

DEWEY-BURDOCK URANIUM PROJECT TIMELINE

2007 – SD Board of Minerals and Environment issues Powertech a uranium exploration permit for the Dewey-Burdock project area.

2007 – Powertech begins drilling exploratory holes in proposed project area.

January 18, 2007 – SD Board of Minerals and Environment holds public hearing and adopts new in-situ leach mining rules.

March 2007 – Defenders of the Black Hills challenges SD Board of Minerals and Environment exploration permit.

June 2007 – Circuit Judge Jack Delaney denies request to halt uranium exploration, saying opponents have not shown how continued drilling will cause environmental harm.

August 22, 2007 – NRC holds a public hearing with Powertech to discuss the Pre-Operational Environmental Baseline Program at the Dewey-Burdock site.

December 28, 2008 – Defenders of the Black Hills and Oglala Sioux Tribe (OST) file nomination petitions with SD Department of Environment and Natural Resources (DENR) to have lands west of Edgemont declared special, exceptional, critical, or unique.

December 2008 – Powertech/Azarga submits application for US Environmental Protection Agency (EPA) permits to mine at Dewey-Burdock.

2008 – Augustana College contracts with South Dakota State Archeologist's office to undertake an archeological survey, paid for by Powertech, of the proposed project area.

February 25, 2009 – Powertech applies to the US Nuclear Regulatory Commission (NRC) for a combined source and byproduct material license to construct and operate the proposed Dewey-Burdock in situ leach uranium recovery facility.

June 16, 2009 – Powertech announces that it is voluntarily withdrawing its application from the NRC in order to provide additional information. The NRC says the company must fix several deficiencies in its application.

August 6, 2009 – DENR determines that Powertech's application for a SD Class III Underground Injection Control Permit is incomplete and lacks sufficient detail necessary to determine if groundwater would be protected.

August 12, 2009 – Powertech announces resubmission of its NRC application.

October 26, 2009 – Powertech announces submission of its Plan of Operation to the Bureau of Land Management for its proposed Dewey-Burdock project.

January 5, 2010 – NRC staff notifies the public of Powertech's application for a materials license.

February 5, 2010 – Powertech submits a revised Class III UIC Permit application to the SD DENR.

March 2010 – Clean Water Alliance forms to oppose the project.

April 1, 2010 – Powertech announces its submission of a Class V UIC permit to the EPA, Region 8.

April 6, 2010 – OST files Request for Hearing and Petition for Leave to Intervene re: Powertech's applications for NRC license. Also filing were Consolidated Intervenor: Aligning for Responsible Mining (ARM), Dayton Hyde, Sustan Henderson, and several others not allowed in the case, including Gary Heckenliable and Liliias Jarding.

April 19, 2010 – SD DENR determine that Powertech's revised Class III UIC Permit application remains incomplete.

August 5, 2010 – Atomic Safety and Licensing Board (ASLB) admits both the OST and Consolidated Intervenor as Intervenor. Several intervenors are ruled to not have standing.

Early 2011 – SD legislature suspends the in-situ leach mining rules adopted in 2007-2008. As a result, Powertech is not required to comply with these rules.

March 7, 2011 – NRC staff suspends health and safety review of Powertech's application, due to inadequate information.

June 8, 2012 – Powertech submits applications for permits to appropriate water from Inyan Kara and Madison aquifers to the SD DENR.

July 31, 2012 – NRC issues draft license to Powertech.

October 1, 2012 – Powertech submits large scale mine permit application with SD DENR.

November 5, 2012 – OST refuses NRC staff's unsupported 'open site' approach proposal for survey of historic and cultural properties at Dewey-Burdock site.

November 26, 2012 – NRC Staff issues a Draft Supplemental Environmental Impact Statement (DSEIS).

November 26, 2012 – Fall River County Commission votes to oppose proposed Dewey-Burdock project until certain conditions related to water issues are met.

