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March 20, 2013

Charlene Dwin Vaughn
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Old Post Office Building
Washington, DC 20004

Dear Mrs. Vaughn,

I am writing to you on behalf of the Standing Rock Sioux Tribe—Tribal Historic Preservation Office (THPO). We recently received a letter from the Nuclear Regulatory Commission (NRC) regarding the Ross In-situ Uranium Recovery Project. This is one project among many that the SRST THPO has been consulting with the NRC on. I have attached the letter from the NRC to this correspondence.

The SRST THPO has been very involved with the development of this project. We had talked to Johari Moore (NRC Project Manager) initially to get an idea of a process that would work and be beneficial to all parties involved. In November 2012 Ms. Moore requested that we assist in the development of a draft a Scope of Work (SOW) for this project. The SRST THPO participated and assisted in that process. We coordinated and received feedback from other tribes, integrating their input into the SOW. We were also requested by Ms. Moore to identify a contractor that the tribes felt could successfully conduct identification efforts for properties of historical and cultural significance under Section 106 of the NHPA. We completed this. We were then asked to identify tribal personnel (Traditional Cultural Specialists/Tribal Monitors) who would be able to officially represent our respective tribes in the field. We also completed this. The NRC finalized the SOW with tribal approval on November 30, 2012.

The SRST THPO had not heard from the NRC regarding this project again until late February 2013 saying that negotiations had come to an end between the applicant and the proposed contractor. In March 2013 tribes were notified by the attached letter that NRC would be seeking an alternate approach for identification in the field. This was news to us and is being implemented without the guidance and involvement of the tribes. Since we had been extremely involved in the process it is unfortunate that we were not included in this discussion.

The SRST THPO does not want this approach that is being implemented by the NRC for the Ross, Crow Butte, North Trend, Dewey-Burdock (identification of properties of historical and cultural significant to tribes) to be a precedent setting standard that will be continuously applied by the NRC and other federal agencies. We have repeatedly expressed our frustration and disappointment in this process. It is not that we or tribes are unwilling to participate in the field survey. We want a fair, practical approach. We feel that initially it begin this way and as to what the break down is now is very unclear to the tribes. We deserve an explanation as to why the alternative method of identification is being chosen without input from tribes. On page 2 under "Alternative Approach for Field Survey" in the first paragraph it reads: "The NRC staff has discussed site access and compensation with Strata and Strata has agreed to the following agreements." In the beginning of the process the tribes were asked to:

1. Assist in drafting a Scope of Work
2. Identify a Contractor that the tribes would support and submit an official letter of support
3. Identify Tribal Monitors (personnel) who would officially represent each of our tribes and submit an official letter with names

The SRST THPO had not heard from the NRC for nearly two months before indirectly receiving an email from Mr. Ralph Knoede, CEO of Strata which he copied to the SRST THPO. On February 25, 2013 I went to the NRC offices in Rockville, Maryland. I met with Ms. Moore, Ms. Yilma, Mr. Hsueh, Mr. Goodman, Mr. Holian and Mr. O'Sullivan regarding these projects and how we could proceed with Section 106 identification efforts. The meeting was somewhat productive but more importantly I was able to relay to them the importance of identification for tribes and that the SRST THPO is committed to the process. It is not in either party's best interest to pursue a paid site visit where there is no specific methodology, no data collected, and no report that could be shared in order to protect resources in the future.

On page 3, under Methodology, in the middle of the page it reads: "The NRC will not require a specific methodology that the Tribal Representatives must follow when conducting the field survey." As a regulatory office that issues decisions based on a very specific set of methodology (such as a Class III pedestrian survey or Tribal Cultural Property Survey) it is inconceivable that tribal contractors would be in the field with no specific methodology. The SRST THPO cannot issue a determination of effects or concurrence letters when there is no data generated in a report. There needs to be a methodology for a pedestrian survey that covers:

- a.) Identification
- b.) Recordation
 - map sketches
 - GPS points
 - site forms
- c.) Recommendations
 - NRHP eligibility of sites
 - Avoidance

- Determination of effects

c.) Final Report

The SRST THPO strongly objects to the divisive approach that fails at the intent of identification for tribes under Section 106 of the NHPA. The process that the NRC is proposing is tantamount to a \$10,000.00 bribe. The THPO's cannot be the contractor due to our roles as tribal regulatory offices. This would be a conflict of interest.

The SRST-THPO has talked with both the Wyoming and South Dakota State Historic Preservation Office (SHPO) about NRC's proposals for alternative approach for Section 106 identification. The discussion was framed as if this proposal were followed to conduct an archaeological survey. According to the current proposal to the tribes, the NRC would ask various archaeological companies (up to 23 based on current consulting tribes to keep things fair and balanced) to accept a ten thousand dollar honorarium to each send up to three representatives to walk around the proposed undertakings license boundary for anywhere from one day to thirty days. There would be no specific methodology as to what was needed to be recorded and with no direction or real accountability as to how they conduct themselves in the field or where they conduct their field studies. The only requirement is that they submit a written report of what they found to NRC. How does this fulfill the identification efforts per 36CFR800.4? This would not fulfill the responsibilities for identification for archaeological sites within the Section 106 process. Both of the SHPO's emphatically stated that they would not accept this proposal for an archaeological report ("boot it out the door" was one response) yet the NRC are requiring the tribes to accept this methodology for their identification efforts. Their actions based on this current proposal are arbitrary and capricious given that the archaeological community was given the opportunity to properly identify sites and in the case of the Dewey-Burdock proposal to excavate those sites as well.

On page 1 of the Dewey-Burdock proposal it states, much like the Ross proposal quoted above, that "the NRC staff has discussed site access and compensation with the applicant, Powertech (USA) INC., and has made the following arrangements:". This sets a very bad precedent in that the applicant is now dictating to the tribes how they will be involved in a project. The SRST-THPO objects to this disregard for the Section 106 process as there is no provision in Section 106 that allows the applicant to dictate how tribes will be involved in a project which is what this amounts to. This was attempted earlier in the process by the applicant through their third party consultant (SRI Foundation). The NRC requested information from the applicant on how they were going to address sites of significance to the tribes in August of 2011. This is not the applicant's decision to make. The tribes were never asked that same question and we were brought into the discussion due to our objections at the way it was being handled by SRI Foundation. The NRC has been negligent and dismissive of the tribes concerns since the onset of this project and has, in fact, attempted to eliminate the tribes from the process through their past actions. This latest proposal is a continuation of those efforts.

We would respectfully ask the NRC to reconsider their approach. The SRST THPO is committed to participating as we have shown in the past. We would like to participate in a pedestrian survey with an explicit methodology that results in a final report.

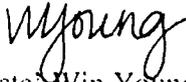
This is a standard that we hold ourselves to on all projects involving federal undertakings. This also refers to the conduct of our tribal personnel who represent our tribes.

The ACHP needs to issue a statement or decision on whether or not the practices being proposed currently and forced upon the tribes to accept by the applicant and the federal agency follow the Section 106 process.

If this alternative approach is acceptable to the ACHP how do we go forward in the process if we cannot accept it?

The SRST-THPO respectfully request that Dr. Lynne Sebastian recuse herself from any decisions or statements regarding these matters as she represented Powertech (USA) Inc. and Cameco as their third party consultant during negotiations, phone calls and meetings for the Dewey-Burdock and Crow Butte facilities.

Sincerely,
STANDING ROCK SIOUX TRIBE



Waste-Win Young
Tribal Historic Preservation Officer

Cc; John Eddins, ACHP
Reid Nelson, ACHP
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