

**The Environmental Protection Agency
National Historic Preservation Act
Draft Compliance and Review Document
for the Proposed Dewey-Burdock In-Situ Uranium Recovery Project
January 20, 2017**

Introduction

As part of the Underground Injection Control (UIC) permitting process, the Environmental Protection Agency is required to consider whether section 106 of the National Historic Preservation Act (NHPA) applies to the issuance of a UIC permit (40 CFR § 144.4). The EPA has determined that the NHPA, which requires federal agencies to take into account the effects of their undertakings on historic properties, applies to its consideration of a UIC permit for the proposed Dewey-Burdock Uranium In-Situ Recovery (ISR) Project (Project). This document describes the status of the EPA's review and consultation process under section 106 and the 36 CFR Part 800 regulations issued by the Advisory Council on Historic Preservation (ACHP), and how the EPA plans to complete that process. The EPA is coordinating its NHPA review efforts with other required federal reviews. 36 CFR § 800.3(b).

Initial Steps in the NHPA Section 106 Process

As an activity requiring federal approval, the Project is a federal undertaking. 36 CFR §§ 800.3, 800.16(y). Further, the EPA has determined that this undertaking has the potential to cause effects on historic properties. 36 CFR § 800.3(a). Because the Site is not located on tribal lands (as they are defined in the ACHP regulations at 36 CFR § 800.16(x)), the EPA is consulting with the South Dakota State Historic Preservation Office (SHPO). 36 CFR §§ 800.2(c)(1) and 800.3(c).

In coordination with the SHPO, the EPA has identified several consulting parties: the 38 federally recognized tribes listed in Table 1; the Nuclear Regulatory Commission (NRC), which has issued a Source and Byproduct Materials License for the undertaking; and the Bureau of Land Management (BLM). *See* 36 CFR § 800.3(f). The BLM manages 240 acres of land within the proposed Dewey-Burdock Project Area and is responsible for issuing a Plan of Operations for the project. The BLM has designated the NRC as the lead agency for the NHPA 106 process, and in connection with that designation has signed a Programmatic Agreement (PA) developed by the NRC. *See* <http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock/section-106-project-docs.html>.

The EPA's Options for Completing the NHPA Section 106 Consultation Process

The EPA is considering whether to rely solely on the NRC's section 106 review and consultation, which would be accomplished by adopting the NRC PA and an EPA-specific addendum, or whether to complete a separate section 106 process. Among the factors the EPA is reviewing is whether additional survey efforts need to be undertaken within the Area of Potential Effects (APE). The EPA will seek to stay apprised of any discussions of potential additional survey work. If the EPA does choose to adopt the PA, the Agency would consult with the NRC and ACHP on the terms of the addendum. Those terms could involve further coordination with the NRC and other consulting parties (including tribes and the Permittee) to assist in the NRC-led efforts to complete identification of historic properties, which includes traditional cultural properties, and the assessment and resolution of adverse effects.

If the EPA chooses to conduct its own section 106 review, the Agency would rely on the work already completed by the NRC and would also work with consulting parties to complete identification of historic properties and the assessment and resolution of adverse effects.

While the EPA is deciding which of these two approaches to take, the agency is proceeding to address its section 106 responsibilities, as described in the rest of this document.

The Area of Potential Effect (36 CFR §§ 800.4(a)(1), 800.16(d))

In coordination with the SHPO, the EPA has identified an APE for the Dewey-Burdock Project Area. As depicted in Figure 1, the APE consists of 3,887 acres within the 10,580-acre Dewey-Burdock Project Area described in Section 2.1 of the UIC Class III Area Permit Fact Sheet. The APE encompasses all areas where land-disturbing activities are expected to occur, with the area of actual disturbance depending on whether the permittee uses deep injection wells or land application as the disposal method for waste fluids. Figure 1 shows the areas that will be affected with each disposal method. If deep injection wells are used, then 243 acres of land will be disturbed. The APE includes a buffer zone of 2,394 acres around this area, for a total of 2,637 acres, which is shown in the lighter shade of purple in Figure 1. If land application is used, then an additional 1,250 acres will be disturbed, which is shown in the darker shade of purple in Figure 1. Therefore, the APE is a total of 3,887 acres.