November 27, 2012 – SD DENR announces that the hearing on Powertech's two applications for water appropriations has been postponed.

January 16, 2013 – SD DENR determines Powertech's mine permit application and supplemental information is procedurally complete.

January 18, 2013 – SD State Senator Jim Bradford (D-Pine Ridge) files three bills in the SD State Legislature to strengthen regulations on uranium mining and restore the state permitting authority over in-situ uranium mining.

January 25, 2013 – OST and Consolidated Intervenors propose new contentions based on DSEIS.

February 7, 2013 – SD State Senate Agriculture and Natural Resources Committee votes 7-1 to kill bill to restore some of the state's permitting authority over uranium mining. Lawmakers say they see no need to spend state money duplicating federal regulatory programs.

February 2013 – NRC staff proposes unsupported 'open site' survey methodology to tribes. Tribes could participate by sending representatives to examine any site area during a one-month period. The offer included per diem for three representatives from each tribe, mileage reimbursement, and a \$10,000 no-strings-attached grant from Powertech to each tribe.

February 20, 2013 – Multiple tribes send letter to NRC stating that they object to the open-site survey because it lacked "a proper methodological framework to conduct the necessary cultural resources survey."

March 2013 – NRC staff issues Safety Evaluation Report for Dewey-Burdock project.

April 15, 2013 – SD DENR recommends conditional approval of Powertech's permit application. The final decision is up to the SD Board of Minerals and Environment.

April 2 - May 2013 – Seven Tribes participate in the Field Survey at Dewey Burdock:

1. *Northern Cheyenne Tribe
2. *Northern Arapaho Tribe
3. *Crow Nation
4. Turtle Mountain Band of Chippewa Indians
5. Cheyenne and Arapaho Tribe of Oklahoma
6. Santee Sioux Tribe
7. Crow Creek Sioux Tribe

June 24, 2013 – NRC Staff prepare a written report of these 7 Tribes' Survey.

July 25, 2013 – 3 of the 7 above Tribes write a written report: *Northern Cheyenne Tribe, *Northern Arapaho Tribe, and *Crow Nation.

July 22, 2013 – ASLB admits nine contentions, from new (based on DSEIS) and original contentions.

August 19, 2013 – Rapid City Council passes resolution opposing proposed Dewey-Burdock project, saying it "poses an unacceptable risk" to the city's primary water supply.

September 23-27, 2013 – SD Board of Minerals and Environment holds case hearing on Powertech's mine permit application. Over 250 people attend, with over two dozen acting as intervenors. Public comments overwhelmingly oppose the mine.

October 29-November 1, 2013 – SD Water Management Board begins water right permits and ground water discharge plan hearing. About two dozen people act as intervenors.

November 2013 – SD State Board of Minerals and Environment postpones the rest of its hearings on the proposed Dewey-Burdock project until after the federal government and the state Water Management Board release their decisions.

November 2013 – SD Water Management Board also postpones the rest of its hearings until the NRC and EPA have ruled.

December 2013 – NRC staff releases revised Technical Report for proposed Dewey-Burdock project.

2013 – Paper published by Raymond H. Johnson and Hlanganani Tutu finds, based on modeling, that post-restoration uranium concentrations in downgradient groundwater at Dewey-Burdock site may be higher than previously thought.

January 29, 2014 – Final Supplemental Environmental Impact Statement (FSEIS) issued by NRC staff. OST withdraws two contentions, leaving seven contentions in effect. OST also files new contentions based on FSEIS.

April 2014 – NRC issues revised Safety Evaluation Report for Dewey-Burdock project.

April 8, 2014 – NRC issues Source Material License, based on FSEIS and Safety Evaluation Report, Augustana, to Powertech to mine.

April 30, 2014 – ASLB issues a temporary stay against Powertech's NRC license. This stay was the result of a petition filed by OST and Consolidated Interveners.

