're all going to the same
8 place to view the data, or is Powertech planning to
9 provide a copy to --

10 CHAIRMAN FROEHLICH: If Staff wants to
11 review the digitized data, I guess they can do that
12 wherever they want. If they want to travel to
13 Edgemont and go through the paper documents, they will
14 arrange a time that was convenient for both.

15 MR. ELLISON: Assuming we deal with the
16 privilege issue and sign any papers that may be
17 required, Mr. Pugsley mentioned CDs. I imagine they
18 could then be sent to all parties once the protective
19 order is --

20 MR. PUGSLEY: Yes, of course. Of course.
21 And certainly, Mr. Ellison, if there were any issues
22 in terms of getting you digitized copies, you know,
23 location or whatever it may be, please contact me.

24 MR. ELLISON: Sure, certainly. And thank
25 you for that. The other thing, Judge, was towards the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 end of the day one of the discussions that came up was
2 the number of additional drilling logs. And I had
3 made a request that Powertech give us some further
4 information. And I believe Mr. Pugsley had agreed to
5 do that.

6 MR. PUGSLEY: I can certainly tell you
7 that, I mean, I thought I made clear that any logs
8 that fall within the scope of both the newly acquired
9 as well as anything within the scope of Mr. Parsons'
10 motion will be provided. Basically, just give me a
11 moment --

12 MR. ELLISON: Sure. Because it was a
13 number. You know, we're trying to understand the
14 volume --

15 MR. PUGSLEY: Let me just make sure my
16 numbers are correct.

17 MR. ELLISON: Oh, no, I understand. We're
18 trying to understand the volume. That will help us
19 with planning as well as give us an indication about
20 timing.

21 MR. PUGSLEY: Got it. I got it, sorry.
22 I keep forgetting these mics are live. All right.
23 Basically, I'm going to give you a bunch of numbers.
24 And if something gets out whack let me know.

25 The total logs, complete, original, was

1 4,245. One hundred and eighty-five of those logs were
2 provided to the Nuclear Regulatory Commission in the
3 license application. With respect to the newly
4 acquired data, there were 1,400 logs, approximately
5 280 of those 1,400 logs are new, not previously known.
6 All of the newly acquired logs, per OST-019, are
7 digitized. And that's the extent of the information
8 I have.

9 MR. FRANKEL: Follow-up question, Mr.
10 Pugsley, did you say that all the new ones are
11 digitized, the 1,400, or was it just the 280?

12 MR. PARSONS: Fourteen hundred, right?

13 MR. PUGSLEY: Okay. All the newly
14 acquired ones are digitized.

15 MR. FRANKEL: So that would be 1,400?

16 MR. PUGSLEY: Yes.

17 MR. FRANKEL: Your Honor, I have a couple
18 of follow-up questions, if I might. David Frankel
19 speaking for Consolidated Intervenors. For one, I'd
20 like a couple of clarifications on Mr. Pugsley's
21 initial statement today.

22 He was asked a question by the Board, and
23 he started with a renewed objection and some legal
24 argument. And I'm interested to know if that was a
25 motion for reconsideration or not.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PUGSLEY: My discussion on the
2 objection today does not serve as a motion for
3 reconsideration from Powertech.

4 MR. FRANKEL: Thank you for that
5 clarification, Mr. Pugsley. Secondly, I note that Mr.
6 Pugsley just said something along the lines of all
7 documents that were within the scope of Mr. Parsons'
8 motion would be disclosed?

9 MR. PUGSLEY: All documents within the
10 scope of his motion regarding electric logs.

11 MR. FRANKEL: Would it not be more correct
12 to say that all documents that are relevant, as that
13 term is defined in the Board's recent ruling on
14 relevancy, would be disclosed? Because there's an
15 ongoing disclosure obligation.

16 So whether or not it fell within the scope
17 of Mr. Parsons' motion would actually not be relevant
18 to that analysis. What is relevant are the Board's
19 ruling, its interpretation of the applicable
20 regulation on relevance and reading that together with
21 the discovery obligations and the continuing
22 disclosure obligations.

23 So I would like, possibly, Mr. Pugsley to
24 clarify his intentions on their standard for deciding
25 what is relevant going forward.

1 MR. PUGSLEY: I will not possibly clarify
2 it, it will. The Board sets the standard for
3 relevancy. We were told yesterday that Powertech is
4 entitled to respond to the entirety of Mr. Parsons'
5 motion next Tuesday. We have conceded only the point
6 of relevancy on the electric logs that were referenced
7 in his motion. We plan to submit a written motion
8 along with our 2.390 affidavit on Tuesday.

9 MR. FRANKEL: I'm sorry to be dense on
10 this issue. I'm just not fully understanding. Are
11 you saying that somehow the Board's ruling on
12 relevance is not complete or that it requires an
13 answer?

14 Because my understanding was is that Mr.
15 Parsons filed either several motions or combined
16 motions. Some of them had to do with remedies and
17 enforcement of the disclosure obligations. And the
18 answers to those are pending.

19 But I did not understand that there were
20 still any open issues on the legal question of what is
21 relevant concerning the e-logs and their association
22 to support or undermine the contentions.

23 MR. PUGSLEY: I think the portion of Mr.
24 Parsons' motions that deal with e-logs, we've
25 dispensed with here.

1 MR. FRANKEL: So are you planning to
2 continue to argue and answer on the legal question of
3 the relevance of this type of information to these
4 contentions? Because it would seem to me that that
5 would be out of order.

6 MR. PUGSLEY: I'm not in the position to
7 answer that question at this time.

8 MR. ELLISON: Judge, one additional
9 matter, at least that I see at this point. If I
10 understand Mr. Pugsley's numbers that he has provided
11 us, the total number of drill logs are 4,245. Is that
12 right?

13 MR. PUGSLEY: Yes.

14 MR. ELLISON: Okay. Of which 185 were
15 presented to the NRC. And then there was this new
16 batch of 1,400 logs of which all but 280 are new?

17 MR. PUGSLEY: Yes.

18 MR. ELLISON: Okay. Where are the other
19 2,600 logs?

20 MR. PUGSLEY: They're in Edgemont. As I
21 say, we're going to make them available to you.

22 MR. ELLISON: Okay. So there's 4,245
23 electric drill logs --

24 MR. PUGSLEY: Original.

25 MR. ELLISON: Okay, thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. FRANKEL: As a follow-on to that,
2 these are little slips of paper or are these rolls?
3 Are they heavy and voluminous, or do they fit into a
4 couple of banker's boxes?

5 I would like to get an idea, because as we
6 go back and talk to our experts and we get an
7 understanding, we might make a counter-proposal that
8 has to do with shipping the logs to a secure location,
9 such as a college facility.

10 And before we make that proposal, I'd like
11 to know if we're dealing with 300 pounds of
12 documentation or 20 pounds of documentation. What is
13 the size and volume of the material that we're talking
14 about here?

15 CHAIRMAN FROEHLICH: Apparently the bulk
16 of the material, at least of the new material, is all
17 digitized.

18 MR. PUGSLEY: As far as I know, the
19 entirety of the new material is digitized.

20 CHAIRMAN FROEHLICH: And from what I
21 understood from the Witness' testimony, the review of
22 the digitized data is sort of the preferable way to
23 go.

24 MR. FRANKEL: I'm sorry. I understood the
25 exact opposite, that they liked to slide the papers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN FROEHLICH: He wants to slide the
2 papers.

3 MR. FRANKEL: And so my understanding is
4 that there's going to be an expert looking at the
5 papers, at least at some point. And if we're talking
6 about an amount of material that fits into something
7 that can be shipped without undue expense, then my
8 question is, you know, how many boxes, how many people
9 does it take to carry all this, all the logs? Are we
10 talking about something that one person can carry in
11 a box, or is something that is the size of a
12 refrigerator? I'd like some understanding.

13 CHAIRMAN FROEHLICH: I don't want to
14 belabor the record with the size. The Intervenors won
15 this one. You have access to these documents. I
16 would request that the parties meet at our first break
17 this morning and figure out the logistics of allowing
18 your experts access and use of this data in the most
19 expeditious way possible.

20 MR. FRANKEL: Thank you, Your Honor.

21 CHAIRMAN FROEHLICH: Okay. Are there any
22 other procedural matters that we need to take up at
23 this point in time before we begin with Panel 3
24 concerning Contentions 6 and 9?

25 MR. PUGSLEY: Just a very quick one, Your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Honor. I can't recall, and I sincerely apologize. I
2 think I've completely forgotten. Are we permitted to
3 have closing statements?

4 CHAIRMAN FROEHLICH: If the parties wish
5 closing statements, we can certainly accommodate that
6 today.

7 MR. PUGSLEY: All right. Well, we would
8 like one if possible. Thank you.

9 CHAIRMAN FROEHLICH: And all parties will
10 be afforded the opportunity to make closing statements
11 at the conclusion of cross examination.

12 Okay. No other procedural matters at this
13 point? We'll now take up Contention 6. Let me note,
14 we have one new witness. And I would ask Ms. McKee to
15 rise and raise her right hand, please.

16 Do you solemnly swear or affirm that the
17 statements you make in this hearing before the ASLBP
18 will be true and correct to the best of your knowledge
19 and belief?

20 MS. MCKEE: Yes.

21 CHAIRMAN FROEHLICH: And do you adopt your
22 pre-filed reply testimony as your sworn testimony in
23 this proceeding?

24 MS. MCKEE: Yes.

25 CHAIRMAN FROEHLICH: Thank you. Please be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 seated. Contention 6, Mr. Parsons, would you care to
2 make an opening statement as to Contentions 6 and 9,
3 the issues before Panel 3?

4 MR. PARSONS: Thank you, Your Honor.
5 Contention 6 deals with the discussion of mitigation
6 measures in the final supplemental environmental
7 impact statement.

8 NEPA requires a reasonably complete
9 discussion of mitigation measures in an EIS. Broad
10 generalizations and vague references do not constitute
11 the detail required. An FSEIS must also assess
12 proposed mitigation measures' effectiveness in a NEPA
13 document.

14 Our opening statement at Pages 27 to 31
15 details these legal requirements taken from both NEPA
16 case law or NEPA statute and regulations as well as
17 case law. In this case, the FSEIS fails to include
18 the required analysis of mitigation and their
19 effectiveness for a variety of impacts.

20 For instance, mitigation for cultural
21 resource impacts was not analyzed in the FSEIS and was
22 simply deferred into a post-FSEIS programmatic
23 agreement phase. The same applies to NRC Staff's
24 reliance on license conditions to mitigate impacts.

25 For instance, the plugging and abandoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of old boreholes, although that's a license condition,
2 no discussion as to the effectiveness or process for
3 this was included in a mitigation discussion in the
4 NEPA document.

5 Groundwater restoration or other
6 groundwater monitoring was also not detailed as to
7 effectiveness in the NEPA document. Wildlife
8 protections where the FSEIS simply states that the
9 Agency "is still in process of working on an avian
10 monitoring and mitigation plan", that does not include
11 the detail necessary to comply with the National
12 Environmental Policy Act.

13 With regard to this avian monitoring and
14 mitigation plan, we find out in recent submittals to
15 the state that such a plan was submitted to the Fish
16 and Wildlife Service last January, yet not disclosed
17 or discussed in the final supplemental environmental
18 impact statement. That issue, of course, is present
19 in the motion the Tribe filed last Saturday.

20 And there are more examples detailed on
21 Pages 35 and 36 of our opening statement. NRC Staff
22 and Powertech respond by generically pointing out to
23 Chapters 2 and 4 of the FSEIS but never identifying
24 where the adequate analysis of mitigation occurs.

25 They also defend by saying that they could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not, in some places, conduct the analysis of
2 mitigation, because Powertech has not submitted their
3 completed permitting with other agencies, including
4 the State, the EPA and the Fish and Wildlife Service.

5 These arguments fail to demonstrate that
6 the necessary analysis was completed and do not change
7 the fact that the final supplemental environmental
8 impact statement lacks the required discussion of
9 mitigation as required by NEPA.

10 With respect to Contention 9 which
11 involves NRC Staff inappropriately deferring to EPA
12 and the state of South Dakota to review environmental
13 impacts, these include NEPA's, excuse me, EPA's Class
14 III and Class V UIC permits as well as the State of
15 South Dakota's National Pollution Discharge
16 Elimination System permits under the Clean Water Act.

17 Instead of evaluating the impacts
18 associated with these permits, the FSEIS simply states
19 with regard to EPA that the EPA will evaluate the, we
20 will evaluate the suitability of the formations for
21 Class V injection disposal. It does not include the
22 required discussion of those impacts within the NEPA
23 document.

24 Notably, neither the EPA or the state of
25 South Dakota, with respect to these permits, are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 subject to NEPA. So the result is there will be no
2 NEPA discussion of those impacts by NRC if not
3 included in this FSEIS. This deprives the parties and
4 the public of any opportunity under NEPA from the NRC
5 to review these impacts.

6 Lastly, the Tribe stands by and reasserts
7 its objection to testimony in this proceeding that
8 attempts to supplement the Supplemental Environmental
9 Impact Statement with analysis that was improperly
10 excluded from that NEPA document.

11 This hearing is not a NEPA process. And
12 our position is the FSEIS inadequacies cannot be cured
13 with testimony here today. Thank you.

14 CHAIRMAN FROEHLICH: Could I just ask one
15 -- it was in your last line. That this proceeding, or
16 the proceedings that have taken place or the actions
17 that have taken place since the issuance of the FSEIS
18 are not a NEPA action?

19 MR. PARSONS: That's correct, Your Honor.
20 The case law we've cited in our opening statement
21 that, within the confines of a court proceeding, that
22 does not provide the public an opportunity to review
23 and analyze. And the environmental impact analysis in
24 a NEPA document does not constitute a NEPA process.

25 CHAIRMAN FROEHLICH: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE BARRETT: Can I ask a question?

2 CHAIRMAN FROEHLICH: Sure.

3 JUDGE BARRETT: Which testimony are you
4 objecting to?

5 MR. PARSONS: Well, we filed a motion in
6 limine, a pre-hearing motion in limine in July which
7 objected to testimony within, we pointed to examples,
8 testimony within the pre-filed testimony that attempts
9 to provide detailed additional, essentially, NEPA
10 analysis that was not included in the FSEIS. So
11 that's the testimony that I'm referring to.

12 For instance, if a witness were to say,
13 well, here's the mitigation plan and here's what we
14 plan to do, our position is that including that in the
15 testimony here in this hearing does not cure those
16 NEPA violations in the FSEIS.

17 JUDGE BARRETT: Thank you.

18 CHAIRMAN FROEHLICH: Consolidated
19 Intervenors?

20 MR. BALLANCO: Thank you, Your Honor. On
21 behalf of the Consolidated Intervenors, Tom Ballanco,
22 attorney for Dayton Hyde.

23 I want to echo what Mr. Parsons just said
24 about the importance of these mitigation measures and
25 having actual public participation in this process of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 crafting strategy.

2 There are a lot of unknowns about this
3 mining facility, the proposed facility which is not
4 licensed, were it to proceed forward. What happens
5 underground? There are some unknowns we'll certainly
6 agree to.

7 There is a host of knowns though. We know
8 there will be leaks in the thousands of gallons of
9 injection fluid. We know there will be leaks in the
10 thousands of gallons of production fluid. We know
11 there will be leaks from the ponds. We know there
12 will be excursions.

13 We know this because every ISR facility
14 licensed by the NRC has had these problems and has
15 these problems. This site will have these problems if
16 it's licensed and goes into operation.

17 And these problems matter extensively,
18 particularly to Mr. Dayton Hyde, a mere 20 miles down
19 the Cheyenne River. Any surface excursion, any
20 surface spill, while it may be good enough for certain
21 standards, good enough may not work in the sense of
22 Mr. Hyde's facility. He has a tremendous
23 concentration of natural wildlife, wild horses that he
24 maintains, that drink from the Cheyenne River.

25 At what I think I heard was a conservative

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 flow rate for the Cheyenne River, we're talking about
2 three miles an hour. So Mr. Hyde's ranch is six hours
3 downstream from a spill at this facility, a spill that
4 can be anticipated.

5 And mitigation measures that will be
6 worked out in the future are in no way adequate to
7 address the very real concerns that the Wild Horse
8 Sanctuary faces from the opening of this facility, not
9 to mention the other Intervenors in the area.

10 As far as connected actions go, we
11 consider this all a connected action. It's not
12 without relevance that I note that Mr. Hyde has worked
13 closely with the Oglala Sioux Tribe, because he leases
14 from the Oglala Sioux Tribe 2,000 acres contingent to
15 his ranch. This is acreage replete with historical,
16 cultural artifacts, burial sites, camp sites.

17 He has worked out an arrangement with the
18 Oglala Sioux Tribe, arms-length agreement, they're
19 both satisfied. Those kinds of agreements are
20 possible. This is not something where it's just
21 impossible to bridge the gulf between something in
22 Oglala's sacred land and the Oglala Sioux Tribe. He's
23 managed to work that out.

24 In that context, he would like to see the
25 NRC and Powertech work something out with the Oglala

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Sioux Tribe. This is a connected action that will
2 likewise affect their concerns in the region.

3 Again, we know there will be some damage.
4 The mitigation measures have to take into account the
5 reality that there will be impacts and not just some
6 theoretical plan to address them when they occur.
7 Thank you.

8 CHAIRMAN FROEHLICH: The NRC Staff,
9 please.

10 MR. CLARK: Okay. Thank you. For
11 Contention 6, the Staff thoroughly considered measures
12 that can be used to reduce or avoid impacts of the
13 Dewey-Burdock project.

14 The Staff's witnesses are Haimanot Yilma
15 from whom you've already heard, Kellee Jamerson who
16 also testified on Tuesday, and Jim Prikryl, who
17 testified yesterday on groundwater issues.

18 Key evidence in this hearing include
19 numerous sections of the final EIS, especially Chapter
20 4 where the Staff explains how the measures it
21 identifies will reduce or avoid impact from the Dewey-
22 Burdock project. The Staff discusses these measures
23 in a level of detail consistent with other NRC
24 environmental statements and also consistent with
25 environmental impact statements from other agencies.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Contrary to the Intervenor's suggestion,
2 the Staff did not need to devote pages to each
3 mitigation measure.

4 Now, this is primarily a legal issue
5 contention. And actually I'll back track a bit.
6 Before I get to that, Mr. Parsons asked for specific
7 examples of how the Staff considered mitigation
8 measures and their effectiveness.

9 And the Staff, in fact, provided those
10 examples and lists of bullet points that we included
11 in both our initial statement of position and our
12 rebuttal statement of position. I don't have the
13 specific page numbers, but if the Board looks at the
14 discussion under Contention 6, it'll find a list of
15 nine or ten bullet points. Those are just examples.

16 There are over 100 mentions of mitigation
17 measures in Chapter 4. Mitigation measures are also
18 discussed in Chapter 2 of the EIS in the context of
19 alternatives to the proposed action in Chapter 7.

20 One Chapter I haven't mentioned is Chapter
21 6 which is the Chapter the Tribe focused on. That's
22 a summary of mitigation measures. The Board needs to
23 look elsewhere for the more specific discussion of how
24 those measures will reduce or avoid impacts in
25 specific areas.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Turning back to the legal issue component
2 of this contention, case law from both the NRC and the
3 Federal Court supports the Staff's position. Under
4 the Hydro Resources decision, 64 NRC-417 at 426 and
5 417, the Commission explained that a mitigation plan
6 need not be legally enforceable, funded or even in
7 final form to comply with NEPA's requirements.

8 As long as the Staff discloses the
9 potential adverse impacts of the proposed action, it's
10 sufficient to discuss mitigation measures in general
11 terms.

12 Also, from the Hydro Resources decision,
13 this is again the same case, 64 NRC at 426 and 27,
14 there's no requirement that an agency's discussion of
15 mitigation measures be supported by scientific
16 studies. The Agency can do that, and in this EIS the
17 Staff did so in certain areas. The Staff did not need
18 to do so in every area.

19 Under Federal Court precedent, the
20 discussion of the effectiveness of mitigation measures
21 does not need to be highly detailed. That's from a
22 recent District Court case. Nor does an agency have
23 to assign an effectiveness rating to mitigation
24 measures.

25 Some agencies have, but that's typically

1 when an agency doesn't go into detail, doesn't provide
2 a qualitative description of the effectiveness of
3 mitigation measures. They just provide a table
4 listing the effectiveness rating as low, moderate or
5 high.

6 Now for cultural resources, Mr. Parsons
7 mentioned that there's a NEPA deficiency because a
8 programmatic agreement was not fully incorporated in
9 the EIS. That's an issue the Board heard Tuesday.
10 The Staff believes the Board has heard enough
11 argument. The Staff's position is that a programmatic
12 agreement was, in fact, included in the record of
13 decision. And that's consistent with NEPA.

14 In terms of license conditions, contrary
15 to what Mr. Parsons said, the Commission's and
16 Powertech's license very specifically described the
17 procedures that Powertech must follow to mitigate
18 certain actions.

19 Mr. Prikryl can provide more information
20 to the Board today regarding groundwater restoration
21 and other license conditions that require specific
22 mitigation measures.

23 In terms of Contention 9, the Staff
24 evaluated the reasonably foreseeable impacts of
25 licensing actions related to the Dewey-Burdock

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 project. Getting to the difference between connected
2 actions and related actions, I think the issue is
3 whether the Staff considered other actions. And the
4 Staff did so, regardless of whether they're connected
5 or related actions.

6 The Staff addressed impacts from related
7 actions in Chapter 4 of the EIS, and examples include
8 extensive discussions of Powertech's applications for
9 Class III and Class V injection permits from the EPA.
10 The Staff also discusses in detail Powertech's storm
11 water discharge plan submitted to the state of South
12 Dakota.

13 Now, the Tribe claims that in many
14 sections the Staff defers to the future analyses of
15 the agencies like the EPA. But that's incorrect. The
16 Staff merely refers to the licensing actions of those
17 other agencies. And it uses these standards in
18 regulations that those agencies will apply in
19 assessing the impacts of the Dewey-Burdock project.

20 Now, while it's true that Powertech hasn't
21 yet obtained all permits it needs to operate the
22 Dewey-Burdock project, NEPA doesn't require the Staff
23 to postpone a licensing decision. And so every other
24 agency completes its own review processes. If that
25 were the case, it'd be almost impossible for any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 agency to finalize an EIS.

2 In conclusion, the Staff complied with
3 NEPA by considering related actions. And the Staff's
4 witnesses look forward to answering the Board's
5 questions.

6 CHAIRMAN FROEHLICH: Thank you, Mr. Clark.
7 Mr. Pugsley.

8 MR. PUGSLEY: Thank you, Your Honor,
9 Members of the Board. May it please the Court, with
10 respect to Contention 6, it is Powertech's position
11 that its NRC license and record of decision more than
12 adequately assesses mitigation measures proposed to be
13 developed and implemented for the Dewey-Burdock
14 project, as well as connected actions.

15 For purposes of Contention 6, one of the
16 major allegations levied against the FSEIS includes an
17 allegation, a statement that mitigation measures were
18 relegated to nothing more than a simple summary chart
19 at the beginning of Chapter 6 of that document. That
20 is absolutely incorrect.

21 Each resource area addressed in the FSEIS
22 had its own analysis of potential mitigation measures.
23 And to the extent necessary and practicable, they were
24 evaluated individually.

25 As Mr. Clark stated and we would, as the

1 Licensee, incorporate all of Mr. Clark's previous
2 statements by reference for the record, mitigation
3 plans are permitted to be developed after license
4 issuance per the Hydro Resource's case as cited by Mr.
5 Clark.

6 With respect to groundwater mitigation, it
7 is extensively addressed in the FSEIS. There are
8 multiple references and discussions regarding items
9 such as post-license issuance pump tests and
10 hydrologic wellfield packages, which was discussed
11 comprehensively yesterday, as well as post-operational
12 restoration and stabilization monitoring.

13 Air emissions as well were addressed
14 specifically in the document, as well as the SER,
15 including the fact that Powertech cannot dispose of
16 11e(2) byproduct material onsite, per the Commission's
17 policy under 10CFR Part 40, Appendix A, Criterion 2.

18 With respect to cultural resources,
19 Powertech says we agree with Mr. Clark's assessment of
20 that mitigation and would add that regulations for
21 Section 106 at 36CFR 800.6 entitled resolution of
22 adverse effects, which was the jumping-off point for
23 the Staff to develop a Part 800.14 programmatic
24 agreement, specifically states the purpose of
25 continuing consultation through this is to develop and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evaluate alternatives or modifications to the
2 undertaking that could avoid, minimize or mitigate
3 adverse effects on historic properties. That
4 language, on its face, speaks to the fact that the
5 programmatic agreement is, itself, a mitigation
6 measure.

7 With respect to Contention 6, our
8 Witnesses will be Mr. Hal Demuth, Mr. Doyl Fritz and
9 Ms. Gwyn McKee.

10 With respect to Contention 9, again,
11 Powertech's license and record of decision
12 demonstrates that NRC Staff adequately considered
13 connected actions and interacted with federal
14 agencies. As a general matter, connected actions here
15 should be limited to those with federal agencies, as
16 state agencies, per case law, do not apply.

17 Specific allegations under this contention
18 include a failure to consult with EPA during the
19 development of the NEPA process, specifically with
20 respect to Class III and Class V wells.

21 This fails to consider several factors,
22 including the fact that NRC Staff interacted with EPA
23 during the development of the draft supplemental EIS.
24 EPA did, indeed, submit comments during the 45-day
25 comment period on the draft supplemental EIS and also,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 by process and rule, had a 30-day concurrence period
2 post-FSEIS finalization to which they did not submit
3 any significant comments.

4 With reference to the Bureau of Land
5 Management, the Board is most likely aware BLM did
6 serve as a cooperating agency with the Nuclear
7 Regulatory Commission Staff on the development of the
8 final SEIS. And they were integral to their
9 development and gave their perspective on a variety of
10 resource areas.

11 Powertech also believes that there are
12 many, many references in the final SEIS regarding
13 assessment of and the use of other regulatory programs
14 to satisfy NRC requirements under the Atomic Energy
15 Act, including but not limited to well plugging and
16 abandonment pursuant to South Dakota requirements,
17 which was deemed adequate.

18 EPA's UIC permits for Class III and Class
19 V wells, which most specifically Class III wells are
20 the hallmark of a wellfield so they, just by logic,
21 had to be extensively considered in both the safety
22 and environmental reviews, as well as Class V having
23 their own independent impact analysis in Chapter 4 of
24 the FSEIS as well as South Dakota requirements for
25 NPDES permits as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So in conclusion, Powertech's position is
2 that the Board should find that no allegations under
3 Contention 6 or 9 should result in a modification of
4 Powertech's NRC license or record of decision. Thank
5 you.