Identification of Historic Properties (36 CFR §§ 800.4(a), (b), (c))

The EPA has reviewed existing information on historic properties within the APE, including information developed by the NRC during its review process. This information is included in Section 3.9.3 of the NRC Supplemental Environmental Impact Statement prepared for the Dewey-Burdock Project (SEIS) and summarized in Appendix B of the NRC PA. Historic properties include prehistoric and historic districts, sites, structures, and objects — including properties of traditional religious and cultural importance to Indian tribes — that meet the criteria for inclusion on the National Register of Historic Places. Information gathered to date indicates that the APE contains properties eligible for inclusion in the National Register of Historic Places. *See* [SEIS](#), Section 3.9.3. The NRC has recently explained that it is considering some additional activities related to the identification of historic properties, and further that assessment and resolution of adverse effects still need to be carried out. *See* Summary of Meeting With the Oglala Sioux Tribe Regarding the Dewey-Burdock In-Situ Uranium Recovery Project (May 19, 2016), <http://www.nrc.gov/docs/ML1618/ML16182A069.pdf>. The EPA is continuing to review information and to consult with all parties to determine whether additional efforts must be taken to identify historic properties within the APE.

Based on the information we have reviewed to date, and subject to resolving concerns identified in the NRC administrative review process, the EPA believes that the level of work completed under the auspices of the NRC on the Class III Cultural Resources Survey appears thorough and comprehensive for the APE defined by the NRC, provided the PA stipulations are followed concerning the unexpected discovery of additional historical properties.

Assessment and Resolution of Effects on Historic Properties (36 CFR § 800.5)

If the EPA adopts the NRC PA, the EPA will coordinate with the NRC and other consulting parties to assist as appropriate in the assessment and resolution of adverse effects.

If the EPA completes its own section 106 review, the EPA intends to follow a phased process for section 106 compliance (similar to that being employed by NRC), in which the evaluation of and determinations

of effects on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects, will be carried out in phases. In those efforts the EPA will work with the SHPO, interested tribes, and other consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

Section 106 Consultation with Indian Tribes

The EPA acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of historic properties that possess religious and cultural significance. Further, the EPA recognizes the obligation of federal agencies to consult with tribes that may attach religious or cultural significance to historic properties that may be affected by an undertaking. A summary of the EPA section 106 tribal consultation efforts to date follows. (Many of these overlapped with the EPA consultation efforts under the EPA Policy on Consultation and Coordination with Indian Tribes (Policy), available at <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>. That policy describes a separate obligation to consult with federally recognized tribes based on the federal government's trust responsibility. The efforts described below may also relate to consultation under the EPA Policy, but the focus of these discussions is the section 106 consultation process.)

Although the EPA did not elect to sign the NRC PA at the time it was finalized in March 2013, the EPA participated in many of the discussions the NRC had with tribes before and during the development of the NRC PA, including the discussions about the Tribal Survey. During that period of time, the tribes requested that the EPA provide information on (1) Cheyenne River water quality; (2) radiation sources and risks at uranium in-situ recovery (ISR) sites; (3) the geology and hydrology at the Dewey-Burdock site, and potential impacts from the ISR process; and (4) seismicity at the site. To date, the EPA has conducted web conferences presenting information on the first three topics, but has not yet conducted the web conference on seismicity.

In May 2013, the EPA sent a notification letter to 35 of the 38 federally recognized Indian tribes listed in Table 1 (see footnote for Table 1) regarding the UIC permit application for the project. The EPA's letter provided information about the project, informed the tribes about the opportunity for government-to-government consultation under section 106 of the NHPA, and provided information on one of the informational web conferences to be conducted by the EPA on a topic the tribes had previously requested.