May 20, 2014 – ASLB lifts temporary stay on Powertech's NRC license, noting that no activity can occur on the site without state, EPA, and BLM permits.

August 19-21, 2014 – ASLB holds evidentiary hearing on OST's and Consolidated Interveners' seven contentions. ASLB rules that geological survey data for Dewey-Burdock project must be released to Dr. Hannan LaGarry, geologist and expert witness for Oglala Sioux Tribe, Clean Water Alliance, and other interveners.

September 24, 2014 – At request of the Institute of Range and the American Mustang, owner of the Black Hills Wild Horse Sanctuary, the EPA issues Preliminary Assessment on the clean-up of historic uranium mines in the Dewey-Burdock project area, indicating that surface soils, air samples, domestic wells, and surface water in the area contain radioactive materials and that domestic wells near the site contain levels of Radium-226 that exceed the drinking water standard. A Site Investigation (planned for 2015) is recommended to determine if hazardous substance releases from abandoned mines are impacting sensitive environments.

November 21, 2014 – Dr. Hannan LaGarry submits testimony indicating “there is no reasonable expectation that confinement remains in drilled areas.” LaGarry's testimony shows at least 7515 old drillholes in the Dewey-Burdock site, in contrast to the 4000 Powertech claimed in their applications. His testimony also says that artesian water (which pumps to the surface naturally) is present on the site, which presents the possibility of mining fluids flowing to the surface, posing “a significant risk of unexpected, serious contamination of the Cheyenne River and its tributaries.” LaGarry's testimony also identifies numerous faults and a sinkhole in the proposed project area, which could lead to contamination –

Powertech has denied the presence of faults and sinkholes at the site. Much of the information that Dr. LaGarry used to create his testimony was taken from documents that included driller's logs. These logs included notations that information should be withheld from maps and from landowners, and some data was missing from the files viewed by Dr. LaGarry. The records also indicated that 13 of the drill holes that Dr. LaGarry looked at were plugged with wooden fenceposts, and another 6 with broken steel.

January 12, 2015 – ASLB rules that Dr. Hannan LaGarry's testimony must be made public, over objections by Powertech.

April 30, 2015 – ASLB issues a partial initial decision addressing seven contentions raised by OST and Consolidated Intervenors concerning the Source Material License issued by NRC to Powertech. ASLB rules in favor of NRC and Powertech on five contentions (related to groundwater usage, groundwater quality, ability to contain fluid migration, mitigation measures, and connected actions) but rules in favor of OST and Consolidated Intervenors for two contentions, determining that NRC Staff had not complied with the National Historic Preservation Act (NHPA) because meaningful government-to-government consultations between the Oglala Sioux Tribe and the NRC Staff had not taken place, and that the NRC Staff had not satisfied its National Environmental Policy Act (NEPA) responsibility because the Final Supplemental Environmental Impact Statement (FSEIS) did not adequately address tribal cultural, religious, and historic resources. The Board stated that these deficiencies could be remedied if the NRC Staff initiated government-to-government consultations with the Oglala Sioux Tribe and took the steps necessary to ensure that an adequate analysis of tribal cultural resources was included in the FSEIS and the Record of Decision in this case.

June 15, 2015 – Necessitated by the death of Dr. Richard F. Cole, NRC appoints Administrative Judge G. Paul Bollwerk, III to serve as Licensing Board member in Dewey-Burdock proceeding.

June 23, 2015 – Letter sent from the Director of the Division of Fuel Cycle Safety, Safeguards and Environmental Review, NRC Office of Nuclear Material Safety and Safeguards, to John Yellow Bird Steele, OST President, seeking to reinstate government-to-government consultation.

July 2015 – OST responds to Division of Fuel Cycle Safety letter, seeking to clarify the roles and responsibilities of the NRC Staff and its plans to fulfill its NHPA and NEPA obligations.