6 CHAIRMAN FROEHLICH: Thank you, Mr.
7 Pugsley. All right, well, let's begin. Beginning
8 with the final environmental impact statement, NRC-
9 008A-2, that's where we find Section 4 and 4.1 which
10 defines the standard of significance based on CEQ
11 regulations for proposed actions. And as I understand
12 this, the significance can range from small to large
13 in the analysis in the EIS. Is that correct?

14 MS. YILMA: That's correct, Your Honor.

15 CHAIRMAN FROEHLICH: And is it the Staff
16 that makes the determination whether a particular
17 impact will be small, or large or moderate?

18 MS. YILMA: That's correct. That would be
19 a part of our review process.

20 CHAIRMAN FROEHLICH: And what are the
21 criteria that the Staff uses to make the overall
22 significance finding?

23 MS. YILMA: The criteria varies by
24 resource area. So each resource area would have to
25 look at it specifically and come up with impact

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 assessment. We do have a NUREG 1748 that we follow
2 which gives us guidance on what type of things should
3 be considered in impact assessment. Using those, we
4 come up with our impact analysis and measures.

5 CHAIRMAN FROEHLICH: I note that at
6 4.3.1.2 is the section which discusses disposal via
7 land application. And there, as part of the analysis
8 or conclusion, the Staff states that the Applicant has
9 proposed to develop emergency response procedures for
10 yellowcake accidents. Is there a deadline for them to
11 do that? And what review is there of that emergency
12 response plan?

13 MS. YILMA: The emergency response plan
14 actually is one of the license conditions that the
15 applicant's would have to do as part of the pre-
16 operation inspection. That's one of the things that
17 the safety team looks at. And it is a requirement
18 that they would have to have that in place before they
19 start operating.

20 CHAIRMAN FROEHLICH: I know that many,
21 many points throughout the FSEIS, it relies upon
22 commitments by the Applicant to mitigate impacts by
23 submitting plans in the future. And that's tied to
24 the license condition. That's sort of the system.
25 That's how you address these future contingencies?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. YILMA: In some instances, that's
2 correct.

3 CHAIRMAN FROEHLICH: Now, these license
4 conditions, how are they enforced by the NRC?

5 MS. YILMA: Well, again, the safety team
6 goes on inspections. During inspections, one of the
7 things they look at are these license conditions and
8 how they are being satisfied. And if they are not
9 being satisfied, then they will take proper action.
10 And that is something of a legal matter, and that is
11 a little bit outside of my comfort zone to discuss
12 here.

13 CHAIRMAN FROEHLICH: Okay. Getting away
14 from the legal matters, just the practical matters,
15 could you give me a feel for the number of
16 inspections, how they're done, when they're done? Are
17 they continuing over the life of the project?

18 MS. YILMA: Yes. So again, this is a
19 safety team inspection. The inspections are typically
20 done on a routine basis, announced and unannounced.
21 So they do both an announced inspections and an
22 unannounced inspection. And on average, I don't know
23 if I can tell you how many inspections are done.

24 MR. CLARK: Judge Froehlich?

25 CHAIRMAN FROEHLICH: Yes.

1 MR. CLARK: Tom Lancaster is a member of
2 the safety team, and he conducts inspections. If you
3 have more detailed questions, I believe he'd be happy
4 to return to the table.

5 CHAIRMAN FROEHLICH: Lancaster, sure, yes.
6 I would like that.

7 MR. CLARK: Okay.

8 CHAIRMAN FROEHLICH: Call him to the
9 stand. Remind him and the other witnesses that
10 they're still under oath.

11 Pull up a chair.

12 MR. LANCASTER: Yes. Is it on? Can you
13 hear me? Yes, at a minimum it's once per year
14 throughout the life of the project, at a minimum. We
15 have facilities where they're doing it twice a year.

16 CHAIRMAN FROEHLICH: Now, at these
17 inspections, does the NRC Staff tell the Applicant or
18 Licensee what would be covered under the NRC
19 inspection? For example, you say we're going to look
20 at all the license conditions. Or could they just
21 assume you're going to look at everything?

22 MR. LANCASTER: They can assume we're
23 going to look at everything. Anything and everything,
24 all the commitments, license conditions, anything
25 that's been licensed, we do an evaluation based on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 facility records and our inspection of the facility
2 itself.

3 CHAIRMAN FROEHLICH: And you might or
4 might not cover it all, depending upon what the
5 inspection team wants to do?

6 MR. LANCASTER: Yes. We're limited in the
7 amount of time that we're out there. So we, you know,
8 can't cover everything. But there are areas that
9 throughout the year, in our correspondence, that we
10 may focus on. But there are some key areas we cover.
11 And then there're some areas where we spot check it.

12 CHAIRMAN FROEHLICH: Thank you. A little
13 bit more, please, Mr. Lancaster, on the once a year
14 approximate inspections that you referred to, how long
15 is the individual or the team out there please?

16 MR. LANCASTER: Yes. We, of course, with
17 the headquarters Staff, and the regional Staff has the
18 actual inspector. So we go out there and support,
19 provide technical support for that inspector. We go
20 out and do that support for three days, travel on
21 Monday, do the inspection Tuesday, Wednesday,
22 Thursday, and then travel back on Friday.

23 CHAIRMAN FROEHLICH: Have there been, as
24 part of the program, have there been violations of
25 license conditions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. LANCASTER: Yes, there have been. And
2 I don't know if you want me to try to summarize some
3 of them. I'd have to regroup to summarize some of
4 those. But that's a function of Region 4 to bring
5 forth the results of the inspection and any
6 violations.

7 And then there's resolution or there's
8 corrective action that's taken by the facility
9 possibly, and they're resolved. I don't know if I can
10 really talk for the inspector, but that's what I'm
11 seeing when I go out and support these inspections.

12 CHAIRMAN FROEHLICH: Does the NRC have any
13 other ways of finding out if there are violations of
14 the license condition, other than this annual or spot
15 inspections?

16 MR. LANCASTER: Yes. Also self-reporting.
17 The facility will recognize an issue that is in
18 violation of their license. And they'll resolve it on
19 by themselves. And they'll record this in their
20 documentation, and we'll see it in the inspection.

21 CHAIRMAN FROEHLICH: Are there any other
22 ways that the NRC Staff learns about alleged or
23 possible violations of a license condition?

24 MR. LANCASTER: There is documentation
25 that is, by license condition, that must be submitted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to us periodically. And that potentially, well,
2 that's a hard question.

3 We do get documentation that is required
4 to be submitted by them regularly. We look at that
5 for compliance with the license.

6 CHAIRMAN FROEHLICH: Mr. Clark?

7 MR. CLARK: Judge Froehlich, can I add --

8 MR. LANCASTER: Because there's also one
9 other thing. There's also, you know, if there's an
10 allegation involved, that's another route that we
11 could find out about a violation. Yes, go ahead. I'm
12 sorry.

13 MR. CLARK: Mr. Lancaster made the point
14 I was going to make. The NRC has a robust allegations
15 program. There's a senior allegations specialist and
16 another allegations specialist, two people in each of
17 the four regions.

18 The NRC also has an extensive management
19 directive, 8.8, that deals with the allegations. And
20 we take allegations very seriously. And we are
21 required by our internal procedures to follow-up on
22 those allegations.

23 CHAIRMAN FROEHLICH: Mr. Lancaster, who
24 makes these allegations?

25 MR. LANCASTER: Well, it could be anybody.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I don't think there are any boundaries for that, from
2 what I understand.

3 MS. YILMA: And it could be anyone. It
4 could be an operator, for instance, if they deem
5 appropriate that the Licensee is not doing what
6 they're supposed to be doing. It could be a public,
7 anyone could have an allegation. It is NRC's
8 responsibility to inspect all allegations that we
9 receive.

10 CHAIRMAN FROEHLICH: And does that happen
11 in the supervision of ISR facilities? Do you get
12 allegations from, I guess, members of the public,
13 watchdog groups --

14 JUDGE COLE: Employees?

15 MR. LANCASTER: Employees, yes. Does that
16 happen?

17 CHAIRMAN FROEHLICH: Yes, does that
18 happen?

19 MR. LANCASTER: Well, I can only talk from
20 my personal experience. I haven't had an allegation
21 come to me yet. But --

22 MR. ELLISON: I couldn't hear that last
23 part, sir.

24 MR. LANCASTER: I can only talk from my
25 personal experience. I haven't had an allegation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 concerning an ISR facility. And that's just for me.
2 But there may have been.

3 MS. YILMA: Maybe we can look into it and
4 get back in touch with you. Unfortunately, the
5 allegation department, of course, is separate from the
6 project managers and the environmental managers.
7 Unless we are given the allegation to investigate, we
8 may not know it. And you heard from Tom Lancaster, he
9 doesn't have any records of it.

10 MR. LANCASTER: That's correct.

11 CHAIRMAN FROEHLICH: I was only trying to
12 follow-up, as this is listed as a mitigation method,
13 that the license conditions are one of the elements
14 that influences the analysis of the risks, or whatever
15 or the impacts on it. I wanted to know if it works
16 like that, if it ever happens. I was going to ask
17 then if it ever happens, what the NRC will do about it
18 or does about it. You get an allegation, what
19 happens?

20 MS. YILMA: If there is an allegation, we
21 have to investigate. There is a time table, a five
22 day, a 30 day time table where we have to investigate
23 the allegation thoroughly. And, as part of the
24 allegation, the individual can say the allegation
25 anonymously without, you know, disclosing her identity

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or his identity.

2 In that situation, we would follow-up with
3 the Licensee to see whether the allegation is
4 accurate. If the individual wishes to discuss or
5 disclose his identity, then we would have, you know,
6 interviews with that individual and also, of course,
7 the Licensee to follow-up if the allegation is
8 accurate and if there are any, you know, enforcement
9 actions, or litigation or corrective action that needs
10 to be followed.

11 Again, all these are somewhat of a legal
12 matter. If there are truly allegations and have been
13 confirmed to be accurate, then the legal aspect takes
14 place and sees if they can enforce them.

15 JUDGE BARRETT: Judge, can I follow-up
16 please?

17 CHAIRMAN FROEHLICH: Sure.

18 JUDGE BARRETT: You mentioned that there
19 was a separate part of the Staff that handles
20 allegations. Is that correct?

21 MS. YILMA: Yes.

22 JUDGE BARRETT: Would they involve the NRC
23 project manager in that?

24 MS. YILMA: That's correct. If it's
25 deemed appropriate, yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE BARRETT: Okay. Thank you.

2 JUDGE COLE: When you say project manager,
3 that's not necessarily one of the plant inspectors?

4 MS. YILMA: That is true. But if an
5 allegation came up of the operation, something that
6 should have been -- Tom, you can correct me --
7 something that should have identified during the
8 inspections, I'm sure the project manager will be
9 contacting the respective inspector to see, you know,
10 what happened and/or review the last inspections to
11 see if they've been identified before.

12 JUDGE COLE: Thank you.

13 CHAIRMAN FROEHLICH: Moving on to a
14 slightly different topic, things like spills during
15 aquifer restoration, those, I believe, are covered
16 primarily in the GEIS. Is that right, or is it a
17 specific analysis in the individual FSEISSs?

18 MS. YILMA: We talk about them in the
19 FSEIS as well.

20 CHAIRMAN FROEHLICH: Okay. And I guess,
21 in the FSEIS, making reference to the generic, I
22 believe, it says that the impacts from spills during
23 aquifer restoration can range from small to large, as
24 I looked at the intro at Page 30 of the PDF version.

25 I guess the impact on the aquifers would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 depend on the volume that was spilled or of the amount
2 of soil that was affected. Is that how you get in
3 that range, between small and large? Or is it
4 something else that drives that range?

5 MR. PRIKRYL: I think you're correct.
6 It's the volume of lixiviant that has spilled,
7 possibly the area of the soil that has been
8 contaminated, yes.

9 CHAIRMAN FROEHLICH: Then how did the
10 Staff conclude that the impact for this project would
11 ultimately be small?

12 MR. PRIKRYL: Well, what we did in our
13 analysis, we looked at the mitigation measures that
14 the Licensee would implement in order to clean up the
15 spills. So in that case, you know, we take those
16 kinds of mitigation measures into account when we
17 determine whether the impact is either a small amount
18 or large.

19
20 CHAIRMAN FROEHLICH: Are the mitigation
21 efforts the same for all ISR projects?

22 MS. YILMA: No. It wouldn't be the same.
23 It would site-specific, because site-specific
24 conditions would differ from site-to-site.

25 CHAIRMAN FROEHLICH: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE BARRETT: Could I follow-up? If the
2 impact is determined to be small, do you still develop
3 mitigation measures? Or are there still required to
4 be mitigation measures even if the impact is small?

5 MS. YILMA: That's correct. NEPA requires
6 disclosure of mitigation measures even if the
7 significance of the analysis shows a small impact.

8 CHAIRMAN FROEHLICH: Mr. Prikryl, you had
9 mentioned that the analysis, I think, was focused on
10 lixiviant spills in your last answer?

11 MR. PRIKRYL: Oh, yes, yes.

12 CHAIRMAN FROEHLICH: Are any other spills
13 considered when you were determining the impacts to be
14 small?

15 MR. PRIKRYL: Well, it would depend on the
16 resource area. For instance, for transportation we
17 would look at possibly spills of yellowcake during
18 transportation. So it's kind of resource specific.

19 CHAIRMAN FROEHLICH: And as I recall, the
20 yellowcake spills, that was also determined to be
21 small in the FSEIS?

22 MR. PRIKRYL: Yes, yes.

23 CHAIRMAN FROEHLICH: Okay. And then when
24 reviewing the spills, the FSEIS concludes that the
25 impacts will be temporary, and long-term impacts will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be small. That's because of the mitigation measures,
2 or because of the size of the spill or what spills?
3 How do you come to the conclusion that all long-term
4 impacts will be small and that the impacts will be
5 temporary?

6 MR. PRIKRYL: Well, because the Licensee,
7 in this case, is required to clean up the spill and
8 dispose of any soil that has been contaminated.

9 CHAIRMAN FROEHLICH: But wouldn't the
10 impact depend on what was spilled or how much of it
11 was spilled?

12 MR. PRIKRYL: Well, remember the Licensee
13 has to clean it up. He's required to clean it up.

14 CHAIRMAN FROEHLICH: Did you want to add
15 something?

16 MS. YILMA: Yes. Judge Froehlich, NEPA
17 requires us to look at short term impact and long-term
18 impact.

19 CHAIRMAN FROEHLICH: Yes.

20 MS. YILMA: In this situation, we
21 disclosed there might be a short term impact, because
22 the leak might go, for instance, into the soil. But
23 the long-term impact could be small, because the
24 Licensee will be required to clean or remediate that
25 area.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: Okay. So your conclusion on
2 the level of impact, small, medium or large, is based
3 upon your knowledge of what has happened at previous
4 plants and your knowledge of what the Applicant says
5 he's going to do if he gets a certain kind of spill?

6 MS. YILMA: In addition to consultation
7 with other agencies like EPA and state of South
8 Dakota, DENR folks. They also give us insights on
9 what type of things that we need --

10 JUDGE COLE: And how do they get involved
11 in your evaluation? Do they provide you with detailed
12 information or what?

13 MS. YILMA: For the Dewey-Burdock project,
14 because EPA had primarily the responsibility for Class
15 III and Class V permitting, which is different in
16 Wyoming versus South Dakota --

17 JUDGE COLE: For wells.

18 MS. YILMA: For wells, yes. We had EPA be
19 an informal cooperating agency, if you will. So
20 throughout the development of the NEPA process, we
21 interacted with them extensively on a number of
22 resource areas, groundwater, surface water. Waste
23 treatments were one of them, air.

24 They reviewed our analysis, gave us
25 feedback on it, disclosed the permitting requirements

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that are necessary for Class III and Class V, and any
2 type of mitigation measures for monitoring that would
3 be required. So a lot of that information came
4 firsthand from EPA Region 8.

5 JUDGE COLE: Could you tell me a little
6 bit about your modus of operation with EPA, and other
7 federal agencies and this plant?

8 MS. YILMA: I'm sorry --

9 JUDGE COLE: Did you deal on, how
10 frequently and on what basis do they have
11 representatives that you deal with all the time?

12 MS. YILMA: For Dewey-Burdock, it's a
13 little bit different in a sense, because EPA had
14 primacy for Class III and Class V. We interacted with
15 them often. Over the last four years, I had constant
16 communication with the NEPA project manager with EPA.

17 JUDGE COLE: When you say often, what's
18 that mean?

19 MS. YILMA: You know, as issues arise, for
20 instance when we were developing the air modeling, we
21 were talking, I want to say once every week or once
22 every two weeks. We were having discussions
23 collectively with EPA, BLM, DENR and Powertech folks
24 to come up with, you know, impact assessments or how
25 we want to address a certain issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: All right, thank you.

2 MS. YILMA: You're welcome.

3 CHAIRMAN FROEHLICH: I'd like to take a
4 ten minute break, if that's all right with everyone.
5 And we'll resume with Contention 6 in ten minutes.

6 (Whereupon, the above-entitled matter went
7 off the record at 10:12 a.m. and resumed at 10:27
8 a.m.)

9 CHAIRMAN FROEHLICH: Please take your
10 seats. Gentlemen, please take your seats. I'd like
11 to ask a few questions about the impacts to surface
12 waters and wetlands. I note that in the EIS that's
13 demarcated as small to moderate impacts. Is that not
14 correct? EIS finds that impacts to surface water and
15 wetlands is in the small to medium impact category.

16 MS. YILMA: That's correct.

17 CHAIRMAN FROEHLICH: That's correct. And
18 for this project, what is the impacts to the surface
19 water and wetlands?

20 MS. YILMA: We see small for construction.
21 And it depends on each resource area, but for
22 construction we say small.

23 CHAIRMAN FROEHLICH: Is it small for, I
24 guess, there are four evaluations. Are they all
25 small?

1 MS. YILMA: Yes, that's correct.

2 CHAIRMAN FROEHLICH: Okay. Now, the
3 impacts to surface waters and wetlands you determine
4 are small. Wouldn't the impact be dependent on the
5 size of the spill or what was spilled?

6 MS. YILMA: You know, could you clarify
7 the question? Are you asking --

8 CHAIRMAN FROEHLICH: Well, you concluded,
9 after evaluating this site and the mitigation methods
10 proposed, that it would be small for this site. I
11 guess, at other sites other analyses have come up with
12 medium or a large impact. How did you determine that,
13 for this project, it would ultimately be a small
14 impact with the mitigation methods that were proposed
15 and listed in the EIS?

16 MS. YILMA: That's correct. For surface
17 water, we look at various different things. So you're
18 now specifically asking on spills. Is that correct?

19 CHAIRMAN FROEHLICH: Right. Accidental
20 spills.

21 MR. PRIKRYL: Well, if I can just, you
22 know, paraphrase from the SEIS?

23 CHAIRMAN FROEHLICH: Okay.

24 MR. PRIKRYL: For construction, the last
25 paragraph of the section 4.5.1.1.1.1, sorry, because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Applicant has committed to implementing mitigation
2 measures to control erosion, storm water runoff and
3 sedimentation, complying with U.S. Army Corps of
4 Engineers Section 404 permitting requirements for
5 wetlands, complying with NPDES permit requirements for
6 discharge to surface waters and following NRC
7 regulations concerning the construction of settling
8 and holding ponds, NRC finds that impacts to surface
9 water and wetlands during construction to be small.
10 You know, we determined that based on these mitigation
11 measures and commitments.

12 CHAIRMAN FROEHLICH: And that's the same
13 for like storm water runoff as well?

14 MR. PRIKRYL: Yes. The NPDES permit
15 requirements, that's for storm water.

16 JUDGE COLE: And what about operation,
17 impacts during operation?

18 MR. PRIKRYL: During operations? Well,
19 it's going to be similar.

20 JUDGE COLE: Impact on surface water and
21 wetlands during operation?

22 MR. PRIKRYL: Right.

23 (Pause.)

24 MR. PRIKRYL: Okay, yes. There's a number
25 of issues that we cover here. I'll just go ahead and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 --

2 JUDGE COLE: Why don't you just emphasize
3 the impacts on spills and on water drawdown,
4 particularly associated with surface waters and
5 wetlands?

6 MR. PRIKRYL: Right. Okay, I'll
7 paraphrase. The Applicant, you know, is committed to
8 implementing mitigation measures to control erosion,
9 sedimentation as part of their storm water management
10 plan, implement emergency response plan to identify
11 and clean up accidental spills and leaks. And then
12 also pipelines will be buried to avoid freezing, and
13 pipeline pressure will be monitored to detect leaks,
14 just a number of mitigation measures.

15 And based on these, any conclusions are
16 based on the hydrologic factors and the Applicant's
17 commitment to comply with permit requirements. The
18 NRC concluded that the environmental impacts to
19 surface waters and wetlands would be small for the
20 operations phase.

21 JUDGE COLE: What about drawdown?

22 MR. PRIKRYL: Drawdown with regard to
23 surface water?

24 JUDGE COLE: Well, you're operating a
25 mine, and you lower the water level because you're

1 taking more water out than you're putting in at
2 certain places.

3 MR. PRIKRYL: Well, with concerns to
4 groundwater, right?

5 JUDGE COLE: Well, if you've got a
6 wetland, and you're going to drop the water table,
7 that's going to dry out, isn't it?

8 MR. PRIKRYL: Not necessarily. You know,
9 if it's an artesian well away from the wellfield it
10 wouldn't be affected. No wellfields are going to be
11 constructed within wetlands.

12 JUDGE COLE: Okay. That backs up your
13 conclusion --

14 MR. PRIKRYL: Yes, so --

15 JUDGE COLE: -- of the impacts on --

16 (Simultaneous speaking.)

17 MR. PRIKRYL: -- operations wouldn't
18 affect wetlands.

19 JUDGE COLE: All right, sir. I'll buy
20 that.

21 MR. PRIKRYL: Thank you.

22 CHAIRMAN FROEHLICH: Now, are there
23 separate mitigation plans depending on the type of
24 waste that might come from the project?

25 MS. YILMA: You mean Class V disposal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 injection or --

2 CHAIRMAN FROEHLICH: For example, I saw a
3 large section there on mitigation plans for like
4 radioactive waste. And are other types of waste given
5 analysis to a similar degree?

6 MS. YILMA: Yes. We do liquid waste,
7 solid waste.

8 CHAIRMAN FROEHLICH: And which, I'm sorry.
9 I didn't mean to cut you off?

10 MS. YILMA: That's it.

11 CHAIRMAN FROEHLICH: Okay. Now, where
12 would I look to find mitigation plans for the disposal
13 or whatever of the heavy metals, and arsenic and
14 things like that? How is the disposal of those things
15 mitigated?

16 (Pause.)

17 MR. PRIKRYL: Are you asking specifically
18 about hazardous constituents in the wastewaters?

19 CHAIRMAN FROEHLICH: There were a number
20 of concerns raised about heavy metals, and arsenic and
21 selenium. And I wanted to know --

22 MR. PRIKRYL: Selenium.

23 CHAIRMAN FROEHLICH: Selenium, whatever.
24 And I wanted to focus or see where, in the statement,
25 mitigation efforts are discussed to reduce the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 impacts.

2 MS. YILMA: We talk about those in Section
3 3, 4.14 which is a waste management section. And we
4 also mention selenium a little bit in the ecology
5 section.

6 CHAIRMAN FROEHLICH: And what are the
7 mitigation methods as to those elements or chemicals
8 you just mentioned?

9 MR. PRIKRYL: Well, with wastewaters,
10 they're going to go through ion exchange before
11 they're discharged to either the land application
12 system or the Class V injection wells.

13 JUDGE COLE: Ion exchange or reverse
14 osmosis?

15 MS. YILMA: Ion exchange.

16 MR. PRIKRYL: Ion exchange to --

17 JUDGE COLE: It's a different ion exchange
18 material than is used to remove the uranium, correct?

19 MR. PRIKRYL: That's correct, yes.

20 JUDGE COLE: And so these are ion exchange
21 resins that are specific for the materials you want to
22 remove, or it's some sort of general ion exchange?

23 MR. PRIKRYL: It's a general, you know,
24 heavy metals hazardous constituents.

25 JUDGE COLE: All right, sir. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. DEMUTH: Judge, if I might interject
2 here, just for the purposes of clarity, I'm not aware
3 that there's going to be any hazardous materials or
4 waste generated from this project.

5 So within the scope of RCRA waste, these
6 would be non-hazardous materials. They might be
7 elevated concentrations, but they are not what we
8 would call RCRA hazardous waste.

9 Likewise, the material that is regulated
10 by NRC as a Level 2 material would be radioactive.
11 But just for the record, I want to make sure that we
12 don't get hazardous thrown in here that's taken in any
13 way in a RCRA format.

14 CHAIRMAN FROEHLICH: I didn't mean
15 hazardous in, let's say, a RCRA. Actually I meant
16 chemicals have long and complicated formulas or
17 whatever that a number of people have raised concerns
18 with as to their disposal.

19 I wanted to know that ion exchange that
20 you mentioned, Mr. Prikryl, what does that remove from
21 the stream? What does it mitigate? Or what
22 concentrations does it reduce or eliminate?

23 MR. PRIKRYL: Well, specifically I don't
24 know numbers. But I know that the waste has to meet
25 certain standards before it's disposed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: On land or in the well, deep
2 well?

3 MR. PRIKRYL: That's right, yes. Now, I
4 think that SDDENR will have this. In the land
5 application they have groundwater standards that the
6 waste that's applied to the land has to meet SDDENR
7 groundwater standards before it's applied to the land.

8 JUDGE COLE: So the state of South Dakota
9 determines what those levels are?

10 MR. PRIKRYL: Yes. That's in a
11 groundwater discharge plan permit.

12 JUDGE COLE: No, surface water discharge.

13 MR. PRIKRYL: That's correct.

14 JUDGE COLE: You said groundwater.

15 MR. PRIKRYL: Well, they also have to have
16 a groundwater discharge plan permit for land
17 application, specifically.

18 JUDGE COLE: A groundwater discharge
19 permit for land application?

20 MR. PRIKRYL: Yes.

21 JUDGE COLE: Okay. Yes, it's got to go
22 somewhere.

23 JUDGE BARRETT: Is there a surface water
24 permit for this site?

25 MR. PRIKRYL: A surface water permit --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. YILMA: They don't plan to, they're
2 not allowed to, I guess, dispose of any waste into
3 surface water. In fact, South Dakota DENR doesn't
4 allow it.

5 Any release, whether it's from Class V
6 injection permit or being sprayed onto the land
7 application would have to meet both EPA's regulatory
8 requirement and NRC's Part 20, Appendix B
9 requirements.