The EPA has also engaged tribal leaders at a number of meetings to conduct "inform and educate" sessions in preparation for government-to-government consultation. These sessions include a presentation at the Rocky Mountain Tribal Leaders Council Quarterly Meeting in Billings, Montana, in August 2015; a meeting with South Dakota, North Dakota and Montana Tribal Historic Preservation Officers in Bismarck, North Dakota, in September 2015; a meeting with the Santee Sioux and Ponca Tribes of Nebraska in Lenexa, Kansas, in October 2015; and a presentation at the Great Plains Tribal Chairman's Association Meeting in Rapid City, South Dakota, in October 2015.

In November 2015, the EPA mailed a letter to the 38 federally recognized Indian tribes listed in Table 1. This letter invited tribes to participate in government-to-government consultation under the EPA's *Policy for Consultation and Coordination with Indian Tribes* and NHPA section 106. In reply to the invitation letter, the EPA received requests for consultation from the following Tribes:

- Cheyenne River Sioux Tribe
- Crow Tribe
- Gros Ventre and Assiniboine Tribes of Fort Belknap
- Oglala Sioux Tribe
- Northern Arapaho Tribe
- Santee Sioux Tribe
- Standing Rock Sioux Tribe
- Upper Sioux Community

The EPA endeavored to engage in a first round of government-to-government consultation meetings with each interested tribe before the issuance of the UIC draft permits. The EPA completed the first round of consultation meetings. However, the EPA was unable to schedule a meeting with the Cheyenne River Sioux Tribe. The EPA met with Oglala Sioux Tribal leaders, but was informed that the Tribe considered these meetings to be “inform and educate” meetings rather than government-to-government consultation. Additional attempts by the EPA to enter into government-to-government consultation with the Oglala Sioux Tribe have been unsuccessful.

The EPA has considered the concerns and input on the proposed project received from tribes to date, and has incorporated these concerns as appropriate into the UIC draft permit requirements and the cumulative effects analysis document. The EPA anticipates further consultation with tribes to complete the NHPA section 106 process.

The EPA's tribal consultation activities and related communications are summarized in the Appendix to this document.

Public Involvement in the EPA's NHPA Section 106 Process

Public participation in the EPA's NHPA review will occur through the UIC program's public involvement procedures, which allow for public notice and comment on the draft UIC permit and its supporting record. See 36 C.F.R. §§ 800.2(d), 800.3(e); 40 CFR § 124.10. Specifically, the EPA is seeking public comment on the identification of traditional cultural properties at the Dewey-Burdock Project Site APE, on the potential adverse effects of the proposed project, and on measures to avoid, minimize, or mitigate potential adverse effects on historic and traditional cultural properties pursuant to 36 CFR §800.2(d) and §800.6(a)(4).

How to Provide Comments to the EPA

Written comments must be received by email, fax or mail sent to:

Valois Shea (shea.valois@epa.gov)