April 25, 2016 – EPA announces that no clean-up will be required at three abandoned uranium mines in proposed Dewey-Burdock project area, citing inability to document a release of hazardous substances from the abandoned mines. This decision is based on water and sediment sampling from September 2015 conducted by Weston Solutions Inc. This sampling did not detect concentrations of hazardous substances in excess of three times the natural or "background" levels.

May 19, 2016 – Face-to-face meeting held between OST and NRC staff re: tribal cultural resources. OST request "that additional comprehensive and meaningful surveys be conducted and that other Tribes should also be involved."

November 7, 2016 – Teleconference held between OST and NRC staff re: tribal cultural resources.

December 23, 2016 – NRC supports ASLB 2015 decision and rules: 1) the process for identification and protection of cultural and historical resources was not done properly, and the NRC Staff must do a proper, former consultation with OST which complies with the National Environmental Policy Act, 2) Powertech

must “attempt to locate and properly abandon all historic drill holes located within the perimeter well ring for the wellfield” at the Dewey-Burdock site. Powertech’s NRC license is kept in place, though one Commissioner noted in his dissent that the license should be suspended until these problems are resolved.

January 13, 2017 – OST confirms its availability for government-to-government consultation between OST and the US, including a discussion of a cultural resource identification process, and specifically how Powertech’s stated position (allegedly that it would only pay for the cost of an open-site survey) would affect the NRC Staff moving forward with the cultural resources assessment process.

January 31, 2017 – Teleconference held between OST and NRC staff re: tribal cultural resource identification process. NRC Staff once again proposes an open-site survey with per diem and mileage reimbursement for those conducting the survey, and a \$10,000 honorarium to be paid to OST, to which OST once again objects.

February 21, 2017 – OST files petition for review with the US Court of Appeals for the DC Circuit of NRC decision pertaining to the April 2015 ASLB partial initial decision.

February - March 2017 – NRC staff and OST legal counsel correspond via email to schedule a conference call.

March 2017 – EPA issues draft permits to Powertech: one for mining process (Class III wells) and one for deep disposal wells (Class V wells).

April 14, 2017 – NRC staff sends a letter to OST THPO again offering a two-week open-site survey proposal with specific arrangements and asking the Oglala Sioux Tribe to accept or reject the survey offer by May 5, 2017.

May 2017 – EPA holds public hearings regarding draft permits in Valentine, Rapid City, Hot Springs, and Edgemont. About 700 people attend. Of those who comment, 92% oppose the permits.

May 31, 2017 – OST sends a “detailed response” to the April 14 survey invitation with its objections of any survey method that lacks identification of acceptable protocols and methodologies for cultural site identification.

June 27, 2017 – OST files Opening Brief with the US Court of Appeals for the DC Circuit, pressing the DC Circuit to revoke the license and questioning why the license remains in place, given that environmental and historic preservation issues have been identified.

August 3, 2017 – After failing to meet OST’s concerns regarding a competent survey methodology, NRC staff moves for summary disposition of Contentions 1A and 1B.

September 1, 2017 – Powertech files a brief in support of the above motion by the NRC staff. OST and the Consolidated Intervenors file responses opposing the motion.

October 19, 2017 – Atomic Safety and Licensing Board (ASLB) orders that the NRC must conduct a study or survey of tribal cultural resources before granting a license to mine (ruling in favor of OST). ASLB finds the NRC survey offer insufficient to uphold the agency’s responsibilities under the National Environmental Protection Act “to protect and preserve cultural, religious, and historical sites important to

the Native American tribal cultures in the Powertech project area.” ASLB also finds that NRC staff has satisfied “at a bare minimum” the consultation requirements of the National Historic Preservation Act (NHPA), thus resolving the NHPA contention in favor of NRC staff and Powertech.

November 16, 2017 – ASLB holds its first conference call with the parties to this proceeding since the issuance of LBP-17-09 (October 2017 decision) to discuss the NRC Staff’s progress in resolving the sole remaining contention in this case.