10 JUDGE BARRETT: Thank you.

11 MR. FRITZ: If I could just interject
12 briefly, there's a very detailed monitoring and
13 mitigation plan that's done for the state of South
14 Dakota in association with the land application, the
15 groundwater discharge permit for the land application.

16 And it is a very comprehensive monitoring
17 program. It's got wells, it's got a perimeter of
18 operational pollution that's defined. And they've got
19 wells to monitor when and if any constituents of
20 concern reach those areas.

21 It's got, Gwyn can talk better than I can
22 about it, but selenium was a constituent of concern.
23 And it's got monitoring and then mitigation depending
24 on certain levels of selenium that's reached in
25 certain areas, mitigation for ponds to exclude

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 wildlife.

2 Again, Gwyn would have to talk more about
3 that. But it's a mitigative action that's discussed
4 in here. But the detail really is in the state
5 groundwater discharge land application permit.

6 JUDGE COLE: And where is that information
7 located, sir?

8 MR. FRITZ: In the groundwater discharge
9 permit application that was submitted to the state of
10 South Dakota DENR.

11 JUDGE COLE: Yes. Well, that's not in the
12 record here.

13 MS. YILMA: May I interject? Actually it
14 is in Chapter 7 of the FSEIS. We have a section for
15 wildlife monitoring which adopts a lot of what has
16 been said right now from the discharge permit.

17 We also have a section for land
18 application monitoring and deep well injection
19 monitoring, all adopted either from the discharge
20 permit from DENR or EPA's Class V application.

21 JUDGE COLE: Thank you.

22 JUDGE BARRETT: Are those permits in place
23 now?

24 MS. YILMA: The DENR permit has a
25 conditional approval. But they are in litigation, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they would have to finish through the litigation
2 before, I guess, it becomes official.

3 The Class V permit is still in process.
4 And they're not issued just yet. But as I mentioned,
5 because EPA has been often a cooperating agency with
6 us, we have information that they had provided to us
7 that we included the SEIS.

8 MR. ELLISON: If I may, for the record,
9 there are no South Dakota permits which have been
10 granted yet. Thank you.

11 MS. YILMA: They've reached conditional
12 approval pending hearing.

13 CHAIRMAN FROEHLICH: What substances, what
14 compounds, chemicals end up in the evaporation ponds
15 that we have been hearing about? I can take that from
16 any of the panel.

17 JUDGE COLE: Do they call them evaporation
18 ponds?

19 MR. PRIKRYL: These are not evaporation
20 ponds. They're radium settling ponds or they're
21 holding ponds.

22 MALE PARTICIPANT: That's correct.

23 CHAIRMAN FROEHLICH: And is that different
24 from the evaporative ponds that are on Page 247 of 355
25 in the EIS? And I don't have that converted into, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 guess, at least on this point. Are evaporative ponds
2 that are discussed here, is that something different
3 than the settling ponds that you're talking about?

4 MR. PRIKRYL: I think evaporation ponds
5 are discussed in Chapter 2 as an alternative.

6 CHAIRMAN FROEHLICH: Andy, can you call up
7 NRC-008-2B at around Page 247 of 335? The PDF page is
8 247, I believe.

9

10 MR. THOMPSON: NRC-8-A2?

11 CHAIRMAN FROEHLICH: I'm not sure now
12 where I read this.

13 JUDGE BARRETT: Would you like me to ask
14 a question while you're --

15 CHAIRMAN FROEHLICH: You go ahead, and let
16 me see if I can --

17 JUDGE BARRETT: Okay. Ms. McKee, I jumped
18 the gun a little bit yesterday. I got interested in
19 something we said about the wildlife and birds. And
20 I asked that out of order. So I will ask that now.
21 You mentioned in your testimony an avian plan that is
22 being developed in concert with state and federal
23 agencies. Is that correct?

24 MS. MCKEE: Yes, sir. Yes.

25 JUDGE BARRETT: Could you briefly describe

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 what some of the mitigation measures are that are
2 going to be implemented to protect avian species?

3 MS. MCKEE: Yes, sir. Several of the
4 measures that are in the draft plan, it is just a
5 draft plan at this stage, are similar to those that
6 are described in the FSEIS.

7 For example, regular annual monitoring
8 will occur for all of the avian species identified by
9 the state and federal agencies we've been
10 collaborating with to create the plan.

11 And prey populations as well are also
12 monitored. Prairie dog colonies, for example, we map
13 every year, rabbits which are, of course, eaten by the
14 eagles and hawks that nest out there.

15 We also are helping develop approaches for
16 Powertech to take at different stages of operations to
17 help minimize impacts to a variety of avian species.
18 For example, ponds -- and I didn't jump in because I
19 knew that you had a question.

20 So as far as selenium in ponds, for
21 example, the ponds are all going to be fenced. And we
22 heard yesterday that, you know, it's likely that not
23 every single animal will be kept out.

24 However, these aren't just going to be
25 barbed wire fences. They'll be very specific fences

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that are based on expertise by a variety of
2 publications and experts that are out there throughout
3 the country that do wildlife fencing.

4 For example, in order to keep animals from
5 burrowing into and under the fence, they will be
6 buried and bent a little bit so they'll be bent out,
7 for example. So, say, a badger or whatever comes up
8 to the edge of the fence, wants to get on the other
9 side, digs down. Well, he's going to hit fencing.
10 The mesh at the bottom of the fence, for example, will
11 be a smaller diameter to keep the smaller mammals out
12 than the higher parts of the fence where they wouldn't
13 be able to access anyway.

14 And these fences are going to be around
15 all of the ponds. They'll be monitored daily as part
16 of the requirements of Powertech's operations. I
17 believe that will be a state requirement. But I defer
18 to Powertech to clarify that.

19 But the point is, they have a variety of
20 measures, fencing, netting, flagging. There's balls
21 and deflectors that you can put up to distract animals
22 and cause them to be uncomfortable with the setting
23 and go somewhere else that would be, perhaps, better
24 for them to drink out of.

25 The ponds, as you heard yesterday, will be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 lined. If there's a risk of animals becoming trapped
2 should they somehow get into the enclosure, there will
3 be escape ramps so that animals can get out if they do
4 get in --

5 JUDGE COLE: A ramp?

6 MS. MCKEE: Pardon me?

7 JUDGE COLE: A ramp?

8 MS. MCKEE: Yes, sir, escape ramps. And
9 these are all standard procedures that are used
10 throughout the country and particularly in our area to
11 help protect animals.

12 And for example, ramps, if you have a
13 pond, you would just lay the ramp on the side, for
14 example. And typically, they'll have cross bars so
15 that an animal like, say, a deer or fawn gets in
16 there. You would want it to get some traction and not
17 just be trapped on the ramp, just like it would be on
18 the pond lining.

19 So I would presume that everyone involved
20 would be reading up on the appropriate literature,
21 talking to the appropriate experts and creating the
22 best possible design to protect the wildlife out
23 there. So that kind of measure, that's just one
24 example of the selenium concern, pond construction.
25 Those types of measures are included in the draft

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 avian plan.

2 JUDGE BARNETT: The kinds of things you're
3 describing there sound thorough and comprehensive to
4 me. Would you agree with that?

5 MS. MCKEE: Yes, sir.

6 JUDGE BARNETT: Are those things in the
7 FSEIS now?

8 MS. MCKEE: Several of them are in there.
9 For example, timing restrictions to protect nesting
10 raptors, that is identified in numerous locations in
11 the FSEIS. I believe I provided some examples of that
12 in my written testimony. I don't have that memorized.

13 Other examples would be consolidating
14 disturbance corridors, for example, if there's already
15 a power line out there, which power lines are out
16 there, and a new road needed to be constructed.

17 Ideally all these new disturbances would
18 be consolidated into common corridors to minimize
19 habitat fragmentation. That, I believe, is listed in
20 the FSEIS.

21 As I say, numerous examples are in the
22 FSEIS in multiple locations, not just the summary
23 table but also in the text throughout the document,
24 very specifically giving examples of mitigation
25 measures that would be implemented as needed to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 protect the wildlife resources.

2 JUDGE BARNETT: Would you call the
3 mitigation measures in the FSEIS thorough and
4 comprehensive?

5 MS. MCKEE: I would with the combination
6 of those that are specifically listed, the references
7 to very specific organizations like the Sage-Grouse
8 National Technical Team, the U.S. Fish and Wildlife
9 Service's Sage-Grouse Conservation Team, referencing
10 the need for Powertech to access those resources as
11 well, accessing and abiding by state permitting
12 requirements.

13 It isn't just the specific measures in the
14 document itself, in my opinion, that makes it so
15 strong. It's the acknowledgment that other experts
16 are out there that should be utilized and other
17 resources are out there that should be utilized and
18 other permitting requirements at the state level are
19 out there that will be followed. So, in my opinion,
20 yes, sir. It is a comprehensive analysis.

21 JUDGE BARNETT: Okay, thank you. Now to
22 the question that I was asking yesterday which I got
23 excited about, how do you keep the birds out of these
24 ponds?

25 MS. MCKEE: Right. There's a few

1 different ways depending on the pond and the size of
2 it. You could put netting across the entire top of
3 it. If it's a large pond, sometimes that doesn't
4 become feasible. It'll start sagging in the middle
5 and it won't really accomplish the process.

6 In that case a lot of folks will string
7 flagging across in parallel lines. Again, it's a
8 visual distraction and deterrent for the birds.
9 There's a variety of deflectors out there. Authorized
10 use by the Fish and Wildlife Service to use hazing to
11 keep birds out of there, either --

12 JUDGE BARNETT: What?

13 MS. MCKEE: Hazing.

14 JUDGE BARNETT: Oh, hazing.

15 MS. MCKEE: Either manually going and
16 flushing the birds out of there or with sound.
17 There's whole companies that have, you know, there's
18 a whole company that makes sound hazing devices.
19 Another whole company that makes visual hazing
20 devices. There are many, many resources out there to
21 help keep the birds out of the ponds.

22 JUDGE COLE: Are they being utilized? Are
23 they proposed on this project?

24 MS. MCKEE: Yes, sir. So Powertech will
25 be monitoring the ponds daily, the fencing and all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that. Let's say they have a problem. Then they will
2 immediately, if they haven't already proactively done
3 so, implement any one of these measures, whichever one
4 is determined to be the most effective at that site,
5 to address it right away and keep the birds out.

6 And that's all in this document. Netting
7 is specifically listed. Fencing is specifically
8 listed in the FSEIS in multiple locations and I
9 believe references to other, you know, methods,
10 deterrents or whatever.

11 So that's the plan to keep the birds out
12 and, as I say, as a professional I would have to
13 acknowledge that it's entirely possible that not every
14 single bird, much like our highway fences. As we all
15 know, not every single deer is kept off those highways
16 as we see by the carnage as we drive along.

17 But the population as a whole, which is
18 where your viability comes in and maintaining the
19 long-term resources of the site, I have no doubt in my
20 mind that that will be maintained through these
21 diligent efforts.

22 And I realize that sounds like a
23 commercial. I am a professional, however, and I have
24 been working with ISR off and on for ten years and
25 I've been --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: ISR?

2 MS. MCKEE: In situ recovery, sorry. And,
3 you know, I mean, I've been a professional biologist
4 for almost 30 years so I'd like to think I have some
5 level of integrity.

6 JUDGE BARNETT: Yes, I would agree. I
7 thought your answer sounded professional, not like a
8 commercial.

9 MS. MCKEE: Thank you very much.

10 JUDGE BARNETT: There's eagles out there?

11 MS. MCKEE: Yes, sir.

12 JUDGE BARNETT: Okay, and what's going to
13 be the impact? First, how many eagles or eagle nests
14 are out there?

15 MS. MCKEE: Originally we had one bald
16 eagle nest in the permit area during the baseline work
17 that we did in 2007/2008. Since then the pair has
18 built a second nest, also in the permit area, so those
19 two nests are in one territory. So we have one pair
20 of bald eagles actively nesting within the permit area
21 which is the same as the NRC license area. It's the
22 boundary you all have been seeing on your maps.

23 Just outside of the monitoring area for
24 the project, and for my purposes I use the permit area
25 and a one-mile perimeter because wildlife don't just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 live in a tiny little spot, and just outside of that
2 one-mile perimeter is a second bald eagle nest near
3 the Cheyenne River.

4 And in addition to that, we have red-
5 tailed hawks, great horned owls. Golden eagles nested
6 this year. We've had merlins, a long-eared owl, so a
7 variety of species.

8 But for the bald eagles, as part of this
9 draft plan that is still being developed, we're out
10 there every two to three weeks from mid-January
11 through end of July monitoring that territory to
12 identify where are the birds hunting? Where are they
13 perching? Where are they spending a lot of time?
14 When do they start nesting? How many eggs do they
15 have, do we think because we don't climb the tree.
16 How many youngsters have hatched?

17 So there's an extensive monitoring system
18 already voluntarily in place. As you know, they have
19 no license. They have no permits and yet they've been
20 doing this. Since December of 2012, we started this
21 monitoring. We watch for wintering bald eagles. How
22 many come into the area during winter in addition to
23 the resident nesting pair?

24 JUDGE BARNETT: So what is, very briefly,
25 the mitigation plan to mitigate effects on the bald

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 eagles?

2 MS. MCKEE: Thank you for the reminder to
3 be brief. The first step is monitoring. In order to
4 properly develop mitigation plans, you have to know
5 where the birds hunt, where they perch, where is their
6 home range.

7 Based on that and based on 30 years of
8 similar type of work that is being done right across
9 the border at the coal mines in Wyoming, which have
10 significantly greater disturbance, a number of things
11 are possible to do.

12 You can limit the time of day that
13 activities occur within certain distances. You can
14 limit the distance that those activities occur
15 relative to the nest location.

16 You can modify how you collect
17 information. Let's say, for example, you can remotely
18 monitor wells. I don't even know if that's possible
19 but let's say it is. And it's more appropriate to do
20 that during the breeding season, for example, and it's
21 not as important to do it in September, for example.

22 So by modifying the types of activities
23 you do, where they occur relative to the nest, what
24 time of year it is, what time of day it is, how you
25 construct your facilities, how you conduct your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 operations and the value you place on protecting
2 resources with the understanding that unless it's an
3 emergency situation, for example, and unless it's
4 required by state or federal regulations, one of the
5 options is to voluntarily restrict all activity, you
6 know, within a certain distance.

7 Pedestrian traffic is typically more
8 disruptive than vehicular traffic, so you might
9 restrict foot traffic in the area in a certain time.

10 So as brief as you would like me to be,
11 there are a lot of different things and honestly the
12 situation dictates which is the most appropriate
13 approach to take.

14 And eventually, if it's anything like what
15 has happened with the coal mines, the eagles are very
16 likely to acclimate. It's not a pristine setting out
17 there now. Rangers are out there. Hunters, it's a
18 walk-in area. A walk-in hunting area is right at the
19 base of this nest. Railroads, you know, ranch
20 traffic.

21 So they already have some comfort level
22 with some level of regular activities and over time I
23 have no reason to believe they won't acclimate to
24 those. They do it all over the country, bald eagles
25 do, and golden eagles do it at the coal mines, nesting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 within feet of blasting and haul trucks.

2 So once they start having their youngsters
3 -- there's a paper out. It's a generational
4 acclimation. You're an adult eagle. You have
5 youngsters. They grow up amidst these activities.
6 That's normal to them and it just perpetuates itself.

7 JUDGE BARNETT: Okay. The mitigation
8 plans that you just described there for the eagles,
9 are they in the FSEIS now?

10 MS. MCKEE: Reference to the plans are in
11 numerous locations in the FSEIS. The plan is not
12 finalized. It is a draft plan at this time. It is
13 still being collaboratively developed with the state
14 and federal agencies and it's being tweaked. The
15 format and content of the draft plan has been changed
16 just over the course of the last few months.

17 But the plan will be finalized and
18 approved by the South Dakota Department of Environment
19 and Natural Resources and Game and Fish as a permit
20 condition before any construction begins.

21 JUDGE BARNETT: Okay, but the plan that
22 exists in FSEIS for the mitigation plans for the
23 eagles, would you call that thorough and
24 comprehensive?

25 MS. MCKEE: I would, based on the

1 understanding that there are specific measures in
2 place in that document, examples of measures to be
3 taken, and it references the other documents that are
4 developed by professional biologists with the
5 expertise to develop them, just like they referenced
6 sage-grouse mitigation specifically and through
7 reference to the national sage-grouse teams, for
8 example.

9 So it seems appropriate to me to rely on
10 the experts for the different resources, just like I
11 would rely on the experts for resources I'm not
12 familiar with, like water resources, for example.

13 JUDGE BARNETT: Okay, thank you. Ms.
14 Yilma, would you say that the plan for mitigating the
15 effects on the bald eagles that is in FSEIS right now
16 is thorough and comprehensive?

17 MS. YILMA: I do.

18 JUDGE BARNETT: Thank you.

19 CHAIRMAN FROEHLICH: First, I want to
20 apologize, Mr. Prikryl. I have confused myself
21 between the land application sections of the EIS and
22 alternatives to the land application and deep wells.

23 I guess the evaporative ponds that are
24 talked about as an alternative to the deep wells or
25 the land application, these are different from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ponds that Ms. McKee just discussed?

2 MR. PRIKRYL: Yes, that's correct.

3 CHAIRMAN FROEHLICH: Okay. Ms. McKee,
4 could you address, and I hope you're the right one to
5 ask, the food chain arguments that we heard a little
6 bit about yesterday, especially as I guess it relates
7 to selenium or perhaps other substances and where
8 small creatures would somehow get through the fencing
9 or the nets or whatever, be eaten by larger creatures
10 and so on.

11 MS. MCKEE: Your Honor, I will do my best.
12 I am not a selenium expert and I'm not a
13 bioaccumulation expert. I am familiar with the food
14 chain, however, and as I mentioned, the ponds are
15 going to be inspected daily by Powertech as part of
16 one of their permit requirements. I believe it's a
17 permit requirement.

18 And through that process, they will be
19 monitoring the selenium levels in a variety of forms,
20 the effluent, soils, vegetation. And my understanding
21 is there are various threshold levels or trigger
22 levels so if selenium in any of those resources
23 reaches that certain level, that will trigger
24 automatic implementation of very specialized
25 mitigation measures which I am not familiar with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because I'm not a selenium expert.

2 But so through a series of diligent
3 monitoring and the use of threshold trigger levels and
4 then the immediate action taken by that, those are the
5 measures that I'm familiar with to try to minimize the
6 potential for exposure in the food chain for selenium.

7 CHAIRMAN FROEHLICH: Mr. Fritz, are you
8 the expert? Can you speak to bioaccumulation,
9 especially as to selenium?

10 MR. FRITZ: No, I'm not an expert on that.

11 CHAIRMAN FROEHLICH: How about the, I
12 guess the processes within the facility to monitor
13 levels of selenium and other such things and to, I
14 guess, alert and trigger the reactions that Ms. McKee
15 just discussed?

16 MR. FRITZ: I've read the monitoring and
17 mitigation plan and the different action levels for
18 different levels of selenium. They sample tissue in
19 animals periodically. They sample vegetation and
20 watch as it accumulates and there are action levels
21 that are required in that plan that they take at
22 certain levels. But beyond that, I can't testify to
23 the health effects of it or the --

24 JUDGE BARNETT: You said you read the
25 monitoring and mitigation plan. Which plan are you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 referring to?

2 MR. FRITZ: That particular plan is in the
3 groundwater discharge plan for land application but it
4 was also referenced in the SEIS.

5 CHAIRMAN FROEHLICH: Is the
6 bioaccumulation argument, is that addressed in any way
7 or in any place in the FSEIS and could you point me to
8 it?

9 MS. YILMA: Yes, Your Honor, it is. It is
10 in ecology section. If you refer to Section
11 4.6.1.2.3, I'm sorry, 4.6.1.2.2, we do talk about it.
12 In fact, we acknowledge that that could be an issue
13 and for that section our impact is moderate, not
14 strong.

15 And we also, I want to follow up with the
16 gentleman who said that the monitoring plan in Chapter
17 7, there is a list of constituents that the Applicant
18 would have to monitor and selenium is one of them.

19 JUDGE BARNETT: Ms. Yilma, the first page
20 that you cited, could you give me a page number from
21 the FSEIS?

22 MS. YILMA: It is Page Number 4-111.

23 JUDGE BARNETT: Thank you.

24 MS. YILMA: And the monitoring table is on
25 Page 7-9.

1 MS. MCKEE: Your Honor, I believe PDF Page
2 111 is the section that is being referred to.

3 MR. ELLISON: Judge Froehlich, I guess I
4 have a procedural question. We have Peggy Detmers
5 here who is our expert and we have noticed her for
6 Contention 6 and one thing she can talk about is this
7 particular issue.

8 And we've been instructed by the clerk
9 that since this was OST's pleading, that we cannot
10 present evidence in that regard. So I just wanted the
11 Board to know I object if that ruling is going to be
12 upheld or if that is a ruling and that Ms. Detmers is
13 here, could answer those questions.

14 CHAIRMAN FROEHLICH: And that was because
15 that contention was proposed by the Sioux Tribe and
16 had not been adopted or formally incorporated into the
17 positions of the Consolidated Intervenors. So, no, we
18 will not be hearing from Ms. Detmers.

19 MS. MCKEE: Your Honor, if I may, one
20 statement that might be what you're looking for on PDF
21 Page 111 is -- if you don't mind if I just read this
22 real quickly, please?

23 CHAIRMAN FROEHLICH: That's fine.

24 MS. MCKEE: "NRC Staff concluded the
25 overall impacts on vegetation, small- to medium-size

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 mammals, upland game birds, raptors, waterfowl and
2 shorebirds, non-game and migratory birds and reptiles
3 from operations for the land application liquid waste
4 disposal option will be moderate because of the
5 potential for some wildlife exposures to harmful
6 constituents in the planned operation period," which
7 I'll skip the rest.

8 "Based on the foregoing analysis, the
9 impacts are expected to noticeably alter important
10 attributes of the terrestrial environment. However,
11 Staff do not expect these impacts to threaten the
12 continued existence of any species."

13 And that reiterates the point that I made
14 earlier, that impacts may occur to individuals but
15 species viability as a whole in the region is not
16 anticipated to be harmed. Is that a fair assessment
17 of the --

18 MS. YILMA: That is exactly what I was
19 referring to when I mentioned impacts are, considering
20 the constituent impacts we determined the impacts
21 would be moderate.

22 CHAIRMAN FROEHLICH: I just want to, I
23 guess, want to go back one more time to the two
24 processes I guess that were mentioned for reducing or
25 eliminating chemicals and other such things.

1 There was one referred to as the reverse
2 osmosis process and another, the ion exchange process.
3 Which one works on what problems? What do you use?
4 I need the scientific sort of --

5 MR. FRITZ: I'll take a stab at it. I'm
6 not a process expert. The ion exchange is for removal
7 of uranium. That's the process to remove uranium from
8 the pregnant source.

9 JUDGE COLE: That's a specific ion
10 exchange that's designed to just remove uranium?

11 MR. FRITZ: Yes. There may be other
12 models that come out with it. I don't know that but
13 it's designed -- that's the mining process. That's
14 how you get the uranium extracted from the source.

15 JUDGE COLE: But there was testimony here
16 today that they have other ion exchanges other than
17 the one that's designed just to remove uranium, to
18 remove other materials, and I believe they can use
19 them or they've been discussed somewhere.

20 MR. FRITZ: I'm not familiar with that.
21 The other water treatment process is an RO unit to be
22 used. If a deep disposal well is an option, it'll be
23 used during restoration to restore wellfields, so to
24 produce clean water to go through the wellfields with
25 the brine going to a disposal pond. That removes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 everything. That's not selective.

2 JUDGE COLE: Right. Now, for land
3 application of wastewater, somewhere in the record
4 here it mentions the possible use or the use of ion
5 exchange to prepare the water to meet the requirements
6 of the state of South Dakota for land application.

7 And I also have a recollection today that
8 someone was discussing with me today that other uses
9 of ion exchange other than the ion exchange that's
10 specific for uranium and they might also use that, and
11 was that one of the NRC witnesses discussed that
12 earlier?

13 MS. YILMA: In Page 2.51 where we talk
14 about liquid waste disposal option we actually go
15 through how waste is filtered to remove constituents
16 before it either is injected into the deep well
17 disposal or sprayed over the land application if the
18 land application option would be required.

19 And there we mentioned that the ion
20 exchange is going to be used to remove the uranium and
21 then it would go through the settling ponds to settle
22 the radium. Then it gets injected into the deep well
23 disposal. A similar process is used for the land
24 application process.

25 For aquifer restoration, in addition to

1 the ion exchange to remove the uranium in settling
2 ponds, they also go through the reverse osmosis to
3 clean it up even more.

4 JUDGE COLE: Through what process to clean
5 it up even more?

6 MS. YILMA: The reverse osmosis.

7 JUDGE COLE: Right, okay. Just a general
8 question, the Tribe argues that the Staff has not
9 adequately addressed or analyzed mitigation measures.

10 Now, earlier today Mr. Clark talked about
11 that list of bullets related to mitigation measures
12 discussed at various parts of Staff documents, the
13 FSEIS, the SER and other Staff documents.

14 In the Tribe's allegation, they
15 principally talked about a certain chapter that just
16 list mitigation items without any discussion of it and
17 I believe both the Applicant and the Staff took that
18 statement and said filling out the details for all
19 this is in other chapters, particularly Chapter 4 of
20 the SEIS, certain parts of the SER and other different
21 chapters. And I believe the Applicant had prepared
22 lists of different items that are directly related to
23 satisfying the Tribe's considerations or problems.

24 Now, my question is do your answers
25 satisfy the Tribe's argument that they did not do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 enough on the mitigation measures? Maybe the Staff
2 can answer first.

3 MS. YILMA: If I understood you correctly,
4 you want us to validate that we have adequately
5 analyzed impacts in our SEIS.

6 JUDGE COLE: Yes, based upon your answers
7 and with the content of the Staff documents.

8 MS. YILMA: Right. So in Chapter 4 for
9 every resource area we do have mitigations listed. In
10 some instances those mitigations are taken into
11 account when we come up with impact assessment of
12 small, moderate and large.

13 In Chapter 6 of our SEIS, for ease of
14 reference we list all those mitigation measures
15 separately. I believe that is what the Tribes were
16 referring to, Chapter 6 where we list in the table for
17 each resource area what mitigation measures were taken
18 into account when we were analyzing the impacts.

19 But you can't just look at the table as a
20 mitigation measure because if you're looking at that
21 it would just list for land application the Applicant
22 plans to do this, for deep well disposal the Applicant
23 plans to do that and that's it. It doesn't have any
24 context to it.

25 JUDGE COLE: It doesn't have the details

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 necessary.