Fax: 303-312-7084

U.S. EPA Region 8

Mail Code: 8WP-SUI

1595 Wynkoop Street

Denver, CO 80202-1129

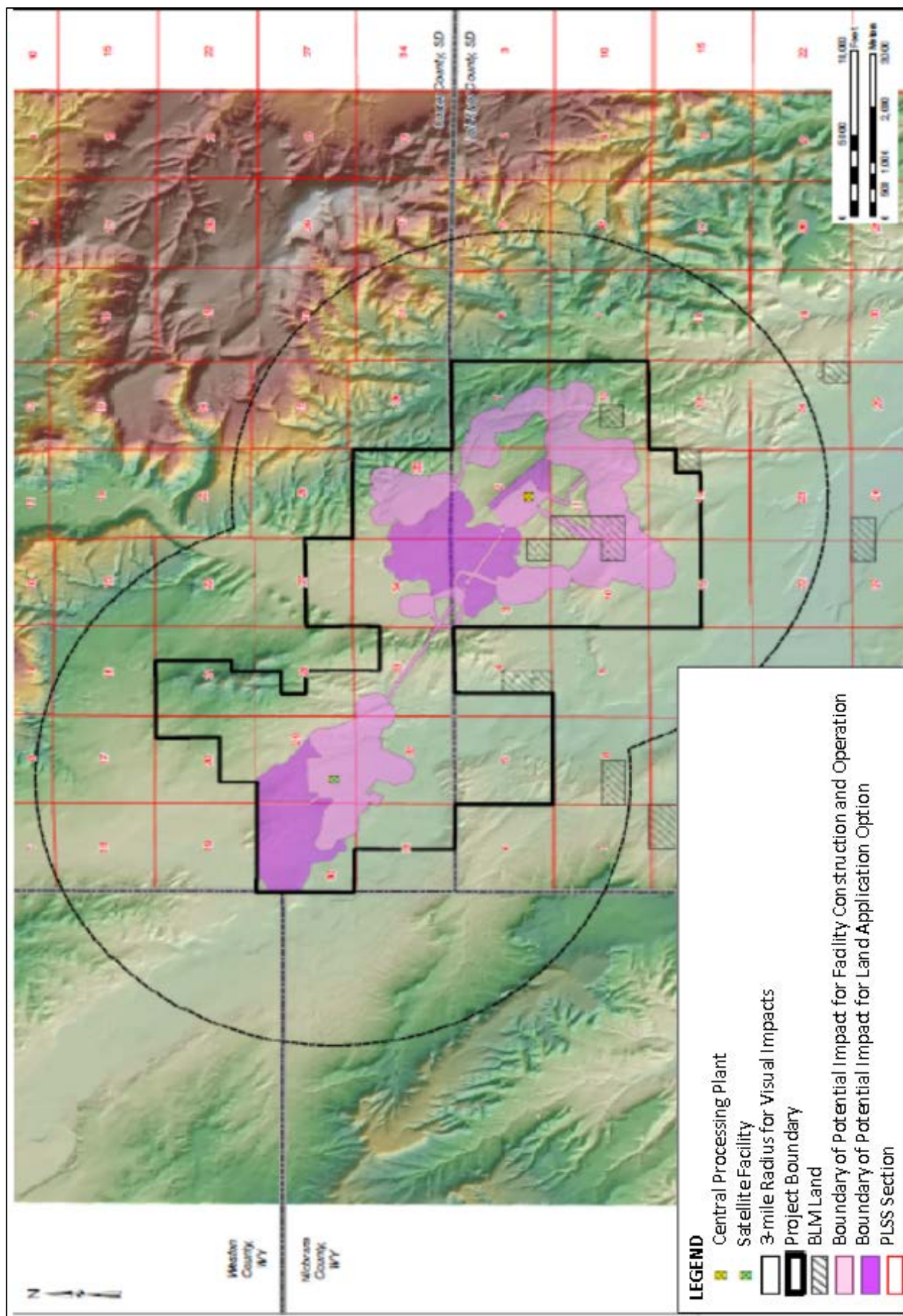


Figure 1. Map Showing Area of Potential Effect (APE) for the Proposed Dewey-Burdock ISR Project (from Appendix A of the NRC Programmatic Agreement)

Table 1. List of Tribes Identified as Potential Consulting Parties.

1	Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
2	Apache Tribe of Oklahoma
3	Blackfeet Tribe of Blackfeet Indian Reservation
4	Cheyenne and Arapaho Tribes of Oklahoma
5	Cheyenne River Sioux Tribe of the Cheyenne River Reservation
6	Chippewa-Cree Tribe of Rocky Boy's Reservation
7	Confederated Salish & Kootenai Tribes of the Flathead Reservation
8	Crow Creek Sioux Tribe of the Crow Creek Reservation
9	Crow Tribe of the Crow Indian Reservation
10	Eastern Shoshone Tribe of the Wind River Reservation
11	Flandreau Santee Sioux Tribe of the Flandreau Santee Sioux Reservation
12	Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation
13	Kiowa Indian Tribe of Oklahoma
14	Lower Brule Sioux Tribe of the Lower Brule Reservation
15	Lower Sioux Indian Community
16	Northern Arapahoe Tribe of the Wind River Reservation
17	Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation
18	Northwestern Band of Shoshoni Nation
19	Oglala Sioux Tribe of the Pine Ridge Reservation
20	Omaha Tribe of Nebraska ¹
21	Paiute Indian Tribe of Utah
22	Ponca Tribe of Indians of Oklahoma ¹
23	Ponca Tribe of Nebraska ¹
24	Prairie Island Indian Community
25	Rosebud Sioux Tribe of the Rosebud Indian Reservation
26	Santee Sioux Tribe of the Santee Reservation
27	Shakopee Mdewakanton Sioux Community
28	Sisseton-Wahpeton Oyate of The Lake Traverse Reservation
29	Skull Valley Band of Goshutes of the Skull Valley Reservation
30	Southern Ute Indian Tribe of the Southern Ute Reservation
31	Spirit Lake Nation Tribe of Fort Totten Reservation
32	Standing Rock Sioux Tribe of the Standing Rock Sioux Reservation
33	Three Affiliated Tribes of Fort Berthold Reservation
34	Turtle Mountain Band of Chippewas of the Turtle Mountain Reservation
35	Upper Sioux Community
36	Ute Indian Tribe of the Uintah and Ouray Reservation
37	Ute Mountain Ute Tribe of the Ute Mountain Reservation
38	Yankton Sioux Tribe of the Yankton Sioux Reservation