December 11, 2017 – Powertech files a request that the ASLB take official notice of six documents in the public record which support the company’s position that the EPA, the BLM, and certain state agencies are awaiting the resolution of Contention 1A before issuing permits to the company, thereby causing Powertech to suffer financial harm.

December 12, 2017 – ASLB holds second teleconference call.

December 31, 2017 – Consolidated Intervenors submit an opposition to Powertech’s December 11 request that the Board take judicial notice of the documents.

January 9, 2018 – ASLB agrees with Consolidated Intervenors that it cannot take notice of Powertech’s arguments in its motion regarding the significance of any of the documents it has identified.

January 24, 2018 – ASLB holds third teleconference call.

February 23, 2018 – ASLB holds teleconference call.

March 16, 2018 – NRC issues a letter abandoning the April 2017 approach and proposing a process for a cultural resource survey. The process, running through May 2019, would involve hiring a contractor, meeting with tribal leaders, interviewing tribal elders, and conducting a field survey. The contractor's work would be billed to Powertech at an estimated cost of \$250,000. The letter also suggests that Powertech consider reimbursing members of five or more tribes for their participation, including mileage, a per diem and lodging costs, plus a \$10,000 honorarium for each tribe. The letter asks for Powertech's response by March 30.

March 27, 2018 – ASLB holds teleconference call.

April 6, 2018 – teleconference held between ASLB, Powertech/Azarga, OST, and NRC staff about cultural resources at proposed mining site.

May 2018 – Research by students at Missouri State University shows that 95.3% of the 1500 pages of written comments to the EPA on draft Dewey-Burdock permits opposed the Dewey-Burdock project. Study finds that water contamination was the most common concern expressed in written comments and that “most of the comments in favor of the project were primarily concerned with money.”

June 2018 - Significant work takes place to create and design a cultural resources survey methodology. NRC staff travel to Pine Ridge.

July 2, 2018 – NRC staff informs OST that it was discontinuing its efforts to implement the March 2018 approach.

July 2018 – OST notes that it does not believe the NRC staff’s request to abandon the March 2018 approach in favor of Motions for Summary Disposition is appropriate or consistent with federal trust responsibilities. Rather, “the Tribe believes that it is incumbent on NRC Staff to engage in substantive discussions on an acceptable methodology for a field survey and oral interview, including the specific bases upon which NRC Staff believes there are no aspects of the Tribe’s discussion draft proposals that be incorporated into an acceptable field survey methodology.” OST also submits that “the Board should require NRC Staff to engage its Tribal Liaison Program to facilitate discussions [regarding a methodology],” and that “the parties should avail themselves of a Settlement Judge as contemplated by 10 C.F.R. § 2.338.”

August 17, 2018 – NRC staff and OST file separate motions for summary disposition of Contention 1A.

July 20, 2018 – US Court of Appeals for the District of Columbia Circuit rules that the NRC violated the National Environmental Policy Act (NEPA) in connection with the NRC’s use of an irreparable harm standard when considering suspension or vacatur of Powertech’s license following the identification of a deficiency in the agency’s NEPA analysis. The court declined, however, to vacate Powertech’s license. Instead, the court remanded the case back to the NRC for further proceedings consistent with the court’s opinion.

October 30, 2018 – ASLB denies the NRC staff’s motion for summary disposition as to Contention 1A. ASLB notes that “material factual disputes still remain regarding the reasonableness of the NRC Staff’s implementation of this approach [March 2018], relating to (1) the survey methodology, and (2) the NRC Staff’s unilateral decision to discontinue efforts to implement the March 2018 Approach during the first week of Phase One of the site survey.” ASLB also denies OST’s motion for summary disposition and its request to stay or revoke Powertech’s NRC license. ASLB presents the parties with the choice to either resume efforts to implement the March 2018 site survey approach or proceed to an evidentiary hearing.

November 30, 2018 – NRC Staff informs ASLB that it chooses to renew its efforts to implement the March 2018 approach.