2 MS. YILMA: It doesn't have any details to
3 it. You would have to go to Chapter 4, each resource
4 area, to read through what the Applicant plans to do
5 based on what the Applicant committed to do and what
6 other regulatory agencies are required or are
7 reviewing per their permit applications. We take into
8 all those factors as a mitigation measure to assess
9 impacts for that resource area.

10 JUDGE COLE: Thank you.

11 MS. YILMA: And in addition to that, we
12 also have Chapter 7 for some of those mitigation
13 measures, like the land application and the Class V
14 injection well where we specify monitoring activities
15 that will need to occur going forward to validate
16 those impacts, those mitigation measures that we use
17 into account to reduce the impact and so on and so
18 forth.

19 JUDGE COLE: Thank you. I don't know
20 whether Mr. Fritz or Mr. Demuth, both of you addressed
21 this question so you can decide how you want to
22 respond.

23 MR. FRITZ: Okay, I'll begin. My written
24 testimony beginning on Page 11 addresses that
25 contention, that those tables were all that was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 provided and what the next several pages, this written
2 testimony provides specific references throughout the
3 document, the FSEIS, the SER and the RAIs, on where
4 the detail behind those two summary tables comes from.
5 I go into all kinds of detail about these. It's all
6 listed here in my written testimony.

7 JUDGE COLE: All right, sir. Thank you.
8 Mr. Demuth, did you want to add something to that?
9 You filed on this issue too.

10 MR. DEMUTH: No, I think Mr. Fritz and NRC
11 Staff have covered that question.

12 JUDGE COLE: Thank you.

13 CHAIRMAN FROEHLICH: I'd like to move on,
14 then, to Contention 9, cumulative impacts.

15 MR. PUGSLEY: Your Honor, is it connected
16 actions?

17 CHAIRMAN FROEHLICH: I'm sorry, connected
18 actions. Right, sorry. One moment please.

19 Okay, connected actions. It seems that
20 there is one very, very large connected action that is
21 critical to this project and that's the deep well
22 storage permits required from EPA.

23 Can anyone tell me the schedule, to the
24 extent we're talking about another government agency
25 doing its job, what the schedule is or when the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 company expects a final decision from the EPA on that
2 deep well application?

3 MR. PUGSLEY: Your Honor, I'll do the best
4 I can here. The EPA Class V application is currently
5 under review at EPA Region 8. We are awaiting, which
6 we hope is imminent, the issuance of a draft permit.

7 And per EPA underground injection control
8 regulations, that draft permit -- one moment. That
9 draft permit comes out in draft form, is made publicly
10 available and then after the remainder of the process
11 concludes it would be finalized, not too dissimilar
12 from a draft SEIS to a final, FSEIS.

13 CHAIRMAN FROEHLICH: Is there a public
14 comment period on that?

15 MR. PUGSLEY: Your Honor, I can't say for
16 sure on that but I know it is made publicly available
17 and in my experience even if there isn't a public
18 comment period noted per se, there is no -- and I
19 will, now that I've just been told there is a public
20 comment period associated with it. Thank you. And
21 so, yes. The answer's yes.

22 CHAIRMAN FROEHLICH: And does the NRC
23 coordinate or consult or comment on this decision of
24 the EPA?

25 MS. YILMA: We can, Your Honor.

1 CHAIRMAN FROEHLICH: You can on the draft
2 deep well permit?

3 MS. YILMA: Right. Correct.

4 CHAIRMAN FROEHLICH: I guess, and maybe
5 you covered this a little earlier, what is the extent
6 of the coordination between NRC and EPA on the deep
7 well permit?

8 MS. YILMA: Extensive. When we first
9 started developing this section and this SEIS, we
10 recognized that we needed to coordinate extensively
11 with EPA.

12 And as I mentioned, we had informal
13 cooperations with them where we shared the affected
14 environment, the impact assessments, the process
15 monitoring plans of various sections, waste management
16 and groundwater, hydrology, air, HP.

17 All those sections were reviewed and EPA
18 gave us, you know, feedback, comments that we
19 incorporated into our SEIS. This was before the draft
20 was issued.

21 During the draft public comment period,
22 EPA also, you know, had additional comments that we
23 considered in the final stage. Between the draft and
24 the final issuance, EPA continued to be a cooperating
25 agency with us and again provided us additional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 information of what they know of already.

2 You know, all this time they've been
3 reviewing the Class III and Class V applications and
4 so they've been providing us information that they
5 know of that needed to be included in this NEPA
6 document.

7 CHAIRMAN FROEHLICH: Does it work the
8 other way? Is there information from the NRC or from
9 studies and worked on by the NRC Staff on the FSEIS
10 that goes to EPA to inform them or to assist them in
11 their decision-making process on the Class V wells?

12 MS. YILMA: I have been in direct
13 communication with the NEPA compliance and been
14 sharing information with the EPA all along, so yes.

15 CHAIRMAN FROEHLICH: And the connected
16 actions are discussed in, which part of the FSEIS
17 addresses connected actions?

18 MS. YILMA: As you mentioned, the Class V
19 injection is actually part of our proposed action and
20 so it's been throughout the SEIS. We've discussed it
21 in great length.

22 CHAIRMAN FROEHLICH: Are there other I
23 guess connected actions that were addressed in the
24 FSEIS?

25 MS. YILMA: Well, we have similar actions

1 that we included in FSEIS, like the groundwater
2 discharge permit application process and what --

3 CHAIRMAN FROEHLICH: That's with the South
4 Dakota state?

5 MS. YILMA: The South Dakota state and, of
6 course, BLM is a cooperating agency so we also
7 included BLM-specific information in the SEIS.

8 JUDGE BARNETT: I'm looking at the bottom
9 of Page 441 of the FSEIS talking about the NPDES
10 permit that will be required for construction.

11 MS. YILMA: Yes.

12 JUDGE BARNETT: So there is a surface
13 water discharge permit I guess, at least for
14 construction, is that correct?

15 MS. YILMA: This NPDES permit deals with
16 stormwater runoff, not necessarily process water.

17 JUDGE BARNETT: Correct. I understand
18 that.

19 MS. YILMA: Yes.

20 JUDGE BARNETT: I understand. But there
21 will be an NPDES permit for it?

22 MS. YILMA: There will be one, yes,
23 because it is South Dakota's law. If the licensee
24 wishes to discharge into surface water, they have to
25 have an NPDES permit issued.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE BARNETT: Did you do a NEPA analysis
2 of the surface water discharge due to construction?

3 MS. YILMA: Well, this is part of it. The
4 section you just referenced, this is where we discuss
5 the NPDES permit requirements and consider those
6 requirements when making our impact assessment to
7 surface water.

8 JUDGE BARNETT: Okay, so you said this was
9 part of it so the way I read this is that you, the
10 NPDES permit requirements for discharges to surface
11 water will conform to SDDENR regulations. Is that
12 right?

13 MS. YILMA: That's correct.

14 JUDGE BARNETT: But there was an
15 additional analysis done beyond that or you just said,
16 well, they have to get this South Dakota permit so,
17 therefore, surface water will not be impacted?

18 MS. YILMA: In various other place we talk
19 about what the surface water requirements, the NPDES
20 requirements are and we reference them.

21 Like, for instance, if you look at the
22 next page, on Page 443 we say surface water monitoring
23 and spill response procedures will be established as
24 part of the NPDES permits. So we take into account
25 what is a requirement of that permit when making

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 assessments of impact for surface water.

2 JUDGE BARNETT: Okay, thank you.

3 JUDGE COLE: In using these wells for
4 wastewater disposal, the water you're discharging into
5 the wells is identified as treated wastewater. How is
6 it treated?

7 MS. YILMA: This is what we were just
8 describing with the ion exchange. That removes the
9 uranium from it and then the settling ponds which
10 settles the radium from it with the barium chloride.
11 We have a --

12 JUDGE COLE: You have to meet the
13 requirements to discharge it into a well?

14 MS. YILMA: That is correct.

15 JUDGE COLE: And traditionally what
16 treatment processes do you use, just plain
17 sedimentation and then you do have to additionally
18 treat it with something else and you say you're using
19 reverse osmosis or ion exchange.

20 MS. YILMA: The reverse osmosis comes into
21 play for aquifer restoration. The key is that before
22 they inject anything into the deep well disposal they
23 have to meet the release requirements. If they are
24 not meeting those release requirements, they would
25 have to do additional treatment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: What requirements? What
2 kind? You say release requirement?

3 MS. YILMA: Release or injection
4 requirements.

5 JUDGE COLE: Who prepares those, does the
6 state of South Dakota or EPA?

7 MS. YILMA: There is actually a criteria
8 in 10 CFR. I'm sorry.

9 MALE PARTICIPANT: Part 20, Appendix B.

10 MS. YILMA: 10 CFR Part 20, Appendix B is
11 the requirement. That is our NRC requirement and
12 there is also EPA's requirement, similar to ours that
13 they would have to meet.

14 JUDGE COLE: All right, thank you.

15 MR. DEMUTH: Judge Cole, if I might add to
16 that, the reason for the treatment to the 10 CFR 20
17 standards is that that material prior to treatment
18 would be regulated as radioactive waste. In a Class
19 V well, EPA will not allow us to inject radioactive
20 waste in a Class V well.

21 JUDGE COLE: So that has to be removed?

22 MR. DEMUTH: That is correct. In other
23 states it's managed with a Class I well and that
24 treatment is not required, so that is a specific
25 requirement for the state of South Dakota.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: Would precipitation with
2 barium sulphide satisfy that requirement generally?

3 MR. DEMUTH: I'm not a process engineer so
4 I think, you know, barium chloride has certainly been
5 used historically for treatment of uranium to a degree
6 but more so radium, so the process has been used
7 historically. How effective that is to meet the 10
8 CFR 20 standards is somewhat dependent on each
9 facility and the makeup water.

10 JUDGE COLE: Is it barium chloride or
11 barium sulfate or both?

12 MR. DEMUTH: I believe barium chloride but
13 --

14 MR. FRITZ: I think the application says
15 barium chloride.

16 FEMALE PARTICIPANT: Yes.

17 JUDGE COLE: Okay, thank you.

18 CHAIRMAN FROEHLICH: I mixed up my papers
19 and forgot a few questions having to do with
20 mitigation, and that was references I guess in the
21 FSEIS to best management practices, BMPs, and that's
22 mentioned a number of places as things that would be
23 used or approaches that would be used to mitigate the
24 effects of different problems that arose. I would ask
25 the Staff, who determines what are the best management

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 practices for any given task?

2 MS. YILMA: Your Honor, the Applicant did
3 provide some best management practices but they are
4 typical of ISR operations also, so it's a mixture of
5 the Applicant proposal plus our knowledge of what are
6 best management practices from other facilities.

7 CHAIRMAN FROEHLICH: The best management
8 practices I guess that are referred to, are they a set
9 of standards, a set of procedures that are drawn up by
10 either a government agency or an industry group or
11 where did that come from?

12 MS. YILMA: It could be that. Can I just
13 read one thing --

14 CHAIRMAN FROEHLICH: Sure.

15 MS. YILMA: -- that we have in Section 6,
16 Chapter 6 of the SEIS? We say, "Best management
17 practices are processes, techniques, procedures or
18 considerations that could be used to effectively avoid
19 or reduce potential environmental impacts." So there
20 are processes, techniques and procedures, that
21 industry practices is one of them.

22 JUDGE BARNETT: BMPs, is that a term of
23 art from EPA?

24 MR. PRIKRYL: What was that question?
25 Does it come from EPA?

1 JUDGE BARNETT: Does EPA have a list of
2 best management practices and is that what you're
3 referring to?

4 MR. PRIKRYL: No. No, not in this case
5 and I'm not sure if they do have a list of BMPs for
6 ISR.

7 JUDGE BARNETT: Okay, so I guess that kind
8 of goes back to Judge Froehlich's question. Where is
9 the BMPs? How do you decide what's a BMP?

10 MR. FRITZ: I could speak a little bit to
11 that, not in every discipline but, for example, on
12 surface water protection. The plan calls for, there's
13 an extensive plan in there for flood control, how
14 we're going to protect surface waters and facilities,
15 things from washing downstream so to speak.

16 We've mapped the floodplains. We're
17 locating facilities, buildings and ponds outside of
18 floodplains and further diverting runoff around those
19 things, storms at least up to the 100-year storm, and
20 for major facilities the state of South Dakota
21 requires a probable maximum storm design, so.

22 And then beyond that, we've got stormwater
23 sediment control, and that varies. Let's say during
24 the construction phase when you've got the most
25 disturbance opened up, before you get your temporary

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 re-veg in, you might put best management practices in.

2 Even though you got control with a pond
3 downstream, you might go upstream and put a silt
4 fence, a real temporary measure till you get
5 vegetation or a rock check dam.

6 JUDGE BARNETT: Okay, I understand. So
7 you said you might put BMPs in. Where do you get that
8 list of BMPs I guess?

9 MR. FRITZ: Well, in this case the Office
10 of Surface Mining and the state of Wyoming have
11 developed a lot of sediment control best management
12 practices, check dams, build dikes.

13 I think it's specific to different
14 disciplines. There's a set for a certain area for
15 sediment control and maybe something else. I think
16 EPA's word for it is best available control technology
17 and that would deal with air quality control. But I
18 think it kind of depends on what discipline you're
19 working in what the best management practice is and
20 the different stage of development.

21 MS. YILMA: Your Honor, may I interject?
22 You are correct. There are government agencies' best
23 management practices, such as EPA would have best
24 management practices on how to control, for instance,
25 constituents from getting into the groundwater. There

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are best management practices for land remediation,
2 revegetation.

3 So it is a combination of government
4 agencies' requirements and recommended suggestions to
5 avoid, minimize or eliminate impacts on certain areas.
6 It could be soil, could be air, could be water,
7 various different things.

8 JUDGE BARNETT: Thank you.

9 CHAIRMAN FROEHLICH: I guess that was the
10 basis of my concern. I noticed a number of places
11 throughout the FSEIS that there was reference to best
12 management practice, but it didn't include immediately
13 thereafter EPA guidance on this or that. It just said
14 best management practice.

15 I was curious how someone reading this, a
16 member of the public or whatever, who wanted to
17 comment would know exactly what practice was going to
18 be applied and would be able to give input as to its
19 effectiveness, whatever it might be when it's used as
20 one of the mitigation techniques.

21 MS. YILMA: In our SEIS if we reference
22 best management practices we would say something like
23 stormwater runoff, having a tree to reduce soil
24 erosion for instance, you know, growing vegetation,
25 sorry, growing vegetation to reduce soil erosion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And then in Chapter 6 we do talk about
2 certain things in best management practices.
3 Corrective actions that could be implemented are
4 something that we discuss in Chapter 6, specific
5 management actions such as programs, procedures.

6 In this case it could be the emergency
7 procedures that the Applicant is going to be
8 developing for various spills that they would have to
9 contain within or reporting criteria. We talk about
10 them in opening section of Chapter 6.

11 CHAIRMAN FROEHLICH: I guess my concern
12 was that I thought I had seen in a number of places
13 that Staff would apply the best management practices
14 to mitigate a particular impact.

15 And by reading it had no idea what best
16 management practices the Staff was going to rely upon
17 to mitigate that or where I could find them or where
18 someone could comment to you on their effectiveness.

19 MS. YILMA: Best management practices are
20 common practices, like the EPA's guidance or DENR's
21 guidance for each resource area. It is why that we
22 don't get prescriptive in them because there are
23 guidance out there for each resource area like the
24 gentleman from Powertech stated.

25 CHAIRMAN FROEHLICH: The cumulative

1 impacts on groundwater resources, I guess were
2 determined to be moderate overall but small at the
3 Dewey-Burdock facility. Did I read that portion of
4 the FSEIS correct?

5 MR. PRIKRYL: Judge Froehlich?

6 CHAIRMAN FROEHLICH: Yes.

7 MR. PRIKRYL: Yes, I believe you read that
8 correctly.

9 CHAIRMAN FROEHLICH: So the impacted
10 groundwater resources is moderate overall I guess from
11 this type of an operation but the cumulative impact of
12 the Dewey-Burdock proposal is small? Did I read that
13 correctly? Dewey-Burdock will have a small cumulative
14 effect on groundwater is what the Staff concluded?

15 MR. PRIKRYL: That's correct, yes.

16 CHAIRMAN FROEHLICH: Okay. And in that
17 portion of the FSEIS the Staff looked at other ISR
18 projects and other mining and drilling operations in
19 the area, a large area.

20 MR. PRIKRYL: Yes, yes.

21 CHAIRMAN FROEHLICH: Okay, and it was in
22 review of those impacts that it was concluded those
23 impacts would be moderate overall?

24 MR. PRIKRYL: Yes.

25 CHAIRMAN FROEHLICH: Okay. Did those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cumulative impacts also include impacts from the
2 placement or the things that are going on at the Black
3 Hills Army Depot?

4 MR. PRIKRYL: Yes, I think we did an
5 analysis on Page 532, the bottom paragraph, starting
6 the bottom paragraph and then going up into the next
7 page. I think there's two paragraphs altogether.

8 We looked at the distance that the Army
9 Depot was away from the site, looked at the regional
10 hydraulic gradient to determine that the Black Hills
11 Army Depot would not have an impact on the site. We
12 also looked at two Army Corps of Engineers reports
13 that were conducted at the site on contamination at
14 the site to make our finding.

15 JUDGE COLE: And the site is 20 miles to
16 the southwest? How far?

17 MR. PRIKRYL: That sounds about right.

18 MALE PARTICIPANT: Fourteen miles I
19 believe, the EIS.

20 MR. PRIKRYL: Fourteen miles.

21 MALE PARTICIPANT: Fourteen miles to the
22 south.

23 MR. PRIKRYL: You got to remember the Army
24 Depot was down gradient, so it's not going to have an
25 impact on groundwater at the Dewey-Burdock site unless

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 --

2 CHAIRMAN FROEHLICH: And the converse is
3 true, I suppose, from your analysis?

4 MR. PRIKRYL: Yes.

5 CHAIRMAN FROEHLICH: Because of the
6 gradient?

7 MR. PRIKRYL: Due to all the mitigation
8 measures, the inward hydraulic gradient, the
9 monitoring that's going to occur at the site. We
10 determined that it's unlikely that fluids would then
11 migrate that far.

12 CHAIRMAN FROEHLICH: Okay. All right.

13 JUDGE BARNETT: Following up on this BMP
14 question, I'll have to admit I had not noticed that
15 but now that Judge Froehlich mentions it, so if I look
16 on Page 6-8 of the FSEIS, it says that this is in the
17 table of summary of mitigation measures proposed by
18 Powertech and it's under ecology, Table 6.2-1. It's
19 under ecology and restoration/reclamation is the
20 activity.

21 And the proposed mitigation measure is,
22 "Construct new overhead power lines using BMPs to
23 reduce bird injuries and mortalities." So my question
24 is how does someone who's reading this know what the
25 BMPs are?

1 MS. MCKEE: Judge Barnett, that's a good
2 question. Elsewhere in the document it references
3 APLIC, which is Avian Power Line Interaction
4 Committee, I believe, and that's an organization that
5 comes out with these BMPs for protecting birds perched
6 on power lines.

7 And I can see where the connection may not
8 be exactly for a layperson, much like my connection
9 with some of these other topics is not clear, but it
10 is in there. I don't know how to address it other
11 than to say that those are developed by organizations
12 such as APLIC and that's what it's referring to.

13 CHAIRMAN FROEHLICH: So for that one there
14 is actually a list, a chart, a series of
15 recommendation --

16 MS. MCKEE: There's a whole book about --

17 CHAIRMAN FROEHLICH: That you could pull
18 off the shelf and see what the --

19 MS. MCKEE: Yes, sir.

20 CHAIRMAN FROEHLICH: Okay.

21 JUDGE BARNETT: And that would be in the,
22 sort of the reference list of the FSEIS I guess?

23 MS. MCKEE: I couldn't tell you for sure,
24 sir.

25 JUDGE BARNETT: How do you spell the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 organization you were talking about?

2 MS. MCKEE: The abbreviation is A-P as in
3 Paul, L-I-C.

4 MS. YILMA: It's listed on Page 4-89.

5 MS. MCKEE: And, sir, also on Page 6-18.

6 MS. YILMA: It's the second paragraph.

7 JUDGE BARNETT: Okay, on Page 6-18. Oh I
8 see, okay. Yes, there is a reference on Page 6-18,
9 Avian Power Line Interaction Committee, quote,
10 "Suggested Practices for Avian Protection on Power
11 Lines, The State of the Art in 2006." So your
12 testimony is that's what is meant from that table when
13 it was talking about best management plans?

14 MS. MCKEE: Yes, sir. That's an entire
15 book that tells you how to design all different kinds
16 of power lines to protect raptors from electrocution
17 and other avian species.

18 JUDGE BARNETT: If someone was reading
19 this and you weren't there to ask that question to,
20 how would they know what you're referring to?

21 MS. MCKEE: I would defer that to the NRC
22 Staff.

23 MS. YILMA: Well, in Section 4.89 it says,
24 "The Applicant could mitigate potential impacts to
25 raptor species for power cord distribution lines by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 following the Avian Power Line Interaction Committee
2 guidance to avoid activities near active nests
3 specifically prior to fledging of the young." Talks
4 about it in our NEPA section, in Chapter 4 of our NEPA
5 section.

6 JUDGE BARNETT: Okay. I think it's a fair
7 point that Judge Froehlich has. When BMPs are listed,
8 to the extent they're coming from documents, in
9 particular different documents, it's probably a good
10 idea to have the reference in there. So somebody
11 could look those up and challenge those if they wanted
12 to.

13 CHAIRMAN FROEHLICH: Playing off of
14 lessons learned yesterday afternoon, this concludes
15 the questions that the Board has of Panel 3. I notice
16 it's 10 to 12:00. Like to give the parties ten
17 minutes to draft up any follow-up questions that they
18 might want the Board to ask of this panel, and we'll
19 go off the record and you'll have ten minutes to
20 collect your thoughts and then we'll resume with Panel
21 3 cross from the parties. So we'll resume at noon.

22 (Whereupon, the above-entitled matter went
23 off the record at 11:49 a.m. and resumed at 12:02
24 p.m.)

25 CHAIRMAN FROEHLICH: We'll be back on the

1 record. I think there is something to this ten-minute
2 of or ten-minute after traditional break times in
3 soliciting questions from the parties. I have two or
4 less from each.

5 For the NRC Staff, when evaluating the
6 potential long-term impacts from spills, did the NRC
7 Staff also consider decommissioning surveys to verify
8 that the site meets the specific conditions for
9 release for unrestricted use?

10 MS. YILMA: Your Honor, there's a
11 requirement for decommissioning plan before
12 decommissioning takes place. That decommissioning
13 plan would have all the specific requirements and the
14 NRC Staff would have to review and approve of that
15 decommissioning plan, including what you just
16 mentioned.

17 CHAIRMAN FROEHLICH: Okay. Was it
18 required as part of the licensee's pre-operational
19 inspection that the NRC Staff verify compliance with
20 license conditions before operations may commence?

21 MALE PARTICIPANT: That's correct.

22 CHAIRMAN FROEHLICH: Does this also
23 include evaluation of BMPs, best management practices?
24 You'll have to speak.

25 MS. YILMA: That's correct. Sorry.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: Yes, the microphone doesn't
2 pick up nods.

3 MS. YILMA: May I just also mention for
4 the record, Your Honor, best management practices are
5 not requirements per se. They are guidance. They are
6 not legally binding. They are guidance, however.
7 Just want to make sure.

8 CHAIRMAN FROEHLICH: Okay. But you use
9 them as elements, you use them as examples of
10 mitigation at least.

11 MS. YILMA: Examples of mitigation, yes,
12 that's correct.

13 CHAIRMAN FROEHLICH: Oh, okay. In the
14 SER, did the Staff evaluate whether operations at
15 Dewey-Burdock project could mobilize contamination
16 from the Black Hills Army Depot?

17 MALE PARTICIPANT: Yes, Your Honor. Page
18 31 and 32 of the SER and actually 31 to 33, yes.

19 CHAIRMAN FROEHLICH: Did the Staff
20 consider its findings in the SER when preparing the
21 final EIS?

22 MALE PARTICIPANT: EIS.

23 MS. YILMA: Oh, I'm sorry. Yes. I
24 apologize. I thought you were still answering the
25 question. Your Honor, we always say the safety review

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 informs the NEPA review, the environmental review so,
2 therefore, yes, we did consider the impacts.

3 CHAIRMAN FROEHLICH: Finally I'd ask of
4 the Commission Staff, is the NRC Staff aware of the
5 sacredness of eagles and other wildlife to the Lakota
6 people?

7 MS. YILMA: Yes, Your Honor. I have heard
8 from many tribes that I've been out in the field with
9 that the bald eagle is a sacred bird.

10 CHAIRMAN FROEHLICH: If there are no other
11 questions at this point, we'll be prepared to take
12 closing arguments, and then I would hope the parties
13 would have a chance to discuss a briefing schedule but
14 incorporating the disclosure requirements and the
15 review of the new data that will have to factor into
16 our schedule as we go forward.

17 Let's move right to closing arguments.
18 Any volunteers? Who wants to go? Powertech, thank
19 you.

20 MR. PUGSLEY: Thank you, Your Honor. For
21 purposes of our closing statement, Powertech would
22 like to highlight some key issues and attempt to
23 answer some questions asked by the Board to the best
24 of its ability on the contentions in sequence.

25 With respect to Contentions 1A and 1B,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we'd like to note for the record, one, that you've
2 heard today, you've heard over the past few days that
3 in terms of the density of archeological sites located
4 at the Dewey-Burdock project site, it is not unique.
5 It is not atypical. It is typical for this region as
6 testified by Dr. Hannus.

7 The Level III cultural survey,
8 archeological survey, I apologize, was done in
9 satisfaction of South Dakota standards and actually
10 exceeded those standards. Subsurface testing with
11 respect to sites was done appropriately and according
12 to standard practices.

13 NRC Staff did not err in severing the NEPA
14 process from the Section 106 tribal consultation
15 process. It is not a federal requirement that those
16 processes be conducted jointly. They can be severed.

17 The tribal TCP field surveys sponsored by
18 NRC Staff and Powertech were conducted with the
19 participation of seven tribes including two Sioux
20 tribes and extensive surveys were conducted over a
21 one-month period that addressed approximately 95
22 percent of the 10,000 plus acre Dewey-Burdock project
23 site.

24 The Programmatic Agreement, as stated by
25 NRC Staff, was selected because of the phased nature

1 of in situ recovery projects and in accordance with
2 Part 800 regulations and Commission precedent that
3 labels ISR projects as able to use phased
4 identification for sites.

5 The PA was developed in consultation with
6 multiple parties including federal agencies as well as
7 the Advisory Council on Historic Preservation and
8 tribes, in consultation with tribes.

9 The ACHP was fully informed of the
10 provisions of this agreement, were involved
11 consistently by the Staff and did, indeed, execute
12 that agreement.

13 And as you will note in the record, that
14 Powertech has cited to regulations at Part 800 where
15 it says ACHP's execution of this PA is a demonstration
16 that NRC Staff engaged in a reasonable and good-faith
17 effort, which is the standard for tribal consultation.

18 With respect to Contention 2, we'd like to
19 note the following points for the record. First, as
20 stated before, ISR is a phased process in all aspects
21 of its site development.

22 This is reflected in the 2006 CLI-06-01
23 Hydro Resources, Incorporated, decision in which the
24 Commission declined to review the Licensing Board's
25 findings that the challenges by the intervenors there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to the procedures associated with post-license
2 issuance, groundwater data gathering is not subject to
3 hearing.

4 It is part of a performance-based
5 licensing scheme that has been endorsed by Commission
6 policy and used in multiple ISR licenses including the
7 Hydro Resources license in that case.

8 The FSEIS and the SER adequately demonstrate that
9 sufficient baseline groundwater quality data pursuant
10 to 10 CFR Part 40 Appendix A Criterion 7 was gathered
11 and analyzed and approved by NRC Staff, contrary to
12 allegations levied regarding wellfield installation,
13 and the need to have "complete" data from a complete
14 wellfield.

15 The 10 CFR Part 40.32(e) Construction Rule
16 expressly prohibits, and by the way, incorporates the
17 definition of construction from 10 CFR 40.4, prohibits
18 the installation of a complete wellfield prior to
19 issuance of a license.

20 This goes directly to Judge Barnett's
21 question previously of the public availability of post
22 license issuance groundwater quality data gathered
23 pursuant to criterion 5(b)(5) to establish what is
24 called commission approved background.

25 While we agree that guidance, NUREG-1569

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chapter 2 and Chapter 5 is not binding on this
2 Licensing Board, nor an applicant, the fact of that
3 particular narrow issue of the difference between the
4 data authorized to be gathered in Chapter 2 versus the
5 data authorized to be gathered in Chapter 5 is binding
6 on this Licensing Board because it was specifically
7 authorized and approved by the Licensing Board and the
8 Commission in the Hydro Resources proceeding.

9 With respect to Contention 3, it is also
10 a phased approach, again, to gathering. We cannot
11 install a complete wellfield including monitoring well
12 network prior to issuance of a license.

13 And once again, that data that is gathered
14 post license issuance is not subject to challenge.
15 And that is the, in our view, not just the position of
16 NUREG-1569, but the position of the Commission as
17 articulated in the Hydro Resources proceeding.

18 The FSEIS and SER demonstrate adequate
19 site hydrogeologic characterization, and the ability
20 to control fluid migration, and it meets NRC
21 regulations at Criterion 7 and NUREG-1569 guidance in
22 Chapter 2.

23 Powertech asserts there are no published
24 studies or site specific investigations that have been
25 offered to show that there are faults, fractures, or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 breach of pipes in the licensed area. Indeed, it has
2 been conceded today that there are no such depressions
3 or subsurface features within the Dewey-Burdock
4 project area.

5 This supports Powertech's site specific
6 evaluation of thousands of drill holes within the
7 area, and as stated by Powertech's witnesses
8 previously, the fact that there are thousands of
9 boreholes present, historic boreholes or current
10 boreholes present in the areas typical of ISR sites
11 throughout the country.

12 Despite claims that were levied yesterday
13 regarding the presence of multiple faults, joints, and
14 fractures in northwestern Nebraska, it is worth noting
15 for the Board that the Crow Butte facility operated in
16 northwest Nebraska by Cameco Resources has been
17 operating for decades without any problems associated
18 with those issues.

19 Indeed, as you heard from a Powertech
20 witness, there is a currently licensed ISR operator in
21 operation that has a fault running through a
22 wellfield, and it still operates safely.

23 It is worth noting that it has been
24 testified that use of the term excursion should not be
25 considered to be an environmental impact. It is an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 early warning of the potential for migration of fluid.
2 It is in place as an early warning so that there will
3 be no environmental impact from that.

4 You've heard a lot of testimony regarding
5 how safety measures imposed in Powertech's license and
6 the record of decision address this issue. As stated
7 yesterday, there was an investigation of the possible
8 potential location of depressions or other features at
9 the Dewey-Burdock site, and that yielded no evidence
10 of such a depression or feature.

11 In addition, with respect to the Fuson
12 shale, it has been shown at some locations to be a
13 potentially leaky confining unit. These are all
14 explained in Powertech's license application and
15 evaluated by NRC Staff, and as attributed to one or
16 more wells improperly completed in two aquifers and
17 one or more unplugged boreholes.

18 For the vast majority of the site, there's
19 strong evidence of the competence of the Fuson shale,
20 including potentiometric surface differences and water
21 quality differences between the overlying and
22 underlying aquifers.

23 Pump tests conducted post wellfield
24 installation are required in the license to
25 demonstrate hydraulic isolation of the production zone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 aquifer prior and subject to pre-operational
2 inspection by NRC Staff prior to the commencement of
3 operations.

4 Pump tests at times show communication
5 through a borehole of a leaking well. In these cases,
6 the well or borehole is plugged in accordance with
7 appropriate state standards, and the pump test is
8 repeated until adequate isolation is demonstrated.

9 With respect to Contention 4, water
10 balance diagram serves the purpose it was intended
11 for, shows the amount of bleed, the amount of liquid
12 waste requiring disposal, and the amount of water
13 needed from the Inyan Kara and Madison aquifers.

14 This bleed only .5 to 3 percent of the
15 water, that's all that is not re-circulated, meaning
16 that the characterization of the project water use as
17 massive or tremendous is completely overstated.

18 The FSEIS documents South Dakota's
19 evaluation of Powertech's Inyan Kara and Madison water
20 right application as well, and their determination is
21 that adequate water is available, there is
22 unappropriated water available, and the water rights
23 may be granted without adversely affecting or
24 impacting existing wells.

25 With respect to the contentions you heard

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony on today, Contention 6, I would like to
2 start with the following statement, that we were
3 talking briefly about compliance with licensed
4 conditions.

5 Commission precedence shows that the
6 Commission does not presume that a licensee will
7 violate its license. In fact, the presumption is the
8 exact opposite, that it will follow its licensed
9 conditions.

10 And that is consistent with the Atomic
11 Energy Act's mission, which is the licensee has the
12 primary responsibility for the safe possession, use,
13 and handling of Atomic Energy Act materials, in this
14 case, source and 11e(2) byproduct material.

15 Also, would like to note on the question
16 of best management practices, a good, another analogy
17 in addition to the testimony you heard today is
18 licensees typically develop standard operating
19 procedures which are consistent with industry
20 practices.

21 Those are developed post license issuance,
22 but the requirement to develop those is in the
23 license, and also subject to pre-operational
24 inspection by NRC Staff prior to commencement of
25 operations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Again, we reiterate our statements from
2 our testimony and our position statements that
3 evaluation of mitigation measures is not simply
4 limited to a summary chart. It is a chart that
5 provides an ease of use opportunity for a layperson to
6 review, what those are, and then each resource area is
7 separately evaluated for purposes of mitigation.

8 And as Ms. McKee demonstrated in her
9 testimony, it does reference standard procedures used
10 throughout the country, and particularly in this area
11 of the country, as well as appropriate references to
12 applicable standards and guidelines that Powertech has
13 committed to compliance with and use of, including
14 raptor stipulations recommended by the U.S. Fish and
15 Wildlife Service.

16 The FSEIS also appropriately considers
17 compliance with other federal and state permitting
18 requirements when considering potential impacts.

19 And finally with respect to connected
20 actions, the major connected actions including the
21 Bureau of Land Management's plan of operations, EPA's
22 need to issue UIC permits for Class III and Class V
23 wells were actively considered in the FSEIS. You've
24 heard testimony to that effect from NRC Staff.

25 BLM was a cooperating agency on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 development of the FSEIS. And EPA consulted
2 extensively in the entire NEPA process, starting with
3 pre-draft SEIS issuance discussions and comments.
4 Other related actions such as South Dakota permits
5 such as groundwater discharge and NPDS were also
6 considered in the context of Contention 9.

7 So with that said, Powertech respectfully
8 requests that this Board find that none of the
9 contentions admitted to this proceeding should result
10 in a modification of its license or the record of
11 decision, and absent anything else requested by this
12 Board on these contentions, Powertech respectfully
13 submits its case to the Board.

14 CHAIRMAN FROEHLICH: Thank you, Mr.
15 Pugsley. Staff?

16 MR. CLARK: First, on behalf of the Staff,
17 I would like to thank the Board for the Staff's
18 opportunity to provide some more information regarding
19 its review.

20 Turning to Contention 1A, the Staff fully
21 complied with laws designed to protect cultural
22 resources. Regarding the National Historic
23 Preservation Act, the Staff made a reasonable and good
24 faith attempt to identify properties important to
25 American Indian tribes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The Staff didn't need to identify every
2 property at the Dewey-Burdock site, nor did it need
3 for all tribes to agree with the Staff's
4 identification efforts. I'm referring here to the
5 ACHP, the Advisory Council and Historic Preservation's
6 guidance addressing the reasonable and good faith
7 standard.

8 And that was entered into evidence as
9 Exhibit NRC-047. Page 3 of the ACHP's guidance, which
10 the Board looked at on Tuesday contains those
11 statements.

12 Regarding NEPA, the Staff complied with
13 this law by finalizing a Programmatic Agreement before
14 it issued its record of decisions for the Dewey-
15 Burdock project. That's another dispute the Board
16 heard Tuesday, and the PA was included in the Staff's
17 NEPA decision document.

18 In the Programmatic Agreement and the
19 appendix to the Programmatic Agreement, those are
20 Exhibits NRC-18A and 18B, the Staff analyzes impacts
21 to cultural resources and describes the mitigation
22 measures. Again, through the record of decision,
23 these documents are incorporated in the Staff's NEPA
24 review.

25 Turning to Contention 1B the Staff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 consulted extensively with American Indian tribes, as
2 reflected in the Advisory Council's letters to both
3 the Staff and the standing Rock Sioux tribe.

4 These letters are Exhibits NRC-18D, which
5 is the ACHP letter to the Staff stating that through
6 execution of the Programmatic Agreement, the Staff
7 completed the Section 106 process under the NHPA, and
8 also Exhibit NRC-31, which is the ACHP's letter to the
9 standing Rock Sioux tribe stating that the Staff
10 complied with both the content and the spirit of the
11 NHPA.

12 Now although the Staff consulted on an
13 equal basis with all interested tribes, Staff would
14 also note that it offered to meet with Oglala Sioux
15 Tribe before any other tribe, and the Staff made that
16 offer in October 2009. The Staff would have met with
17 the tribe in December 2009. But as Ms. Yilma
18 explained, the tribe was not available.

19 The Staff would also note that it held
20 face-to-face meetings, three face-to-face meetings
21 with tribes, and those were all close to the Pine
22 Ridge Reservation. One was on Pine Ridge, the other
23 two were in Rapid City.

24 Turning to Contentions 2 and 3, the Staff
25 found that Powertech's application, as supplemented by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 its responses to the Staff's request for additional
2 information met the criteria for granting a license in
3 NUREG-1569. That's the standard review plan for
4 uranium recovery facilities.

5 The standard review plan isn't just
6 relevant to the Staff safety findings, it also
7 includes guidance for determining whether an applicant
8 has provided enough environmental information for the
9 Staff to comply with NEPA.

10 And here, I'd refer the Board to Pages 29
11 through 31 of Exhibit NRC-13, and that's a table,
12 three page table showing clearly what sections are
13 relevant to the Staff's safety review, and the
14 sections relevant to the environmental review.

15 In making its findings under NEPA, the
16 Staff also took into account the numerous conditions
17 it included in Powertech's license. These conditions
18 are mitigation measures, and under NEPA, the Staff
19 reasonably took them into account when assessing the
20 impacts of the Dewey-Burdock project.

21 Now, at this point I'd focus the Board's
22 attention on two important aspects of the testimony
23 the Intervenors witnesses provided yesterday. The
24 first important point is that Intervenors witnesses
25 did not challenge the findings that Staff made under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the standard review plan.

2 While they argued the review plan in
3 itself isn't sufficient to comply with NEPA, they
4 didn't argue that the Staff incorrectly applied any of
5 the guidance in the various review plan sections to
6 determine that Powertech did in fact provide enough
7 information in support of its application.

8 Now, the Staff is aware, as Judge Barnett
9 pointed out yesterday, that the NUREG is not binding
10 on the Board. It's a guidance document. However,
11 under Commission precedent, the standard review plan
12 is nonetheless entitled to special weight.

13 I'll refer to a number of Commission
14 decisions, including the recent decisions on this
15 point. The Commission made this point most recently
16 in the Seabrook case, that's CLI 12-0575 NRC at 314
17 Note 78. They also made this very point in Private
18 Fuel Storage, that's CLI 02-2250 NRC at 264.

19 In a 2005 Yankee Atomic decision, the
20 Commission elaborated on the role of Staff guidance.
21 I'll quote from that decision. The Commission stated,
22 "We recognize, of course, that guidance documents do
23 not have the force and effect of law. Nonetheless,
24 guidance is at least implicitly endorsed by the
25 Commission, and therefore is entitled to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 correspondingly special weight." And that citation is
2 CLI 05-1561 NRC at 375 Note 26.

3 Let's see. The second point I'd make is
4 this, in their testimony yesterday, the Intervenors'
5 witnesses did not challenge the specificity of any of
6 Powertech's licensed conditions, nor the methodology
7 about which Powertech must acquire additional data.

8 Rather, in response to one of the Board's
9 questions, the witnesses clarified that their only
10 argument is that as a general matter, using licensed
11 conditions to gather additional information on water
12 quality and aquifer confinement doesn't comply with
13 NEPA. It didn't address the conditions specifically
14 in describing problems with them.

15 The arguments of the Intervenors'
16 witnesses regarding the general use of licensed
17 conditions, as I believe Mr. Pugsley just stated, is
18 foreclosed however by Hydro Resources. A couple
19 decisions, CLI 0601, and I believe also CLI 9922, both
20 those decisions make clear that licensed conditions
21 have an appropriate role under both Atomic Energy Act
22 and NEPA.

23 For Contention 4, the primary concern the
24 Intervenors' witnesses raised yesterday was that the
25 water balance on the final EAS does not account for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evaporation. As Powertech's witness, Mr. Fritz
2 explained in his answering testimony at A.5, I'm not
3 referring to his testimony yesterday but his pre-
4 filed, written testimony, his answering testimony at
5 answer A.5, the amount of water that will be lost to
6 evaporation is already included in the disposal stream
7 listed in Powertech's water balance.

8 And both the Staff's and Powertech's
9 witnesses reiterated this point yesterday in their
10 testimony.

11 Another issue the Board heard about
12 yesterday was draw down in the Madison and Inyan Kara
13 aquifers, two aquifers that concerns residents at Hot
14 Springs, Edgemont and Rapid City.

15 I'll just make two points here. When
16 reviewing Powertech's water rights applications, the
17 state of South Dakota found that Powertech's annual
18 water consumption will not exceed the recharge rates
19 of either the Madison or Inyan Kara aquifers.

20 And yesterday, although they were asked
21 about this point, the Intervenors' witnesses didn't
22 provide any information to contradict those findings.
23 They suggested they don't agree with them, but they
24 were unable to give any specific information calling
25 into question the state of South Dakota's findings.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now for Contentions 6 and 9, the Board
2 heard from the Staff recently enough that I'll just
3 say two things. First, the Staff considered
4 mitigation measures and related licensing actions to
5 the extent consistent with other NRC environmental
6 impact statements and other impact statements prepared
7 by other agencies. What the Staff did here is nothing
8 unusual.

9 Second, the Staff's consideration
10 mitigation measures and other licensing actions
11 complies with applicable case law, including the case
12 law in mitigation measures that the Staff cited in
13 both its initial and rebuttal statements of position.

14 That's all I have. And again, on behalf
15 of Staff counsel and the Staff's witnesses, we thank
16 the Board.

17 CHAIRMAN FROEHLICH: Thank you, Mr. Clark.
18 Your choice to close first, Mr. Parsons.

19 MR. PARSONS: I'll go ahead.

20 CHAIRMAN FROEHLICH: Thank you.

21 MR. PARSONS: Thank you, Your Honor. With
22 respect to Contention 1A, we heard from Staff and from
23 the testimony that acknowledging the importance of the
24 Lakota people and the connection, strong connection of
25 the Lakota tribes to the Dewey-Burdock area, yet

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 despite this acknowledgment, there was no involvement
2 by the Lakota Sioux tribes in the surveys that were
3 conducted.

4 And although there were two Sioux tribes
5 that participated in the self-directed tribal surveys,
6 those reports were not completed. And nothing, as was
7 admitted by Staff, is included in the record, or in
8 the Final Supplemental Environmental Impact Statement
9 with regard to those tribes that did conduct.

10 We heard from the Staff that they
11 conducted no ethnographic studies because they were
12 relying on the tribes to conduct the survey. But then
13 those surveys never occurred.

14 So our contention, we believe, stands and
15 was bolstered and confirmed by the testimony that
16 despite, and I'll get to 1B in a moment, but despite
17 the efforts made by NRC Staff, the fact remains that
18 the cultural resources survey and analysis that's
19 included in the Final Supplemental Environmental
20 Impact Statement is not sufficient, does not include
21 what even Staff acknowledged was critical input from
22 the Oglala Sioux tribe in particular, but any Lakota
23 tribe.

24 With respect to 1B, NRC Staff points to
25 their list of contacts they made with the tribes as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evidence that they made a reasonable and good faith.
2 We would urge the Board to look not just at the
3 quantity of contacts, but the quality of those
4 contacts.

5 And what we find in reading the record is
6 that the NRC Staff rejected the tribe's proposals for
7 a comprehensive survey based on cost and timing
8 without, however, making a counter proposal or working
9 through those issues.

10 The Staff commented that with regard to
11 the PA, which they assert fixes the problems going
12 forward, that they took into consideration all of the
13 tribes' comments, but we submit that they did not.

14 If you look at the record, Exhibit NRC-016
15 are letters from the standing Rock Sioux and the
16 Oglala Sioux tribes that raise specific disagreements
17 with the Programmatic Agreement. And those letters
18 were not responded to, and those criticisms were not
19 dealt with in the Programmatic Agreement.

20 Again, it's important to remember, not a
21 single tribe signed off on that Programmatic
22 Agreement. Now, they will say that they were not
23 required signatories. But I would submit that that is
24 strong evidence that if they had conducted the
25 meaningful and good faith consultation required under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Section 106, you would have had much more tribal
2 agreement.

3 And that was testified to, Mr.
4 CatchesEnemy stated on the stand that the tribe's
5 concerns were ignored, from their perspective, and
6 that they did not feel like their voices were heard in
7 that process. I think that's entitled to considerable
8 weight.

9 With respect to the Programmatic
10 Agreement, and I guess this ties to Contention 1A as
11 well, it's touted as a mitigation measure. If you
12 read the Programmatic Agreement in detail, you see
13 that it does nothing but say we will develop plans in
14 the future to analyze historic resources and come up
15 with mitigation. There are no specifics.

16 And we continue to raise the concern that
17 the Programmatic Agreement was not analyzed or
18 addressed, although mentioned that it was in
19 preparation, it was not analyzed or assessed in the
20 Final Supplemental Environmental Impact Statement.
21 Through that document is where the public and the
22 decision makers get their information as NEPA
23 contemplates.

24 With respect to Contention 2, again,
25 Criterion 7 of 10 CFR Appendix 8, the Appendix 8

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Criteria, Criterion 7 requires complete baseline data.
2 Powertech's argument should be rejected using the
3 construction rule to somehow modify that term
4 complete.

5 Their view is complete data only comes in
6 after the NEPA process. We would submit that that
7 undermines and renders nonsensical the requirement in
8 Criterion 7 that there be complete data on the front
9 end.

10 We heard with regard to Contention 3 that
11 there's significant information left out by NRC Staff.
12 No investigation was conducted, meaningful
13 investigation at least, of any false fractures,
14 boreholes, or breccia pipes. What we have is
15 commitments to look at those factors later.

16 We heard testimony that those kinds of
17 problems at a ISL site can have serious ramifications.
18 And pushing that analysis off until a later time
19 deprives the public of any meaningful review in a NEPA
20 document. It violates the NEPA hard look.

21 What we seem to have is an argument of no
22 data, no problem. And we would submit that NEPA
23 requires more than NRC Staff and Powertech agreeing
24 through a licensed condition to take a look at these
25 serious impacts and issues at a later time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We heard Mr. Pugsley reference evidence
2 that I believe is not in the record, arguing that
3 somehow the Crow Butte has had no problems and is
4 operated safely. There's no evidence as to that, and
5 Mr. Pugsley's comments in that regard should not be
6 considered by the Board.

7 Importantly, and on that matter, he
8 mentioned that there are no breccia pipes on the site
9 because the Gott map did not show any. I think that's
10 a gross mischaracterization and an improper assumption
11 based on that map. That was one map by one survey in
12 the late '60s.

13 What we heard is that the science has
14 gotten considerably more advanced since that time, and
15 there was no indication that that map was intended to
16 be a comprehensive study of the entire region.

17 What we did hear was that if you don't
18 look for those faults and fractures and problems, you
19 will not find them. And there's no evidence that that
20 sort of detailed review has occurred at this site.

21 What we do hear is that in the future,
22 after the licensing process, after the public is
23 allowed to participate, they will conduct the real
24 studies to determine what the conditions are at the
25 site. And I submit that that process, while I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 understand a phased process is allowed under NRC
2 regulations, NEPA requires that hard look.

3 And what we have at this point is
4 generalized information that did not comply with that
5 hard look, particularly where we have admissions that
6 there are unplugged boreholes that are causing
7 problems now, yet no investigation to confirm that
8 data, no attempts to fix those problems on the front
9 end.

10 We heard from Mr. Clark that there are
11 some aspects that will require what he termed, what's
12 termed review and approval from Condition 10B, I
13 believe. However, if you dig a little deeper what you
14 find out is that is only three of 16 wellfields where
15 any sort of future review will be provided.

16 And it's not clear that Powertech will
17 ever proceed to those three wellfields that are not
18 fully saturated. The partially saturated wellfields
19 will have future review, but none of the other
20 wellfields will. So those assurances of somehow the
21 public will get their say in the future, I think are
22 without great impact.

23 With regard to Contention 4, we continue
24 to believe that the water use impact analysis lacks
25 the necessary detail to comply with NEPA's requirement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for environmental impacts. Our testimony, written,
2 opening, and rebuttal testimony as well as our opening
3 and rebuttal statements we think provide that strong
4 basis for that argument.

5 With respect to Contention 6, NRC Staff
6 can point to some aspects of the NEPA document where
7 mitigation was reviewed. We're not disputing that.
8 There are some analysis in there of some mitigation,
9 but there is a whole group of mitigation measures that
10 are not reviewed in there.

11 By simply pointing to some of their
12 mitigation does not excuse the gaps in the review of
13 an analysis of mitigation and their effectiveness that
14 exists in this NEPA document.

15 One example that the Court brought forward
16 I think is very apt are the BMPs. While there was
17 some ability to point to some BMPs for avian impacts,
18 if you do a search in that NEPA document for BMPs, you
19 find it throughout. And the Staff says well, the
20 testimony was when we use BMPs, we then list what
21 those might be. What you find reading the document is
22 that is simply not true.

23 They say the South Dakota State Government
24 will impose some BMPs, with no discussion of what
25 those are, simply stating that they are procedures

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that reduce impacts, provides the public with no
2 information. That does not comply with NEPA's hard
3 look. The same is true for the cultural resources
4 impacts, to name another.

5 The programmatic agreement, which is an
6 attempt to rehabilitate the lack of any discussion of
7 mitigation in the Final Supplemental Environmental
8 Impact Statement does nothing more than say we will,
9 in the future, prepare plans for mitigation of
10 impacts.

11 A statement that plans will be prepared in
12 the future is not a reasonably complete discussion of
13 mitigation that's required under NEPA.

14 And as I stated in our opening this
15 morning, there are several more examples that are in
16 our briefing where NRC Staff failed to conduct a
17 meaningful review of any mitigation plans, rather just
18 stating that they would be developed at some point.

19 With regard to Contention 9, when you read
20 the NEPA document, what you find are references to the
21 South Dakota Clean Water Act, NPDES, National
22 Pollution Discharge Elimination System permits, and to
23 the Class V permits and their requirements. But
24 there's no discussion of how those requirements will
25 be met, what the impacts will be associated with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 those.

2 It just simply differs to those agencies
3 to impose those and assumes without analysis that
4 impacts will be small because the applicant is
5 presumed to be complying with those permit
6 requirements. That is not a hard look, that is a
7 deferral of that hard look to other agencies at some
8 point in the future.

9 Overall, as we stated in our opening, NRC
10 Staff and Powertech have taken a good enough approach.
11 Even when confronted with specific problems, they say
12 that they will look at those later, outside of the
13 NEPA process, outside of the ability of the public to
14 get involved or challenge or seek a hearing.

15 But NEPA requires a hard look at the front
16 end of the process, not at some point in the future.
17 Pushing meaningful analysis and review until later is
18 simply not sufficient. We very much look forward to
19 the opportunity to brief these issues in detail and
20 provide the Board with much more specific information
21 in our briefing. Thank you very much for the time and
22 your patience throughout.

23 CHAIRMAN FROEHLICH: Thank you. For
24 Consolidated Intervenors? Mr. Ballanco.

25 MR. BALLANCO: Thank you, Your Honor. And

1 I want to thank the Board again for conducting these
2 hearings and giving us the opportunity for the closing
3 remarks.

4 Though along with that, I must comment it
5 seems strange to be offering a closing remark when
6 certainly there is at least one Contention still
7 active. And I appreciate it for how that
8 characterizes what this entire process has somewhat
9 seemed to, as here I am giving a closing on a
10 Contention that's still outstanding on a hearing to
11 determine the proper issuance of a license that's
12 already been issued.

13 And I think that's a pattern that all of
14 the Consolidated Intervenors see that we're saying yes
15 first, and then we'll get to the details. And forgive
16 us for asking questions along the way and identifying
17 some of our discomforts.

18 As Mr. Parsons said, we get the appearance
19 of a good enough mentality. There's a regulation
20 here, there's a plan that can be developed there.
21 There is one person's small impact is another person's
22 five thousand gallons of aqueous arsenic spilled in
23 his watershed.

24 We've heard about the Dewey-Burdock's site
25 not being unique. One property that is absolutely

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unique is my client's. The Wild Horse Sanctuary is
2 entirely unique. In the west, there's not another
3 place like it. It's the largest private wild horse
4 sanctuary in the west, absolutely dependent on the
5 waters that flow through the project site that is
6 unquestionably in the drainage of the Cheyenne river,
7 the water source for the property administered by Mr.
8 Hyde.