December 6, 2018 – ASLB holds conference call to discuss the NRC staff’s decision to resume implementation of the March 2018 approach. NRC staff reports that it has been working with its contractor, S. Cohen and Associates (SC&A), to secure a replacement for the recently-departed Dr. Paul Nickens to develop and conduct the site survey. OST confirms “it’s going to continue discussions [with the NRC Staff] regarding the site survey methodology” and indicates “that it was important to the Tribe to be involved in the selection of the contractor and also in the development of the scope of work for that contractor in order to ensure that a sound methodology could be determined.” OST also expresses continued apprehension about tribal elder interviews without “additional thought and protections” built into the proceeding’s existing protective order. The Consolidated Intervenor’s voice support for the OST’s positions.

January 29, 2019 – ASLB holds its second conference call with the parties to this proceeding to discuss OST’s January 11, 2019 response to the NRC Staff’s November 21, 2018 letter, as well as the recent progress made by the NRC Staff in its efforts to resolve Contention 1A.

January 31, 2019 – NRC leaves Dewey-Burdock license in place in spite of 2018 Appeals Court ruling. NRC orders Powertech to notify the ASLB and the parties 60 days in advance of conducting any activities

at the site under its NRC license, “so that the Board may consider expeditiously whether action is necessary to ensure full compliance with NEPA.”

February 22, 2019 - NRC staff and its new contractor, Mr. Jerry Spangler, travel to Pine Ridge to discuss a proposed methodology. Tribal Historic Preservation Officers from Oglala Sioux Tribe, Standing Rock Sioux Tribe, Rosebud Sioux Tribe, and Cheyenne River Sioux Tribe all attend.

March 1, 2019 - NRC staff sends letter to OST pulling back from methodology negotiations..

March 21, 2019 – ASLB holds a status teleconference with all parties to this proceeding to discuss the progress made by the NRC Staff in its efforts to resolve Contention 1A. NRC Staff announces that “the staff has not the reasonable expectation of agreement with the tribe on this matter” and that “the appropriate way to document this inability to reach an agreement would probably be on the record of an evidentiary hearing.”

April 23, 2019 – ASLB holds teleconference call.

April 29, 2019 – ASLB issues an order scheduling an evidentiary hearing to take place from August 28-30, 2019. The purpose of the hearing is to resolve the disputed issues of fact as to the reasonableness of the NRC Staff’s proposed draft methodology for the conduct of a site survey to identify sites of history, cultural, and religious significance to the Oglala Sioux Tribe, and the reasonableness of the NRC Staff’s determination that the information it seeks to obtain from the site survey is unavailable. This is related to Contention 1A, pertaining to the NRC Staff’s obligation under the National Environmental Policy Act (NEPA) to assess the impacts to cultural, religious, and historical resources.

May 17, 2019 – NRC staff submit prefiled direct testimony and initial position statement.

June 28, 2019 – OST and Consolidated Intervenors submit prefiled response testimony and response position statements.

July 17, 2019 – NRC staff submit prefiled reply testimony and reply position statement.

August 28-30, 2019 – Evidentiary hearing before the ASLB concerning Contention 1A held in Rapid City, SD.

August 28, 2019 – EPA releases revised draft UIC permits for Dewey-Burdock project, announcing public hearing to be held in Hot Springs on October 5, 2019 and requesting written comments on revised draft permits by October 10, 2019. EPA documents show that Powertech has been aware of this revised draft permit release date for at least six months.

August 2019 – Tribal nations, including OST, as well as affiliated organizations such as the Great Plains Tribal Water Alliance, receive letters from EPA requesting consultation on revised draft UIC permits.

Sept 18, 2019 – EPA extends time period for requesting public comment on revised draft Dewey-Burdock permits until December 9, 2019.

October 5, 2019 – EPA hearing held in Hot Springs, SD, to consider revised draft permits. 100% of public comments oppose the Dewey-Burdock project.