9 There's no good enough when you consider
10 what that means to what Mr. Hyde and his associates
11 have been building for decades now, what some of the
12 other land owners in the vicinity who have to face the
13 risks of these small impacts.

14 These are real people's lives. It's
15 nothing personal against this Agency. The Federal
16 Government does not have a great track record here,
17 whether we take that from the perspective of the
18 Oglala Lakota, whether we look at the BLM and the
19 management of land.

20 In Mr. Hyde's personal experience, he's
21 seen the Forest Service destroy forest reserves, he's
22 seen Fish and Wildlife decimate natural predators and
23 cause a prairie dog epidemic. He was honored by the
24 Whooping Crane Conservation Association for coming up
25 with a plan to rescue the whooping crane population,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 again, something that was dropped by federal
2 government charges.

3 A regulation or a policy is not always
4 going to guarantee the kinds of things that we can
5 talk about as small impact. There may be a reg to
6 assess what happens for a spill. That's not going to
7 save horses six hours away from when that happens.

8 As the Board considers the record that has
9 gone into the decision, the record that was
10 established during these hearings, we would urge to
11 keep in mind that these small impacts in the scheme of
12 this licensing procedure are huge impacts in terms of
13 the neighbors and persons who have to live here long
14 after this project is closed. Again, thank you for
15 being here.

16 CHAIRMAN FROEHLICH: Thank you, Mr.
17 Ballanco. With the conclusion of closing statements,
18 we now need to set ourselves a briefing schedule so
19 that we can take the record that was made here and the
20 legal arguments that had been put forward by counsel
21 into a decisional document. And the Board stands
22 ready to do just that.

23 Before we can close the record, we'll have
24 to build in an opportunity for the Intervenors and the
25 Staff to view the newly acquired document. Powertech

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has made them available, and has requested the
2 confidentiality agreement apply to these documents.

3 Have the parties had an opportunity to
4 work out a schedule or a timetable for the review of
5 these documents by your experts?

6 MR. PARSONS: Jeff Parsons, Your Honor.
7 We have not worked out that schedule. I would want to
8 inform the Board that we would be willing to, as Mr.
9 Pugsley suggested, provisionally sign the protective
10 order to move things along.

11 And then should we find issue with Mr.
12 Pugsley's affidavit that he intends to file next
13 Tuesday, we'll raise that issue then. But we have not
14 discussed a distinct time table.

15 I would guess I would note the concern I
16 continue to have with regard to the fact that at least
17 a portion, as I understand it, of the newly acquired
18 information that's been deemed relevant will come into
19 Powertech's possession sometime in September. I'm not
20 sure that issue's been fully discussed.

21 I don't know if the Board would be open to
22 us trying to work these things out rather than doing
23 so here. But I'm certainly willing to make that
24 attempt.

25 MR. PUGSLEY: Excuse me, Your Honor. We

1 certainly welcome the opportunity to meet with the
2 parties as soon as this afternoon to discuss these
3 issues, including the one Mr. Parsons just raised.
4 More than happy to do that.

5 CHAIRMAN FROEHLICH: I think, what would
6 be best if I outlined sort of my vision of a
7 timetable, but not set that timetable at this point,
8 and then have the parties confer and hopefully respond
9 back with a consensus agreement as to dates for the
10 filing of briefs, transcript corrections, and the
11 review of the data.

12 I had contemplated that we would establish
13 a period to take place over the next three weeks or
14 so, i.e. by September 12th that the Intervenors and
15 the Staff review the data that Powertech has
16 disclosed.

17 And then perhaps a week later or so, that
18 we have our proposed transcript corrections from all
19 parties, along with any additional testimony or
20 motions dealing with the newly reviewed well log data
21 from all parties, you have an opportunity to review
22 that.

23 The Board would then review the additional
24 testimony or motions that would come in with the
25 proposed transcripts, and we would shoot to try to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 close the record by September 26th.

2 Shortly thereafter, on or about October
3 3rd, the parties would have the opportunity to file
4 findings of fact and conclusions of law together with
5 legal briefs because, in this case, Contentions 1A,
6 1B, 6, and 9 especially seem to turn on legal
7 questions, legal calls whether the statutes of
8 regulations were complied with.

9 So along with traditional findings of fact
10 and conclusions of law, I think the Board would
11 benefit from a legal brief, a brief that cites to the
12 record we made here, the testimony that we have heard,
13 the exhibits that were prepared and filed.

14 And in this brief, we'll pull together the
15 facts that came out during the hearing with the legal
16 arguments that have been interspersed all through and
17 some of which have been put before the Board in the
18 pleadings right along the way.

19 If we have findings of facts, conclusions
20 of law, and briefs from the party at or about October
21 3rd, the Board would be able to issue its decision
22 within 90 days of the close of the record, i.e. you
23 would have an initial decision by the end of the year.

24 I would encourage the parties to discuss
25 a schedule with these general parameters in mind,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 report back to the Board hopefully with a unanimous
2 agreement, and then we would set a schedule such as
3 that in place to conclude this matter.

4 MR. ELLISON: Judge Froehlich, I guess I
5 want to just begin by stating an objection to this
6 proposal. The concept, we don't even know if our
7 experts will be available over the next three weeks.

8 I would note for the Board that we had
9 testimony yesterday that Powertech worked for six
10 years going through these e-logs. That would be like
11 us saying to the Board, how about by this afternoon
12 you have your full complete decision done. And it
13 would be preposterous.

14 I would submit that the idea that our
15 experts are going to be able to free themselves up
16 immediately, that then they would have and be able to
17 get done in three weeks what it took years for
18 Powertech to do is beyond my comprehension, with all
19 due respect.

20 What we're doing now is basically what
21 this Board is saying as I'm hearing proposed, look,
22 we've already got our decision ready. Just fill in
23 this little stuff.

24 What I would suggest is we consult with
25 our experts, we come back with what we understand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 based upon their schedules would be when they are
2 available, and what would be a reasonable amount of
3 time for them to review these materials and write a
4 report and discuss it with us, and then we begin after
5 that to start setting up a schedule.

6 I really don't, unless really due process
7 and substance has nothing to do with these
8 proceedings, this schedule as proposed is completely
9 unreasonable and unworkable from the Consolidated
10 Intervenors' standpoint.

11 CHAIRMAN FROEHLICH: I would encourage you
12 to consult with your consultants to have them review
13 the material as soon as they possibly can, and to
14 begin to draw conclusions.

15 In the first sitting with the
16 representative, the portions they have document, and
17 with the electronic data, they will be able to see
18 whether this is a treasure trove of new information
19 that will support your position, in which case I would
20 hear from you within three weeks.

21 On the other hand, if the data, you know,
22 merely reinforces what's already been reviewed or
23 reviewed by the Staff and I guess the company, well
24 then I'll hear from them that, you know, upon
25 additional review there's nothing new that will come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in.

2 Certainly, six years, a six year delay is
3 not possible at this point.

4 MR. ELLISON: I'm not suggesting that.
5 But --

6 CHAIRMAN FROEHLICH: Well, why don't you
7 consult with your consultant and tell me what is
8 possible?

9 MR. ELLISON: Okay, because our consultant
10 is a full time college professor. The Tribe's
11 consultant is a full time hydrogeologist who has a
12 very busy schedule as well. It may be months before
13 they're even available to begin such a review.

14 So I just wanted to put that on the record
15 because I'm really concerned that this data which had
16 elevated itself up to what seemed like the importance
17 that it is, the significance that it is, and now it's
18 being relegated to just a footnote for anything.

19 CHAIRMAN FROEHLICH: Perhaps you should
20 consider with your consultants an initial review of
21 that. And if the initial review indicates that their
22 view is reinforced with this data, which I am not
23 saying, I don't know what it is, then perhaps we'll go
24 forward and hold open the proceeding.

25 That wouldn't be my first choice on how to

1 proceed. Or perhaps go forward with an initial
2 decision on all the other elements, and then bifurcate
3 this. I don't know. I haven't heard from any of the
4 parties who have looked at this data on what it shows
5 other than what Powertech has represented.

6 Is there anything further? I would
7 encourage you to get a response back to the Board as
8 quickly as possible, because we do need to close the
9 record, or at least move forward on all the other
10 issues.

11 Not knowing, not knowing what your experts
12 will make of this data, I don't see any other way of
13 proceeding and making use of the record that we have
14 created in this case other than to have them review it
15 just as promptly as they can, and then to report their
16 findings back to you so that you can make the
17 appropriate motions either to re-open the record, to
18 withdraw any further objections to this type of data,
19 or anything that comes of it.

20 I can't tell you what to do with this or
21 what your clients do with it, but you have to look at
22 it first, and then tell me where it goes.

23 In any event, that would be the Board's
24 proposal for how to proceed with the procedural dates
25 that would be necessary for us to prepare our

1 decision. Would the parties please confer, and to the
2 extent it's possible, respond to us.

3 I don't think, given the objection of Mr.
4 Ellison, that that will be accomplished over a lunch
5 hour. I'm not sure what we should do on that.

6 MR. ELLISON: I might say, if I might,
7 that one way that might somewhat expedite these
8 proceedings would be if a copy was made of all of the
9 data, and then provide it to our experts so they don't
10 have to work out in addition to finding gaps in their
11 schedules to review, but also finding gaps and an
12 opportunity to go to Edgemont to go and look at data.
13 That might be one way of expediting this, to some
14 extent.

15 CHAIRMAN FROEHLICH: And I would ask that
16 Powertech consider that.

17 MR. PUGSLEY: We're certainly prepared to
18 discuss any and all opportunities with the parties.

19 CHAIRMAN FROEHLICH: Okay. So that we can
20 go forward, I would -- as to the dates proposed for
21 the transcript corrections, does September 19th work
22 for all parties?

23 MR. CLARK: It works for the Staff,
24 assuming it's the usual seven to ten day turnaround
25 before --

1 CHAIRMAN FROEHLICH: Yes, it will be a
2 seven day turnaround on the transcripts. So we'll
3 have transcript corrections. Please keep in mind that
4 transcript corrections are to correct typos, not to
5 change the oral testimony that was given.

6 Even though the witness would have liked
7 to say X or Y, you have to change the transcript only
8 to the extent that the reporter got it wrong, and he
9 doesn't make too many mistakes.

10 MR. PUGSLEY: That's fine with Powertech,
11 Your Honor.

12 CHAIRMAN FROEHLICH: All right. We'll
13 have proposed transcript corrections from all parties
14 on the 19th of September. And I will await a report
15 back from the parties after you've had a chance to
16 discuss the arrangements necessary for review of the
17 data.

18 Looking forward to something that will
19 allow us to move forward with our decision. I would
20 propose one further date. The briefs and findings of
21 facts and conclusions of law at or about, would be set
22 for October 3rd. Is that --

23 MR. PUGSLEY: Your Honor?

24 CHAIRMAN FROEHLICH: Yes?

25 MR. PUGSLEY: I apologize. We would ask

1 that, because that's Friday, October 3rd I believe.
2 We would ask that it be possibly be Monday the 6th
3 only because Mr. Thompson and I are counsel to Strata
4 Energy, and their Subpart L proceeding is from
5 September 30th to October 2nd in Gillette, Wyoming.
6 So that's all we would ask.

7 CHAIRMAN FROEHLICH: Okay. As a briefing
8 schedule, Mr. Ellison, October 6th for findings of
9 fact, conclusions of law?

10 MR. ELLISON: I guess I can't agree to
11 that date with all due respect until we know when
12 we're going to be able to get the data reviewed and be
13 able to move on from there. Seems like we're putting
14 the cart before the horse, unless you're talking about
15 other than Contention 3.

16 CHAIRMAN FROEHLICH: That may have to be
17 the arrangement, the avenue that we take out of it.
18 I would hope it wouldn't be, but for the record made
19 in this case at least thus far, we would be looking
20 for findings of fact, conclusions of law and briefs on
21 October 6th. Is that acceptable to Staff?

22 MR. CLARK: That's fine for the Staff,
23 Judge Froehlich. During the August 15th
24 teleconference, the Board suggested it might define
25 the legal issues the parties should address in their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 briefs, either at the end of the hearing or at
2 sometime thereafter. Should we be expecting some
3 guidance from the Board on specific legal issues to
4 address?

5 CHAIRMAN FROEHLICH: The Board would be
6 glad to propose a series of legal questions that will
7 arise from the Contentions that were in this case.
8 They would only be a guide, and they would not limit
9 in any way the parties' ability to address the legal
10 arguments that they've raised or touched upon thus
11 far.

12 But the Board will endeavor to go through
13 the Contentions and pick up the legal questions as to,
14 you know, sufficiency of the document and what might
15 be guiding. We will issue such a thing, as well.

16 MR. CLARK: Great, thank you.

17 CHAIRMAN FROEHLICH: All right. Okay. Is
18 there anything else that the Board need consider
19 before we adjourn?

20 MR. PUGSLEY: Nothing from Powertech, Your
21 Honor.

22 CHAIRMAN FROEHLICH: From the Commission
23 Staff?

24 MR. CLARK: Nothing for the Staff.

25 CHAIRMAN FROEHLICH: From the Intervenors?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PARSONS: Not at this time, Your
2 Honor.

3 MR. ELLISON: Not at this time.

4 CHAIRMAN FROEHLICH: Okay. Then I thank
5 all the counsel, the witnesses who gave testimony in
6 this proceeding for their efforts. Certainly the
7 arguments and the testimony will be a great help to
8 the Board in rendering a decision in this case.

9 I also want to thank the Fall River Police
10 Department who provided security, the Hotel Alex
11 Johnson for giving us this facility and adequate air
12 conditioning, especially after limited appearance
13 statements in Hot Springs. I thank our court
14 reporter, Mr. Miller. And with that, we'll stand
15 adjourned. Thank you all.

16 (Whereupon, the above-entitled matter was
17 adjourned at 1:07 p.m.)

18

19

20

21

22

23

24

25



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-001	Dr. Lynne Sebastian Initial Testimony.	Identified and Admitted
APP-002	Dr. Lynne Sebastian CV.	Identified and Admitted
APP-003	Dr. Adrien Hannus Initial Testimony.	Identified and Admitted
APP-004	Dr. Adrien Hannus CV.	Identified and Admitted
APP-005	Representative Sample of ALAC Projects.	Identified and Admitted
APP-006	ACHP Section 106 Regulations: Text of ACHP's Regulations, "Protection of Historic Properties: (36 CFR Part 800) (incorporates amendments effective Aug. 5, 2004)".	Identified and Admitted
APP-007	National Park Service, Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 1983	Identified and Admitted
APP-008	South Dakota State Historic Preservation Office, Guidelines for Cultural Resource Surveys and Survey Reports in South Dakota (For Review and Compliance), 2005.	Identified and Admitted
APP-009	Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project (Public Version), Vol. 3 Part 6; ML100670366.	Identified and Admitted
APP-010	Michael Fosha Initial Testimony.	Identified and Admitted
APP-011	Michael Fosha CV.	Identified and Admitted
APP-012	February 11, 2013 letter from Michael Fosha to SDDENR.	Identified and Admitted
APP-013	Hal Demuth Initial Testimony.	Identified and Admitted
APP-014	Hal Demuth CV.	Identified and Admitted
APP-015-A	Revised Technical Report (TR) for the Dewey-Burdock Project; Part 1 of 22; Transmittal Letter, Change Index and Revised TR RAI Responses; ML14035A052.	Identified and Admitted
APP-015-B	Revised TR for the Dewey-Burdock Project; Part 2 of 22; Text through Sec. 2.8.5.7; ML14035A029.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-015-C	Revised TR for the Dewey-Burdock Project; Part 3 of 22; Text Sec. 2.9 through 10.2; ML14035A030.	Identified and Admitted
APP-015-D	Revised TR for the Dewey-Burdock Project; Part 4 of 22; Plates 1.5-1 through 2.6-8; ML14035A031.	Identified and Admitted
APP-015-E	Revised TR for the Dewey-Burdock Project; Part 5 of 22; Plates 2.6-9 through 2.6-12; ML14035A032.	Identified and Admitted
APP-015-F	Revised TR for the Dewey-Burdock Project; Part 6 of 22; Plates 2.6-13 through 2.6-15; ML14035A033.	Identified and Admitted
APP-015-G	Revised TR for the Dewey-Burdock Project; Part 7 of 22; Plates 2.6-16 through 2.7-2; ML14035A034.	Identified and Admitted
APP-015-H	Revised TR for the Dewey-Burdock Project; Part 8 of 22; Plates 2.8-1 through 5.7-1; ML14035A035.	Identified and Admitted
APP-015-I	Revised TR for the Dewey-Burdock Project; Part 9 of 22; App. 2.2-A through 2.5-F; ML14035A036.	Identified and Admitted
APP-015-J	Revised TR for the Dewey-Burdock Project; Part 10 of 22; App. 2.6-A through 2.6-G; ML14035A037.	Identified and Admitted
APP-015-K	Revised TR for the Dewey-Burdock Project; Part 11 of 22; App. 2.6-H through 2.7-E; ML14035A038.	Identified and Admitted
APP-015-L	Revised TR for the Dewey-Burdock Project; Part 12 of 22; App 2.7-F through 2.7-G; ML14035A039.	Identified and Admitted
APP-015-M	Revised TR for the Dewey-Burdock Project; Part 13 of 22; App. 2.7-H 1 of 3; ML14035A040.	Identified and Admitted
APP-015-N	Revised TR for the Dewey-Burdock Project; Part 14 of 22; App. 2.7-H 2 of 3; ML14035A041.	Identified and Admitted
APP-015-O	Revised TR for the Dewey-Burdock Project; Part 15 of 22; App. 2.7-H 3 of 3; ML14035A042.	Identified and Admitted
APP-015-P	Revised TR for the Dewey-Burdock Project; Part 16 of 22; App. 2.7-J through 2.7-L 1 of 2; ML14035A043.	Identified and Admitted
APP-015-Q	Revised TR for the Dewey-Burdock Project; Part 17 of 22; App.2.7-L 2 of 2; ML14035A044	Identified and Admitted
APP-015-R	Revised TR for the Dewey-Burdock Project; Part 18 of 22; App. 2.7-M; ML14035A045.	Identified and Admitted
APP-015-S	Revised TR for the Dewey-Burdock Project; Part 19 of 22; App 2.7-N through 2.8-H; ML14035A046.	Identified and Admitted
APP-015-T	Revised TR for the Dewey-Burdock Project; Part 20 of 22; App. 2.8-I through 2.9-L; ML14035A047.	Identified and Admitted
APP-015-U	Revised TR for the Dewey-Burdock Project; Part 21 of 22; App. 2.9-M through 3.1-A; ML14035A048.	Identified and Admitted
APP-015-V	Revised TR for the Dewey-Burdock Project; Part 22 of 22; App. 3.1-B through 7.3-D; ML14035A049.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-016-A	Revised Response to the Request for Additional Information (RAI) for the Technical Report (TR) for the Dewey-Burdock Project; Cover Letter; ML11207A711.	Identified and Admitted
APP-016-B	Revised TR RAI Response; Text Part 1: ML11208B712.	Identified and Admitted
APP-016-C	Revised TR RAI response; Text Part 2; ML11208B719.	Identified and Admitted
APP-016-D	Revised TR RAI response; Text Part 3; ML11208B714.	Identified and Admitted
APP-016-E	Revised TR RAI Response; Exhibits Part 1; Exh. 2.6-1 through 2.6-4; ML11208B716.	Identified and Admitted
APP-016-F	Revised TR RAI response; Exhibits Part 2; Exh. 2.6-5; ML11208B763.	Identified and Admitted
APP-016-G	Revised TR RAI response; Exhibits Part 3; Exh. 2.6-6 through 3.1-1; ML11208B764.	Identified and Admitted
APP-016-H	Revised TR RAI Responses; Exhibits Part 4; Exh. 3.1-2 through 5.7-1; ML11208B767.	Identified and Admitted
APP-016-I	Revised TR RAI response; Appendices Part 1; App. 2.5-D through 2.6-G; ML11208B765.	Identified and Admitted
APP-016-J	Revised TR RAI response; Appendices Part 2; App. 2.6-H 1 of 3; ML11208B766.	Identified and Admitted
APP-016-K	Revised TR RAI response; Appendices Part 3; App. 2.6-H 2 of 3; ML11208B769.	Identified and Admitted
APP-016-L	Revised TR RAI response; Appendices Part 4; App. 2.6-H 3 of 3; ML11208B770.	Identified and Admitted
APP-016-M	Revised TR RAI response; Appendices Part 5; App. 2.7-B through 2.7-G; ML11208B771.	Identified and Admitted
APP-016-N	Revised TR RAI response; Appendices Part 6; App. 2.7-H 1 of 4; ML11208B777.	Identified and Admitted
APP-016-O	Revised TR RAI response; Appendices Part 7; App. 2.7-H 2 of 4; ML11208B778.	Identified and Admitted
APP-016-P	Revised TR RAI Response; Appendices Part 8; App. 2.7-H 3 of 4; ML11208B784.	Identified and Admitted
APP-016-Q	Revised TR RAI Response; Appendices Part 9; App 2.7-H 4 of 4; ML11208B827.	Identified and Admitted
APP-016-R	Revised TR RAI response; Appendices Part 10; App. 2.7-K; ML11208B832.	Identified and Admitted
APP-016-S	Revised TR RAI Response; Appendices Part 11; App. 2.7-L 1 of 4; ML112088833.	Identified and Admitted
APP-016-T	Revised TR RAI Response; Appendices Part 12; App. 2.7-L 2 of 4; ML11208B868.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-016-U	Revised TR RAI response; Appendices Part 13; App. 2.7-L 3 of 4; ML11208B864.	Identified and Admitted
APP-016-V	Revised TR RAI response; Appendices Part 14; App. 2.7-L 4 of 4; ML11208B865.	Identified and Admitted
APP-016-W	Revised TR RAI response; Appendices Part 15; App. Vol. 4 Cover; ML11208B870.	Identified and Admitted
APP-016-X	Revised TR RAI response; Appendices Part 16; App. 2.7-M; ML11208B872.	Identified and Admitted
APP-016-Y	Revised TR RAI response; Appendices Part 17; App.2.9-B through 2.9-K; ML112150229.	Identified and Admitted
APP-016-Z	Revised TR RAI response; Appendices Part 18; App. 3.1-A 1 of 2; ML11208B922.	Identified and Admitted
APP-016-AA	Revised TR RAI response; Appendices Part 19; App. 3.1-A 2 of 2; ML11208B924.	Identified and Admitted
APP-016-BB	Revised TR RAI response; Appendices Part 20; App. 6.1-A through 7.3-C; ML11208B925.	Identified and Admitted
APP-017	Figures to Accompany Demuth Initial Testimony.	Identified and Admitted
APP-018	USGS Water-Supply Paper 2220, Basic Ground-Water Hydrology, 1983.	Identified and Admitted
APP-019	National Mining Association's (NMA) Generic Environmental Report in Support of the Nuclear Regulatory Commission's Generic Environmental Impact Statement for In Situ Uranium Recovery Facilities; ML080170159	Identified and Admitted
APP-020	ISR animation (Video of ISR Operation).	Identified and Admitted
APP-021-A	Dewey-Burdock Project Technical Report (TR); re-submitted August 2009; Part 1; Text thru Sec. 2.7.1; ML092870298	Identified and Admitted
APP-021-B	Dewey-Burdock Project TR; re-submitted August 2009; Part 2; Text Sec. 2.7.2 thru 2.9; ML092870295.	Identified and Admitted
APP-021-C	Dewey Burdock Project TR; Re-submittal August 2009, Part 3; Text Sec 3 thru End; ML092870299.	Identified and Admitted
APP-021-D	Dewey-Burdock Project TR; Re-submitted August 2009; Part 4; Plate 1.5-1; ML092870313.	Identified and Admitted
APP-021-E	Dewey-Burdock Project TR; Re-submitted August 2009; Part 5; Plate 1.5-2; ML092870314.	Identified and Admitted
APP-021-F	Dewey-Burdock Project TR; Re-submittal August 2009; Part 6; Plate 2.5-1; ML092870315.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-021-G	Dewey-Burdock Project TR; re-submitted August 2009; Part 7; Plate 2.6-1; ML092870316.	Identified and Admitted
APP-021-H	Dewey-Burdock Project TR; Re-submitted August 2009; Part 8; Plate 2.6-2; ML092870317.	Identified and Admitted
APP-021-I	Dewey-Burdock Project TR; Re-submittal August 2009; Part 9; Plate 2.6-3; ML092870318.	Identified and Admitted
APP-021-J	Dewey-Burdock Project TR; Re-submittal August 2009; Part 10; Plate 2.6-4; ML092870305.	Identified and Admitted
APP-021-K	Dewey-Burdock Project TR; re-submitted August 2009; Part 11; Plate 2.6-5; ML092870306.	Identified and Admitted
APP-021-L	Dewey-Burdock Project TR; re-submitted August 2009; Part 12; Plate 2.6-6; ML092870307.	Identified and Admitted
APP-021-M	Dewey-Burdock Project TR; Re-submitted August 2009; Part 13; Plate 2.6-7; ML092870309.	Identified and Admitted
APP-021-N	Dewey-Burdock Project TR; re-submitted August 2009; Part 14; Plate 2.6-8; ML092870310.	Identified and Admitted
APP-021-O	Dewey-Burdock Project TR; Re-submitted August 2009; Part 15; Plate 2.6-9; ML092870311.	Identified and Admitted
APP-021-P	Dewey-Burdock Project TR; Re-submitted August 2009; Part 16; Plate 2.6-10; ML092870312.	Identified and Admitted
APP-021-Q	Dewey-Burdock Project TR; re-submitted August 2009; Part 17; Plate 2.6-11; ML092870320.	Identified and Admitted
APP-021-R	Dewey-Burdock Project TR; re-submitted August 2009; Part 18; Plate 2.6-12; ML092870321.	Identified and Admitted
APP-021-S	Dewey-Burdock Project TR; re-submitted August 2009; Part 19; Plate 2.6-13; ML092870322.	Identified and Admitted
APP-021-T	Dewey-Burdock Project TR; Re-submitted August 2009; Part 20; Plate 2.6-14; ML092870323.	Identified and Admitted
APP-021-U	Dewey-Burdock Project TR; re-submitted August 2009; Part 21; Plate 2.6-15; ML092870324.	Identified and Admitted
APP-021-V	Dewey-Burdock Project TR; re-submitted August 2009; Part 22; Plate 2.8-1; ML092870325.	Identified and Admitted
APP-021-W	Dewey-Burdock Project TR; re-submitted August 2009; Part 23; Plate 2.8-2; ML092870326.	Identified and Admitted
APP-021-X	Dewey-Burdock Project TR; re-submitted August 2009; Part 24; Plate 2.8-3; ML092870327.	Identified and Admitted
APP-021-Y	Dewey-Burdock Project TR; re-submitted August 2009; Part 25; Plate 3.1-1; ML092870328.	Identified and Admitted
APP-021-Z	Dewey-Burdock Project TR; re-submitted August 2009; Part 26; Plate 3.1-2; ML092870329.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-021-AA	Dewey-Burdock Project TR; Re-submitted August 2009; Part 27; App. 2.2-A thru 2.6-B; ML092870350.	Identified and Admitted
APP-021-BB	Dewey-Burdock Project TR; re-submitted August 2009; Part 28; App. 2.6-C thru 2.7-B(partial); ML092870351	Identified and Admitted
APP-021-CC	Dewey-Burdock Project TR; Re-submittal August 2009; Part 29, App. 2.7-B (Partial) thru 2.7-F; ML092870370.	Identified and Admitted
APP-021-DD	Dewey-Burdock Project TR; re-submitted August 2009; Part 30; App. 2.7-G thru 2.8-F (partial); ML092870354.	Identified and Admitted
APP-021-EE	Dewey-Burdock TR; Re-submitted August 2009; Part 31; App. 2-8.F (Partial); ML092870357.	Identified and Admitted
APP-021-FF	Dewey-Burdock Project TR; re-submitted August 2009; Part 32; App. 2.8-G thru 2.9-A; ML092870358.	Identified and Admitted
APP-021-GG	Dewey-Burdock Project TR; re-submitted August 2009; Part 33; App. 4.2-A thru 7.3-A (partial); ML092870343.	Identified and Admitted
APP-021-HH	Dewey-Burdock Project TR; re-submitted August 2009; Part 34; App. 7.3-A (partial) thru 7.3-B; ML092870344.	Identified and Admitted
APP-022	Geochemical Data from Groundwater at the Proposed Dewey Burdock Uranium In-situ Recovery Mine, Edgemont, South Dakota: U.S. Geological Survey Open-File Report 2012-1070.	Identified and Admitted
APP-023	Uranium In-Situ Recovery and the Proposed Dewey Burdock Site, Edgemont, South Dakota, Public Meeting Talk Given by Dr. Raymond Johnson, U.S. Geological Survey, in Hot Springs, SD on Feb. 7, 2013 and Custer, SD on May 22, 2013.	Identified and Admitted
APP-024	Pre-Licensing Well Construction, Lost Creek ISR Uranium Recovery Project; ML091520101.	Identified and Admitted
APP-025	Numerical Modeling of Hydrogeologic Conditions, Dewey-Burdock Project, February 2012; ML12062A096.	Identified and Admitted
APP-026	Update on USGS research at the proposed Dewey Burdock uranium in-situ recovery mine, Edgemont, South Dakota, presentation to EPA Region 8 in Denver, CO on Feb. 22, 2012, based on USGS OFR 2012-1070.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-027-A	Report to Accompany Madison Water Right Permit Application, June 2012; ML12193A239.	Identified and Admitted
APP-027-B	Report to Accompany Madison Water Right Permit Application, June 2012, Appendix A; ML12193A234.	Identified and Admitted
APP-027-C	Report to Accompany Madison Water Right Permit Application, June 2012, Appendix B; ML12193A235.	Identified and Admitted
APP-028	Report to the Chief Engineer on Water Permit Application No. 2685-2 [Madison Aquifer], ADAMS Accession No. ML13165A160, November 2, 2012.	Identified and Admitted
APP-029	Letter Agreement between Powertech and Fall River County Commission.	Identified and Admitted
APP-030	NUREG/CR-6733, A Baseline Risk-Informed, Performance-Based Approach for In Situ Leach Uranium Extraction Licensees - Final Report, July 2001; ML012840152.	Identified and Admitted
APP-031	Decision of the TCEQ Executive Director regarding Uranium Energy Corporation's Permit No. UR03075.	Identified and Admitted
APP-032	In-Situ Leach Uranium Mining in the United States of America: Past, Present and Future, by D.H. Underhill, in IAEA TECDOC-720, Uranium In Situ Leaching, Proceedings of a Technical Committee Held in Vienna, 5-8 October 1992, September 1993.	Identified and Admitted
APP-033	Safety Evaluation Report for the Moore Ranch ISR Project in Campbell County, Wyoming, Materials License No. SUA-1596; ML101310291.	Identified and Admitted
APP-034	Safety Evaluation Report for the Nichols Ranch In Situ Recovery Project in Johnson and Campbell Counties, Wyoming, Material License No. SUA-1597; ML102240206.	Identified and Admitted
APP-035	Safety Evaluation Report for the Lost Creek Project in Sweetwater County, Wyoming, Materials License No. SUA-1598; ML112231724.	Identified and Admitted
APP-036	Safety Evaluation Report for the Strata Energy, Inc. Ross ISR Project, Crook County, Wyoming, Materials License No. SUA-1601; ML14002A107.	Identified and Admitted
APP-037	Errol Lawrence Initial Testimony.	Identified and Admitted
APP-038	Errol Lawrence CV.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-039	Materials License SUA-1597 for the Nichols Ranch ISR Project, July 2011; ML111751649.	Identified and Admitted
APP-040-A	Dewey-Burdock Project Environment Report (ER); Re-submittal August 2009; Part 1; Cover thru Sec. 3.4.2.1.1; ML09270345.	Identified and Admitted
APP-040-B	Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 2; Sec. 3.4.2.1.2 thru 3.12; ML092870346.	Identified and Admitted
APP-040-C	Dewey-Burdock Project Environmental Report (ER); re-submitted August 2009; Part 1; Sec. 4 thru end; ML092870360.	Identified and Admitted
APP-040-D	ER Plate 3.1-1; ML092870380.	Identified and Admitted
APP-040-E	ER Plate 3.3-1; ML0921870381.	Identified and Admitted
APP-040-F	ER Plate 3.3-1; ML092870381.	Identified and Admitted
APP-040-G	ER Plate 3.3-3; ML092870383.	Identified and Admitted
APP-040-H	ER Plate 3.3-4; ML092870591.	Identified and Admitted
APP-040-I	ER Plate 3.3-5; ML092870386.	Identified and Admitted
APP-040-J	ER Plate 3.3-6; ML092870387.	Identified and Admitted
APP-040-K	ER Plate 3.3-7; ML092870388.	Identified and Admitted
APP-040-L	ER Plate 3.3-8; ML092870389.	Identified and Admitted
APP-040-M	ER Plate 3.3-9; ML092870390.	Identified and Admitted
APP-040-N	ER Plate 3.3-10; ML092870592.	Identified and Admitted
APP-040-O	ER Plate 3.3-11; ML092870586.	Identified and Admitted
APP-040-P	ER Plate 3.3-12; ML092870588.	Identified and Admitted
APP-040-Q	ER Plate 3.3-13; ML092870589.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-040-R	ER Plate 3.3-14; ML092870590.	Identified and Admitted
APP-040-S	ER Plate 3.3-15; ML092870394.	Identified and Admitted
APP-040-T	ER Plate 3.5-1; ML092870395.	Identified and Admitted
APP-040-U	ER Plate 3.5-2; ML092870397.	Identified and Admitted
APP-040-V	ER Plate 6.1-1; ML092870593.	Identified and Admitted
APP-040-W	ER Replacement Plates; ML093370652.	Identified and Admitted
APP-040-X	ER App. 3.3-A thru 3.3-E; ML092870411.	Identified and Admitted
APP-040-Y	ER App. 3.3-F thru 3.4-A; ML092870421.	Identified and Admitted
APP-040-Z	ER App. 3.4-B thru 3.4-E; ML092870414.	Identified and Admitted
APP-040-AA	ER App.3.5-A thru 3.5-F; ML092870416.	Identified and Admitted
APP-040-BB	ER App. 3.5-F thru 3.5-I; ML092870422.	Identified and Admitted
APP-040-CC	ER App. 3.5-J thru 3.6-C; ML092870407.	Identified and Admitted
APP-040-DD	ER App. 4.6-A; ML092870409.	Identified and Admitted
APP-040-EE	ER App. 4.14-C thru 6.1-G; ML092870413.	Identified and Admitted
APP-041	Using Groundwater and Solid-phase Geochemistry for Reactive Transport Modeling at the Proposed Dewey Burdock Uranium In-situ Recovery Site, Edgemont, South Dakota, presentation given to EPA on April 11, 2012.	Identified and Admitted
APP-042-A	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Cover Letter; ML12244A519.	Identified and Admitted
APP-042-B	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text thru Sec. 4; ML12244A522.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA
ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-042-C	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 5 thru 8; ML12244A520.	Identified and Admitted
APP-042-D	Dewey-Burdock Project Revised Class III Underground Injection Control Permit Application, Revised July 2012, Text Sec. 9 thru end; ML12244A521.	Identified and Admitted
APP-043	Revised Response to TR RAI 5.7.8-3(b), June 27, 2012, ML12179A534.	Identified and Admitted
APP-044	Results of Acceptance Review for TR RAI Responses; ML110470245.	Identified and Admitted
APP-045	Responses to Technical Review Comments for Dewey-Burdock Large Scale Mine Permit Application; ML13144A182.	Identified and Admitted
APP-046	Doyle Fritz Initial Testimony.	Identified and Admitted
APP-047	Doyle Fritz CV.	Identified and Admitted
APP-048	Report to the Chief Engineer on Water Permit Application No. 2686-2 [Inyan Kara Aquifer], ADAMS Accession No. ML13165A168, November 2, 2012.	Identified and Admitted
APP-049	Water Right Permit No. 2626-2 Application and Permit.	Identified and Admitted
APP-050	ER RAI Responses, transmittal letter and text; ML102380516.	Identified and Admitted
APP-051	Groundwater Discharge Plan (GDP) permit application, as updated with replacement pages through November 2012.	Identified and Admitted
APP-052	Dewey-Burdock BLM Site Determinations; January 10, 2014 letter from BLM to SD SHPO; ML14014A303.	Identified and Admitted
APP-053	Gwyn McKee Initial Testimony.	Identified and Admitted
APP-054	Gwyn McKee CV.	Identified and Admitted
APP-055	Greater Sage Grouse Management Plan, South Dakota, 2008-2017; ML12241A215.	Not Offered
APP-056	A Report on National Greater Sage Grouse Conservation Measures.	Not Offered
APP-057	Greater Sage grouse (Centrocercus urophasianus) Conservation Objectives: Final Report.	Not Offered



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Applicant's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
APP-058	Endangered Species Act Consultation Handbook, Procedures for Conducting Section 7 Consultations and Conferences, U.S. Fish and Wildlife Service and National Marine Fisheries Service, 1998	Not Offered
APP-059	Frequently Asked Questions on ESA Consultations, USFWS.	Not Offered
APP-060	Whooping Crane (Grus americana) 5-Year Review: Summary and Evaluation, USFWS.	Not Offered
APP-061	Division of Migratory Bird Management, Important Information for Sandhill Hunters, Fall Whooping Crane Sightings 1943-1999.	Not Offered
APP-062	Black Footed Ferret Recovery Plan, Second Revision, Nov. 2013.	Not Offered
APP-063	Answering Testimony of Dr. Lynne Sebastian.	Identified and Admitted
APP-064	Dr. Adrien Hannus Answering Testimony.	Identified and Admitted
APP-065	Hal Demuth Answering Testimony.	Identified and Admitted
APP-066	Errol Lawrence Answering Testimony.	Identified and Admitted
APP-067	Figure to Accompany Errol Lawrence Answering Testimony.	Identified and Admitted
APP-068	Doyle Fritz Answering Testimony.	Identified and Admitted
APP-069	Figures to Accompany Doyle Fritz Answering Testimony.	Identified and Admitted
APP-070	Gwyn McKee Answering Testimony.	Identified and Admitted
APP-071	2013 Wildlife Monitoring Report for the Dewey-Burdock Project.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Consolidated Intervenor's Exhibits			
ADAMS Number	Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
INT-001		Testimony of Dr. Louis Redmond regarding Lakota Cultural Resources.	Identified and Admitted
INT-002		10/31/09 Report of Dr. Richard Abitz on Powertech Baseline Report.	Identified and Admitted
INT-003		Statement of Professional Qualifications of Dr. Louis Redmond.	Identified and Admitted
INT-004		Statement of Professional Qualifications of Dr. Hannan LaGarry	Identified and Admitted
INT-005		Statement of Professional Qualifications of Dr. Richard Abitz.	Excluded by Board Order (August 1, 2014)
INT-006		Declaration of Wilmer Mesteth regarding Lakota Cultural Resources.	Identified and Admitted
INT-007		Testimony of Susan Henderson regarding water resources issues and concerns of downflow rancher.	Identified and Admitted
INT-008		Testimony of Dr. Donald Kelley a former forensic pathologist regarding the radiological impact on humans and other animals.	Excluded by Board (At Hearing)
INT-008a		Dr. Donald Kelley Affidavit	Excluded by Board (At Hearing)
INT-009		Statement of Qualifications of Dr. Kelley.	Excluded by Board (At Hearing)
INT-010		Testimony of Peggy Detmers a Wildlife Biologist Regarding the D-B Site and Endangered Species.	Identified as Proffered
INT-010a		Statement of Qualifications of Peggy Detmers.	Identified as Proffered
INT-010b		Map - Beaver Creek Watershed.	Identified as Proffered
INT-010c		Map - Central Flyway.	Identified as Proffered
INT-010d		Map - Whooping Crane Route.	Identified as Proffered
INT-010e		Map - D-B Project Site.	Identified as Proffered
INT-010f		Google Photo - Dewey Project - close.	Identified as Proffered



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Consolidated Intervenor's Exhibits			
ADAMS Number	Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
INT-010g		Google Photo - Dewey Project - Medium Height.	Identified as Proffered
INT-010h		Google Photo - Dewey Project - Wide.	Identified as Proffered
INT-010i		Map - 5 state area - D-B Project.	Identified as Proffered
INT-010j		GPS Google Photo - D-B Project - Close-up.	Identified as Proffered
INT-010k		GPS Google Photo - D-B Project - Drainage.	Identified as Proffered
INT-010l		GPS Google Photo - D-B Project - wideshot.	Identified as Proffered
INT-010m		Map - D-B area.	Identified as Proffered
INT-010n		GPS Google Photo - D-B Project - triangle.	Identified as Proffered
INT-010o		Diagram - Whooping Crane Bioaccumulaton.	Identified as Proffered
INT-010p		Beaver Creek Final Fecal Coliform.	Identified as Proffered
INT-010q	PAC		NOT FILED
INT-011		Testimony of Marvin Kammera, a rancher, on potential impacts on down flow ranchers as to Inyan Kara water quantity and quality.	Identified and Admitted
INT-012		Testimony of Dayton Hyde, Owner/Operator of Black Hills Wild Horse Sanctuary, on Potential Impacts and Concerns about Proposed ISL Mine on Downflow Surface and Underground Water Resources.	Identified and Admitted
INT-013		Testimony of Dr. Hannon LaGarry a geologic stratigrapher regarding fractures, faults, and other geologic features not adequately considered by Powertech or NRC staff.	Identified and Admitted
INT-014		Testimony of Linsey McLane, a Bio-chemist Regarding Bioaccumulation of Heavy Metals in Plant and Animal Species.	Identified and Admitted
INT-014a		Powerpoint of Linsey McLane, a biochemist regarding bioaccumulation of heavy metals in plants and animal species	NOT FILED
NT-014b		Linsey McLane Affidavit	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Consolidated Intervenor's Exhibits			
ADAMS Number	Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
INT-15	INT	Comments on DSEIS, with Exhibits	NOT FILED
INT-016		Petition to Intervene, with Exhibits.	Identified and Admitted
INT-017		Statement of Contentions on DSEIS, with Exhibits.	Identified and Admitted
INT-018		INT Statement of Contentions on FSEIS, with Exhibits.	Identified and Admitted
INT-019		Dr. Redmond Rebuttal Letter.	Identified and Admitted
INT-020		Rebuttal Written Testimony of Dr. Hannan LaGarry.	Identified and Admitted
INT-020A		Expert Opinion Regarding the Proposed Dewey-Burdock Project ISL Mine Near Edgemont, South Dakota.	Identified and Admitted
INT-021A		Violation History - Crow Butte ISL mine in Crawford, Nebraska.	Identified and Admitted
INT-021B		Violation History - Crow Butte ISL mine in Crawford, Nebraska.	Identified and Admitted
INT-021C		Violation History - Crow Butte ISL mine in Crawford, Nebraska.	Identified and Admitted
INT-022A		Violation History - Smith Highland Ranch.	Identified and Admitted
INT-022B		Violation History - Smith Highland Ranch.	Identified and Admitted
INT-022C		Violation History - Smith Highland Ranch.	Identified and Admitted
INT-023	INT	Violation History - Irigaray Christiansen Ranch	NOT FILED



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-001	Initial Testimony and Affidavits from Haimanot Yilma, Kellee L. Jamerson, Thomas Lancaster, James Prikryl, and Amy Hester	Identified and Admitted
NRC-002-R	REVISED - Statement of Professional Qualifications of Po Wen (Kevin) Hsueh.	Identified and Admitted
NRC-003	Statement of Professional Qualifications of Haimanot Yilma	Identified and Admitted
NRC-004	Statement of Professional Qualifications of Kellee L. Jamerson	Identified and Admitted
NRC-005	Statement of Professional Qualifications of Thomas Lancaster	Identified and Admitted
NRC-006	Statement of Professional Qualifications of James Prikryl	Identified and Admitted
NRC-007	Statement of Professional Qualifications of Amy Hester	Identified and Admitted
NRC-008-A-1	NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact	Identified and Admitted
NRC-008-A-2	NUREG-1910, Supplement 4, Vol. 1, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental....	Identified and Admitted
NRC-008-B-1	NUREG-1910, Supplement 4, Vol. 2, Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental	Identified and Admitted
NRC-008-B-2	NUREG-1910, Supplement 4, Vol. 2., Final Report, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact Statement for In-Situ Leach....	Identified and Admitted
NRC-009-A-1	NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic Environmental Impact Statement....	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-009-A-2	NUREG-1910, Supplement 4, Vol. 1, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic	Identified and Admitted
NRC-009-B-1	NUREG-1910, S4, V2, DFC, EIS for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Suppl to the GEIS for In-Situ Leach Uranium Milling Facilities (Chapter 5 to 11 and Appendices)....	Identified and Admitted
NRC-009-B-2	NUREG-1910, Supplement 4, Vol. 2, Draft Report for Comment, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota: Supplement to the Generic	Identified and Admitted
NRC-010-A-1	NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No.	Identified and Admitted
NRC-010-A-2	NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4)(May 2009) (ADAMS Accession No. ML091480244 Page 153-512	Identified and Admitted
NRC-010-A-3	NUREG-1910, Vol. 1, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 1 through 4) (May 2009) (ADAMS Accession No. ML091480244) Pages 513-704.	Identified and Admitted
NRC-010-B-1	NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009) (ADAMS Accession No. ML091480188). Pages 1-272.	Identified and Admitted
NRC-010-B-2	NUREG-1910, Vol. 2, Final Report, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Chapters 5 through 12 and Appendices) (May 2009) (ADAMS Accession No. ML091480188). Pages 273-612.	Identified and Admitted
NRC-011	Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466).	Identified and Admitted
NRC-012	Materials License SUA-1600, Powertech (USA), Inc. (Apr. 8, 2014) (ADAMS Accession No. ML14043A392).	Identified and Admitted
NRC-013	NUREG-1569, Standard Review Plan for In-Situ Leach Uranium Extraction License Applications (June 4, 2003) (ADAMS Accession No. ML031550272).	Identified and Admitted
NRC-014	NUREG-1748, Final Report, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs (Aug. 2003) (ADAMS Accession No. ML032450279).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-015	Dewey-Burdock ISR Project Summary of Tribal Outreach Timeline (Apr. 8, 2014) (ADAMS Accession No. ML14099A010).	Identified and Admitted
NRC-016	Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (ADAMS Accession No. ML14077A002)	Identified and Admitted
NRC-017	Dewey-Burdock ISR Project Documents Pertaining to Section 106 of the National Historic Preservation Act (June 10, 2014), available at http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock/section-106-docs.html	Identified and Admitted
NRC-018-A	Final PA for the Dewey-Burdock Project. (ADAMS Accession Nos. ML14066A347).	Identified and Admitted
NRC-018-B	Final Appendix for the Dewey-Burdock Project PA. (ADAMS Accession No. ML14066A350).	Identified and Admitted
NRC-018-C	NRC PA Signature Page. (ADAMS Accession No. ML14098A464).	Identified and Admitted
NRC-018-D	Letter from ACHP finalizing Section 106. (ADAMS Accession No. ML14099A025).	Identified and Admitted
NRC-018-E	ACHP PA Signature Page. (ADAMS Accession No. ML4098A1550).	Identified and Admitted
NRC-018-F	BLM signature on PA; (Mar. 25, 2014) (ADAMS Accession No. ML14098A102).	Identified and Admitted
NRC-018-G	South Dakota SHPO PA Signature Page. (ADAMS Accession No. ML14098A107).	Identified and Admitted
NRC-018-H	Powertech PA Signature Page. (ADAMS Accession No. ML14098A110).	Identified and Admitted
NRC-019	Summary Report Regarding the Tribal Cultural Surveys Completed for the Dewey-Burdock Uranium In Situ Recovery Project. (Dec. 16, 2013) (ADAMS Accession No. ML13343A142).	Identified and Admitted
NRC-020	NRC Letter transmitting the Applicant's Statement of Work to all consulting parties. (May 7,2012). (ADAMS Accession No. ML121250102).	Identified and Admitted
NRC-021	3/19/2010 NRC sent initial Section 106 invitation letters to 17 tribes requesting their input on the proposed action. ADAMS Accession No. ML100331999.	Identified and Admitted
NRC-022	Letter to Oglala Sioux Tribe Re: Request for Updated Tribal Council Members Consultation (Sep. 8, 2010) ADAMS Accession No. ML102450647).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-023	Powertech Dewey-Burdock Draft Scope of Work and Figures - Identification of Properties of Religious and Cultural Significance (Mar.07,2012) (ADAMS Accession No. ML120870197).	Identified and Admitted
NRC-024	NRC Staff Letter Postponing fall 2012 tribal survey. (12/14/2012). ADAMS Accession No. ML12335A175.	Identified and Admitted
NRC-025-A	HDR, Engineering Inc., "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming"....	Identified and Admitted
NRC-025-B	HDR, Engineering Inc. "Assessment of the Visual Effects of the Powder River Basin Project, New Build Segment, on Previously Identified Historic Properties in South Dakota and Wyoming."....	Identified and Admitted
NRC-026	WY SHPO (Wyoming State Historic Preservation Office). "Dewey-Burdock Line of Sight Analysis." Email (September 4) from R. Currit, Senior Archaeologist, Wyoming State Historic Preservation Office to H. Yilma,NRC. September 4,2013....	Identified and Admitted
NRC-027	ACHP, National Register Evaluation Criteria, Advisory Council on Historic Preservation. (Mar. 11, 2008) (2012 ADAMS Accession No. ML12262A055).	Identified and Admitted
NRC-028	Email from Waste Win Young to NRC Staff re SRST Comments Final Draft PA Dewey-Burdock SRST THPO Comments (Feb. 20, 2014) (ADAMS Accession No. ML14105A367).	Identified and Admitted
NRC-029	Letter to Cheyenne River Sioux Tribe re: Response Received Regarding Tribal Survey for Dewey-Burdock (Dec. 14, 2012) (ADAMS Accession No. ML12335A175).	Identified and Admitted
NRC-030	Standing Rock Sioux Tribe Comments - Final Draft PA Dewey-Burdock SRST-THPO Comments (Feb. 05, 2014) (ADAMS Accession No. ML14055A513).	Identified and Admitted
NRC-031	04/07/2014 Letter from the Advisory Council on Historic Preservation to the Standing Rock Sioux Tribe Concerning the Dewey- Burdock ISR Project, SD. ADAMS Accession No. ML14115A448.	Identified and Admitted
NRC-032		NOT FILED
NRC-033	09/13/2012 Summary of August 30,2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. ADAMS Accession No. ML12255A258.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-034	Letter to Ponca Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550372).	Identified and Admitted
NRC-035	Letter to Santee Sioux Tribe of Nebraska Re: Invitation for Formal Consultation Under Section 106 of the National Historic Preservation Act (Mar. 4, 2011) (ADAMS Accession No. ML110550172).	Identified and Admitted
NRC-036	Letter to Crow Tribe of Montana Re: Invitation for Formal Consultation Under Section 106 of the national Historic Preservation Act (Mar. 04,2011) (ADAMS Accession No. ML110550535).	Identified and Admitted
NRC-037	12/3/2010 Yankton Sioux tribe requests face-to-face meeting to discuss past and current project as well as request for TCP survey. Sisseton Wahpeton and Fort Peck tribes also asked for face-to-face meeting via phone....	Identified and Admitted
NRC-038-A	Invitation for Informal Information-Gathering Meeting Pertaining to the Dewey-Burdock, Crow Butte North Trend, and Crow Butte License Renewal, In-Situ Uranium Recovery Projects (May 12, 2011)(ADAMS Accession No. ML111320251).	Identified and Admitted
NRC-038-B	Informal Information Gathering Meeting - Pine Ridge, SD Invitation to Section 106 Consultation Regarding Dewey-Burdock Project (ADAMS Accession No. ML111870622) (Package).	Identified and Admitted
NRC-038-C	Memo to Kevin Hsueh Re: Transcript for the June 8, 2011 Informal Information - Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870623).	Identified and Admitted
NRC-038-D	Attendee List - Informal Information Gathering Meeting Held in Pine Ridge, SD (July 8, 2011) (ADAMS Accession No. ML111870624).	Identified and Admitted
NRC-038-E	Transcript Re: Informal Information-Gathering Meeting Pertaining to Crow Butte Inc. and Powertech Inc. Proposed ISR Facilities (June 8, 2011) (ADAMS Accession No. ML111721938) (Pages 1-195).	Identified and Admitted
NRC-038-F	Presentation Slides for the Section 106 Consultation Meeting Pertaining to the Proposed Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR In-Situ Uranium Recovery Projects (June 8, 2011) (ADAMS Accession No. ML111661428).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-039	Meeting Agenda for Informal Information Gathering Pertaining to Dewey-Burdock, Crow Butte. Accompanying NRC letter with map of the proposed project boundary and digital copies of the Class III	Identified and Admitted
NRC-040	Letter to Richard Blubaugh, Powertech, Re: NRC Information Request Relating to Section 106 and NEPA Reviews for the Proposed Dewey-Burdock Project (Aug. 12, 2011) (ADAMS Accession No. ML112170237).	Identified and Admitted
NRC-041	8/31/2011 NRC letter from Powertech letter and proposal in response to the Aug 12, 2011 request for NHPA Section 106 info. This letter enclosed a proposal which outlined a phased approach to	Identified and Admitted
NRC-042	10/20/2011 NRC provided copies of the 6/8/2011 meeting transcripts to all the Tribes. Thank you Letter to James Laysbad of Oglala Sioux Tribe Enclosing the Transcript of the Information-Gathering Meeting and Unredacted Survey Pertaining....	Identified and Admitted
NRC-043		NOT FILED
NRC-044	1/19/2012 NRC invitation letters to all THPOs for a planned Feb 2012 meeting to discuss how best to conduct the TCP survey. (ADAMS Accession No. ML12031A280).	Identified and Admitted
NRC-045	2/01/2012 (February 14-15, 2012 meeting agenda). (ADAMS Accession No. ML120320436).	Identified and Admitted
NRC-046	3/28/2012 - NRC transmitted transcripts of the NRC face-to-face meeting in Rapid City, SD to discuss how best to conduct the TCP survey. (ADAMS Accession Nos. ML120670319).	Identified and Admitted
NRC-047	Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review (ACHP), available at http://www.achp.gov/docs/reasonable_good_faith_identification.pdf .	Identified and Admitted
NRC-048	NEPA and NHPA, A Handbook for Integrating NEPA and Section 106 (CEQ and ACHP), available at http://www.achp.gov/docs/NEPA NHPA Section 106 Handbook Mar2013.pdf .	Identified and Admitted
NRC-049	Letter to Crow Creek Sioux Tribe Re: Transmittal of Applicant's Draft Statement of Work (May 7, 2012) (ADAMS Accession No. ML 121250102).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-050	Letter to Oglala Sioux Tribe Re: Transmittal of Transcript from Teleconference Conducted on April 24, 2012 (June 26, 2012) (ADAMS Accession No. ML12177A109).	Identified and Admitted
NRC-051	NRC Email Re: August 9, 2012 Teleconference Invitation and Revised Statement of Work Transmittal (Aug. 07, 2012) (ADAMS Accession No. ML12261A375).	Identified and Admitted
NRC-052	NRC Request Re: Scope of Work with Coverage Rate, Start Date, Duration, and Cost (Aug 30, 2012) (ADAMS Accession No. ML12261A470).	Identified and Admitted
NRC-053	Letter to Tribal Historic Preservation Officer Re: Transmittal of Tribes' Proposal and Cost Estimate of the Dewey-Burdock ISR Project (Oct. 12, 2012) (ADAMS Accession No. ML12286A310).	Identified and Admitted
NRC-054	Letter to James Laysbad, Oglala Sioux Tribe, Re: Information Related to Traditional Cultural Properties; Dewey-Burdock, Crow Butte North Trend, and Crow Butte LR ISP Projects (Oct. 28, 2011) (ADAMS Accession No. ML112980555)	Identified and Admitted
NRC-055	Letter to Tribal Historic Preservation Officers Re: Request for a Proposal with Cost Estimate for Dewey Burdock Project (Sep. 18, 2012) (ADAMS Accession No. ML12264A594).	Identified and Admitted
NRC-056	H. Yilma Email Re: Draft PA for Dewey-Burdock Project (Nov. 22, 2013) (ADAMS Accession No. ML13329A420).	Identified and Admitted
NRC-057	Dewey-Burdock Project Draft Programmatic Agreement (Nov. 22, 2013) (ADAMS Accession No. ML ML13329A466).	Identified and Admitted
NRC-058	Draft Appendix A for Dewey-Burdock Project PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A468).	Identified and Admitted
NRC-059	Table 1.0 - NRC NRHP Determinations for Dewey-Burdock Draft PA (Nov. 22, 2013) (ADAMS Accession No. ML13329A470).	Identified and Admitted
NRC-060	STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Request for Review and Comment on 21 Archaeological Sites, Surface Transportation Board....	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-061	Letter to Oglala Sioux Tribe Re: Transmittal of TCP Survey Report for Dewey-Burdock Project (Dec. 23, 2013) (ADAMS Accession No. ML13357A234).	Identified and Admitted
NRC-062	NRC Overall Determinations of Eligibility and Assessments of Effects (Dec. 16, 2013) (ADAMS Accession No. ML13343A155).	Identified and Admitted
NRC-063	Draft NRC NRHP Determinations - Table 1.0 for Draft PA (Dec. 13, 2013) (ADAMS Accession No. ML13354B948).	Identified and Admitted
NRC-064	Letter from John Yellow Bird Steele, President of the Oglala Sioux Tribe Re: Refusal to Accept Dewey-Burdock In Situ Project Proposal (Nov. 5, 2012) (ADAMS Accession No. ML13026A005).	Identified and Admitted
NRC-065	Letter from Sisseton Wahpeton Oyaye Tribe Re: Refusal to Accept Dewey-Burdock In Situ Recovery Project Proposal (Nov. 6, 2012) (ADAMS Accession No. ML13036A104).	Identified and Admitted
NRC-066	Letter from Standing Rock Sioux Tribe Re: Tribal Survey Using Persons Without Sioux TCP Expertise to Identify Sioux TCP (Nov. 5, 2012) (ADAMS Accession No. ML13036A110).	Identified and Admitted
NRC-067	Email from Standing Rock Sioux Tribe Providing Comments on Final Draft PA Dewey-Burdock SRST-THPO (Feb. 20, 2014) (ADAMS Accession No. ML14059A199).	Identified and Admitted
NRC-068	Email Re: Transmittal of a Follow-up Email Pertaining to an Upcoming Field Survey for the Dewey-Burdock Project (Feb. 08, 2013) (ADAMS Accession No. ML13039A336).	Identified and Admitted
NRC-069	Letter to Oglala Sioux Tribe Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock ISR Project (Nov. 6, 2013) (ADAMS Accession No. ML13308B524).	Identified and Admitted
NRC-070	Letter to J. Fowler, ACHP, Re: Notification of Intention to Separate the NHPA Section 106 Process from NEPA Review for Dewey-Burdock IS Project (Nov. 13, 2013) (ADAMS Accession No. ML13311B184).	Identified and Admitted
NRC-071	Letter from Department of State Re: Keystone XL Pipeline Project Traditional Cultural Property (TCP) Studies (Aug. 4, 2009).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-072	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. I, (Page 1.2 through Page 4.18)....	Identified and Admitted
NRC-073	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota (Pages 5.53 through 5.106)....	Identified and Admitted
NRC-074	NRC (1980). Regulatory Guide 4.14, Radiological Effluent and Environmental Monitoring at Uranium Mills. ADAMS Accession No. ML003739941.	Identified and Admitted
NRC-075	NRC, 2009. Staff Assessment of Ground Water Impacts from Previously Licensed In-Situ Uranium Recovery Facilities, Memorandum from C. Miller to Chairman Jaczko , et al. Washington DC: USNRC, July 10, 2009d ADAMS Accession No. ML091770385.	Identified and Admitted
NRC-076	NUREG/CR-6705, Historical Case Analysis of Uranium Plume Attenuation.. (Feb. 28, 2001) (ADAMS Accession No. ML010460162).	Identified and Admitted
NRC-077	05/28/2010 NRC Staff Request for Additional Information for Proposed Dewey-Burdock In Situ Recovery Facility (ADAMS Accession No. ML101460286).	Identified and Admitted
NRC-078	09/13/2012 NRC Staff RAI: Summary of August 30, 2012 Public Meeting with Powertech Inc, to Discuss Powertech's Proposed Environmental Monitoring Program related to the proposed Dewey-Burdock Project. (ADAMS Accession No. ML12255A258).	Identified and Admitted
NRC-079	09/09/2013 NRC Staff RAI: Email Concerning Review of Powertech's Additional Statistical Analysis of Radium-226 Soil Sampling Data and Gamma Measurements and Request for Information. ADAMS (Accession No.	Identified and Admitted
NRC-080	12/09/2013 NRC Staff RAI: NRC Staff review of revised statistical analysis of the Radium 226 (soil) and gamma radiation correlation for screening surveys at the proposed Dewey-Burdock Project requesting additional information....	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-081	Gott, G.B., D.E. Wolcott, and C.G. Bowles. Stratigraphy of the Inyan Kara Group and Localization of Uranium Deposits, Southern Black Hills, South Dakota and Wyoming. ML120310042. U.S. Geological Survey Water Resources Investigation Report....	Identified and Admitted
NRC-082	Driscoll, D.G., J.M. Carter, J.E. Williamson, and L.D. Putnam. Hydrology of the Black Hills Area, South Dakota. U.S. Geological Survey Water Resources Investigation Report 02-4094. (ADAMS Accession No. ML12240A218). 2002.	Identified and Admitted
NRC-083	Braddock, W.A. Geology of the Jewel Cave SW Quadrangle Custer County, South Dakota. U.S. Geological Survey Bulletin 1063-G. (08 April 2013)....	Identified and Admitted
NRC-084-A	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program....	Identified and Admitted
NRC-084-B	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program,....	Identified and Admitted
NRC-084-C	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium....	Identified and Admitted
NRC-084-D	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program....	Identified and Admitted
NRC-084-E	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium Resource Evaluation (NURE) Program....	Identified and Admitted
NRC-084-F	Butz, T.R., N.E. Dean, C.S. Bard, R.N. Helgerson, J.G. Grimes, and P.M. Pritz. Hydrogeochemical and Stream Sediment Detailed Geochemical Survey for Edgemont, South Dakota, Wyoming. National Uranium	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-085	Darton, N.H. Geology and Water Resources of the Northern Portion of the Black Hills and Adjoining Regions of South Dakota and Wyoming. U.S. Geological Survey Professional Paper 65. 1909....	Identified and Admitted
NRC-086	Epstein, J.B. "Hydrology, Hazards, and Geomorphic Development of Gypsum Karst in the Northern Black Hills, South Dakota and Wyoming." U.S. Geological Survey Water-Resource Investigation Report 01-4011....	Identified and Admitted
NRC-087	NUREG-1910, Final Report, Supplement 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities....	Identified and Admitted
NRC-088	NUREG-1910, Final Report, Supplement 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities....	Identified and Admitted
NRC-089	NUREG-1910, Final Report, Supplement 3, Environmental Impact Statement for the Lost Creek ISR Project in Sweetwater County, Wyoming. Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities....	Identified and Admitted
NRC-090	SDDENR. "Report to the Chief Engineer on Water Permit Application No. 2686-2, Powertech (USA) Inc., November 2, 2012." November 2012a. ADAMS Accession No. ML13165A168.	Identified and Admitted
NRC-091	NRC. "Staff Assessment of Groundwater Impacts from Previously Licensed In-Situ Uranium Recovery Facilities." Memorandum to Chairman Jaczko, Commissioner Klein, and Commissioner Svinicki, NRC from C. Miller....	Identified and Admitted
NRC-092		NOT FILED
NRC-093	EPA comments on FSEIS; (ADAMS Accession No. ML14070A230).	Identified and Admitted
NRC-094	NRC Regulatory Guide 3.11, Rev. 3, Design, Construction, and Inspection of Embankment Retention Systems at Uranium Recovery Facilities, November 2008, (ADAMS Accession No. ML082380144).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-095	Letter to P. Strobel Re: EPAs Response Comment to FSEIS (Mar. 25, 2014) (ADAMS Accession No. ML14078A044).	Identified and Admitted
NRC-096	Comment (14) of Robert F. Stewart on Behalf of the Dept. of the Interior, Office of Environmental Policy and Compliance on Draft Supplemental Environmental Impact Statement (DSEIS), Dewey-Burdock Project.....	Identified and Admitted
NRC-097	Request for Information Regarding Endangered or Threatened Species and Critical Habitat for the Powertech Inc. Proposed Dewey-Burdock In-Situ Recovery Facility Near Edgemont South Dakota (Mar. 15, 2010) (ADAMS Accession No. ML100331503).	Not Offered
NRC-098	FWS. Whooping Cranes and Wind Development - An Issue Paper. (Apr. 2009)....	Not Offered
NRC-099	Avian Power Line Interaction Committee. "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006" (ADAMS Accession No. ML12243A391).	Not Offered
NRC-100	Informal Information Gathering Meetings Trip Summary (Dec. 9, 2010) (ADAMS Accession No. ML093631627).	Not Offered
NRC-101	Email from Mitchell Iverson of BLM. (June 25, 2012) & Wildlife Stipulations in the Current 1986 South Dakota Resource Management Plan. (ADAMS Accession No. ML12249A030).	Not Offered
NRC-102	USGS. "Fragile Legacy, Endangered, Threatened, and Rare Animals of South Dakota, Black-footed Ferret (Mustela nigripes)." (2006), available at http://www.npwrc.usgs.gov/resource/wildlife/sdrare/species/mustnigr.htm.	Not Offered
NRC-103	FWS. "Species Profile, Whooping Crane (Grus Americana)"	Not Offered
NRC-104	BLM. "Draft Environmental Impact Statement, Dewey Conveyor Project." DOI-BLM-MT-040-2009-002-EIS. (Jan. 2009b) (ADAMS Accession No. ML12209A089).	Not Offered
NRC-105	BLM. "Final Statewide Programmatic Biological Assessment: Black-Footed Ferret (Mustela nigripes)." August, 2005. Cheyenne, Wyoming: U.S. Bureau of Land Management, Wyoming State Office.	Not Offered



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-106	FWS. "South Dakota Field Office, Black Footed Ferret," (Sep. 9, 2013), available at http://www.fws.gov/southdakotafieldoffice/bfferret.htm.	Not Offered
NRC-107	FWS. "Black Footed Ferret Draft Recovery Plan." Second Revision, (Feb. 2013), available at	Not Offered
NRC-108	South Dakota State University. "South Dakota GAP Analysis Project." Brookings, South Dakota: South Dakota State University, Department of Wildlife and Fisheries Sciences (Jan. 13, 2012), available at http://www.sdstate.edu/nrm/gap/index.cfm.	Not Offered
NRC-109	South Dakota State University. "Suitable Habitat Predicted for the Black Footed Ferret in South Dakota." available at http://www.sdstate.edu/nrm/gap/mammals/upload/blfootferret-model.pdf.	Not Offered
NRC-110		NOT FILED
NRC-111	Dewey-Burdock Record of Decision (Apr. 8, 2014) (ADAMS Accession No. ML14066A466).	Not Offered
NRC-112	Travsky, A., Beauvais, G.P. "Species Assessment for the Whooping Crane (Grus Americana) in Wyoming." October 2004. Cheyenne, Wyoming: United States Department of the Interior, Bureau of Land Management,	Not Offered
NRC-113	Endangered and Threatened Wildlife and Plants; 12-Month Findings for Petitions to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered. 75 Fed. Reg. 13,909-13,959	Not Offered
NRC-114	Habitat Assessment and Conservation Strategy for Sage Grouse and Other Selected Species on Buffalo Gap National Grassland, U.S. Department of Agriculture, Forest Service (Sep. 2005) (ADAMS Accession No.	Not Offered
NRC-115	Email with Attachments from Mitchell Iverson, BLM, RE: Meeting at 11:30 EST (June 25, 2012) (ADAMS Accession No. ML12250A802).	Not Offered
NRC-116	Attachment 1, Appendix C, South Dakota Field Office Mitigation Guidelines (June 25, 2012) (ADAMS Accession No. ML12250A827).	Not Offered
NRC-117	Appendix D South Dakota Field Office Reclamation Guidelines.	Not Offered



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC 118	BLM Email Subject "Appendix E Wildlife Stipulations" and attachments. From M. Iverson, BLM, Acting Field Manager, South Dakota Field Office, to A. Hester, CNWRA, Southwest Research Institute. (June 25, 2012.)	Not Offered
NRC 119	BLM Email Subject "Wildlife and Special Status Stipulations in the 1896 South Dakota Resource Management Plan" and attachment. From M. Iverson, BLM, Acting Field Manager, South Dakota Field Office, to H. Yilma, Project Manager.	Not Offered
NRC 120	Peterson, R.A. "The South Dakota Breeding Bird Atlas." Jamestown, North Dakota: Northern Prairie Wildlife Research Center. 1995. http://www.npwrc.usgs.gov/resource/birds/sdatlas/index.htm	Not Offered
NRC 121	BLM "Newcastle Resource Management Plan." (2000) (ADAMS Accession No. ML12209A101).	Not Offered
NRC 122	Sage Grouse Working Group (Northeast Wyoming Sage Grouse Working Group). "Northeast Wyoming Sage Grouse Conservation Plan." (2006) (ADAMS Accession No. ML12240A374).	Not Offered
NRC 123	SDGFP. "Sage Grouse Population Dynamics." (Nov. 20, 2009), available at http://gfp.sd.gov/hunting/small-game/sage-grouse-population-dynamics.aspx	Not Offered
NRC 124		NOT FILED
NRC 125	U.S. Fish and Wildlife Service Press Release and Draft Report to Help Sage Grouse Conservation Objectives (August 23, 2012) (ADAMS Accession No. ML12276A248).	Not Offered
NRC 126	U.S. Fish and Wildlife Service. "Greater sage grouse (Centrocercus urophasianus) Conservation Objectives: Final Report" (Feb. 2013), available at http://www.fws.gov/mountain-prairie/ea/03252013_COT_Report.pdf	Not Offered
NRC 127	Department of Environment And Natural Resources Recommendation Powertech (USA) Inc. Large Scale Mine Permit Application. (April 15, 2013), available at http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf.	Not Offered



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-128	SDGFP. "Colony Acreage and Distribution of the Black-Tailed Prairie Dog in South Dakota, 2008" (Aug. 2008), available at http://gfp.sd.gov/wildlife/docs/prairedog-distribution-report.pdf	Not Offered
NRC-129	S. Larson, FWS letter re Environmental Comments on Powertech Dewey-Burdock Project, Custer and Fall River County, South Dakota. (Mar. 29, 2010) (ADAMS Accession No. ML1009705560).	Not Offered
NRC-130	E-mail from Terry Quesinberry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, to Amy Hester, Research Scientist, Center for Nuclear Waste Regulatory Analyses, Southwest Research Institute.....	Not Offered
NRC-131	E-mail from Terry Quesinberry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, to Haimanot Yilma, Environmental Project Manager for Dewey-Burdock, Office of Federal and State Materials and Environmental.....	Not Offered
NRC-132	Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA.	Identified and Admitted
NRC-133		NOT FILED
NRC-134	Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota. Materials License No. SUA-1600 (April 2014) ADAMS Accession No. ML14043A347.	Identified and Admitted
NRC-135	Safety Evaluation Report for the Dewey-Burdock Project Fall River and Custer Counties, South Dakota, Materials License No. SUA-1600, Docket No. 40-9075 (March 2013), ADAMS Accession No. ML13052A182.	Identified and Admitted
NRC-136-A	A - Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological Contract Series No. 251....	Identified and Admitted
NRC-136-B	Palmer, L. and J.M. Kruse Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas Black Hills Archaeological Region Volumes I and II....	Identified and Admitted
NRC-136-C	Palmer, L. and J.M. Kruse. "Evaluative Testing of 20 Sites in the Powertech (USA) Inc. Dewey-Burdock Uranium Project Impact Areas." Black Hills Archaeological Region. Volumes I and II. Archaeological	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-137	Department of Environment and Natural Resources, Recommendation, Powertech (USA) Inc, Large Scale Mine Permit Application at 6 (April 15, 2013), available at http://denr.sd.gov/des/mm/documents/Powertech1/DENRRec4-15-13.pdf .	Identified and Admitted
NRC-138	Jack R. Keene (1973). Ground-Water Resources of the Western Half of Fall River County, South Dakota. South Dakota Department of Natural Resource Development, Geological Survey, Report of Investigations, No. 109, 90 pg....	Identified and Admitted
NRC-139	U.S. Geological Survey, 2006, Quaternary fault and fold database for the United States, accessed June 20, 2014, from USGS web site: http://earthquakes.usgs.gov/regional/qfaults/ .	Identified and Admitted
NRC-140		NOT FILED
NRC-141-A	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 1-42	Identified and Admitted
NRC-141-B	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession	Identified and Admitted
NRC-141-C	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 124-132	Identified and Admitted
NRC-141-D	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155). Pages 133-143	Identified and Admitted
NRC-141-E	Dewey-Burdock Project Supplement to Application for NRC Uranium Recovery License Dated February 2009, Prepared by Powertech (USA) Inc. Greenwood Village, Colorado, CO. (Aug 31, 2009) (ADAMS Accession No. ML092870155).	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-142	Submittal of Comments on Draft Programmatic Agreement for the Proposed Dewey-Burdock ISR Uranium Mining Project. (Mar. 17, 2014) (ADAMS Accession No. ML14077A002. Pages 5-1	Identified and Admitted
NRC-143	Letter to Oglala Sioux Tribe re: Invitation for Government-to-Government Meeting Concerning Licensing Actions for Proposed Uranium Recovery Projects. (Mar. 12, 2013) (ADAMS Accession No. ML13071A653).	Identified and Admitted
NRC-144	SRI (SRI Foundation). "Overview of Places of Traditional and Cultural Significance, Cameco/Powertech Project Areas." Rio Rancho, New Mexico: SRI Foundation. (June 8, 2012) (ADAMS Accession No. ML12262A113).	Identified and Admitted
NRC-145-A	Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 1-14	Identified and Admitted
NRC-145-B	Guidelines for Evaluation and Documenting Traditional Cultural Properties. National Register Bulletin, U.S. Department of the Interior. National Park Service. (ADAMS Accession No. ML12240A371). Pages 15-18	Identified and Admitted
NRC-146	2013/03/13 Powertech Dewey-Burdock LA - RE: field survey in the spring of 2013. (Mar. 13, 2013) (ADAMS Accession No. ML13078A388).	Identified and Admitted
NRC-147	2013/03/13 Powertech Dewey-Burdock LA - RE: field survey for Dewey-Burdock. (Mar. 13, 2013) (ADAMS Accession No. ML13078A384).	Identified and Admitted
NRC-148	Letter from Oglala Sioux Tribe in response to February 8, 2013 letter to Tribal Historic Preservation Officer March 23, 2013 (ADAMS Accession No. ML13141A362).	Identified and Admitted
NRC-149	2013/08/30 Powertech Dewey-Burdock LA - Request for Availability to discuss development of a PA for the Dewey Burdock Project. (Aug. 30, 2013) (ADAMS Accession No. ML13267A221).	Identified and Admitted
NRC-150	2013/11/14 Powertech Dewey-Burdock LA - Reminder: Teleconference to discuss the development of the PA for the Dewey Burdock project is scheduled for Friday. (Nov. 15, 2013. (ADAMS Accession No. ML13322B658).	Identified and Admitted
NRC-151	NRC Staff Rebuttal Testimony.	Identified and Admitted
NRC-152	Statement of Professional Qualifications of Hope E. Luhman.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

NRC Staff's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
NRC-153	Excerpt from Parker, P. and T. King. Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register of Historic Places Bulletin 38. (1990) (ADAMS Accession No. ML12240A371).	Identified and Admitted
NRC-154	Excerpt from Bates, R. and J. Jackson. Dictionary of Geological Terms 3rd Edition. (1984).	Identified and Admitted
NRC-155	Letter from South Dakota Historical Society re: Dewey-Burdock Project, (Jan. 2014).	Identified and Admitted
NRC-156	Johnson, R. H. "Reactive Transport Modeling for the Proposed Dewey-Burdock Uranium In-Situ Recovery Mine, Edgemont, South Dakota, USA." International Mine Water Association, Mine Water-Managing the Challenges. 2011.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Oglala Sioux Tribe's Exhibits		
Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
OST-001	Opening Written Testimony of Dr. Robert E. Moran.	Identified and Admitted
OST-002	U.S. EPA, 2007, TENORM Uranium Occupational and Public Risks Associated with In- Situ Leaching; Append. III, PG 1-11.	Identified and Admitted
OST-003	US EPA, 2008, Technical Report on Technologically Enhanced Naturally Occurring Radioactive Materials from Uranium Mining, Volume 1: Mining and Reclamation Background: Previously published on-line and printed as Vol. 1 of EPA 402-R-05-007....	Identified and Admitted
OST-004	U.S. EPA, 2011 (June), CONSIDERATIONS RELATED TO POST-CLOSURE MONITORING OF URANIUM IN-SITU LEACH/IN-SITU RECOVERY (ISL/ISR) SITES, Draft Technical Report; [Includes Attachment A: Development of the Groundwater Baseline for Burdock ISL Site....	Identified and Admitted
OST-005	Powerpoint presentation prepared by Dr. Robert E. Moran.	Identified and Admitted
OST-006	Boggs, Jenkins, ?Analysis of Aquifer Tests Conducted at the Proposed Burdock Uranium Mine Site, Burdock, South Dakota,? Tennessee Valley Authority, Report No. WR28-1-520-109, May 1980.	Identified and Admitted
OST-007	Boggs, Hydrogeologic Investigations at Proposed Uranium Mine Near Dewey, South Dakota (1983).	Identified and Admitted
OST-008	Keene, Ground-water Resources of the Western Half of Fall River County, S.D., Dept. of Natural Resource Development Geological Survey, Univ. S.D., Report of Investigations No. 109 (1973).	Identified and Admitted
OST-009	TVA, Draft Environmental Statement, Edgemont Uranium Mine.	Identified and Admitted
OST-010	OST Petition to Intervene, with Exhibits.	Identified and Admitted
OST-011	OST Statement of Contentions on DSEIS, with Exhibits.	Identified and Admitted
OST-012	OST Statement of Contentions on FSEIS, with Exhibits.	Identified and Admitted
OST-013	OST Statement of Undisputed Facts submitted with OST Motion for Summary Disposition.	Identified and Admitted
OST-014	Declaration of Michael CatchesEnemy.	Identified and Admitted
OST-015	Declaration of Wilmer Mesteth.	Identified and Admitted



Atomic Safety and Licensing Board Panel
In the Matter of:
Powertech (USA) Inc., (Dewey-Burdock In Situ Uranium Recovery Facility)

Docket No. 40-9075-MLA

ASLBP No. 10-898-02-MLA-BD01

Oglala Sioux Tribe's Exhibits

Exhibit Number	Exhibit Title (as reflected in ADAMS)	Exhibit Status
OST-016	February 20, 2013 letter from Standing Rock Sioux to NRC Staff.	Identified and Admitted
OST-017	March 22, 2013 letter from Oglala Sioux Tribe to NRC Staff.	Identified and Admitted
OST-018	Rebuttal Testimony of Dr. Robert E. Moran.	Identified and Admitted
OST-019	Powertech Press Release.	Identified and Admitted
OST-020	E-Mail from Chris Pugsley, Powertech, re NRC Proceeding.	Identified and Admitted
OST-021	Powertech Quarterly Management Discussion and Analysis.	Identified and Admitted