¹ The Omaha Tribe of Nebraska, the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska did not receive the May 2013 letter from EPA.

APPENDIX
EPA Tribal Consultation Activities
Dewey-Burdock Uranium In-Situ Recovery Project,
Southern Black Hills, South Dakota

ACTIVITY	DATE	NOTES
An EPA representative attended the Nuclear Regulatory Commission (NRC) Tribal Consultation Meeting for Dewey Burdock and Crow Butte in Rapid City	February 2012	Tribes requested the EPA provide information on 4 topics: <ol style="list-style-type: none"> 1. Cheyenne River Water Quality 2. Radiation Sources and Risks at uranium ISR sites 3. Geology & Hydrology at the Dewey Burdock site and potential impacts from the ISR process. 4. Seismology at the site.
Web conference on Cheyenne River Water Quality	March 2013	
Web Conference on Radiation Sources and Risks at uranium ISR sites	April 2013	
Sent invitation letters to Tribal government leaders; cc'ed Environmental Directors and Tribal Historic Preservation Officers	Mailed and emailed letter May 28-30, 2013	Invitation for NHPA Section 106 consultation and provided information on the informational web conferences the EPA committed to conducting. Information about the first web conference was included in the letter.
Web conference on Geology & Hydrology at the Dewey Burdock site and potential impacts from the ISR process	June 2013	
Contacted Kelly Fanizzo, Advisory Counsel for Historic Preservation liaison to the EPA	November 15, 2013	Discussed the procedure for EPA to sign on to designate the NRC as lead agency for the NHPA 106 process and to sign on to the NRC Programmatic Agreement at a later date
Contacted SD SHPO, Paige Olsen	November 15, 2013	Discussed the EPA's option to sign on to designate the NRC as lead agency for the NHPA 106 process and to sign on to the NRC Programmatic Agreement at a later date

ACTIVITY	DATE	NOTES
Conference call with Kelly Fanizzo, Paige Olsen & John Eddins, ACHP liaison to the NRC	December 3, 2013	Topics Discussed: <ol style="list-style-type: none"> 1. Quick overview of the Dewey Burdock project 2. History of the Nuclear Regulatory Commission's 106 process for the Dewey Burdock 3. The EPA's plan to wait until a later date to designate the NRC as lead agency and adopt the NRC PA
Meeting with Oglala Sioux Tribe representatives in Hot Springs, SD	June 11, 2015	The EPA Regional Administrator requested a meeting with Oglala Sioux Tribal representatives
Presentation at the Rocky Mountain Tribal Leaders Council Quarterly Meeting Billings, MT	August 13, 2015	
Presentation at meeting with South Dakota, North Dakota and Montana Tribal Historic Preservation Officers in Bismarck, ND	September 10, 2015	In conjunction with ND DOT meeting
Presentation at meeting with Santee Sioux and Ponca Tribes of Nebraska in Kansas City	October 28, 2015	
Presentation at meeting with the Great Plains Tribal Chairman's Association Meeting in Rapid City	October 30, 2015	
Consultation invitation letters sent to Oklahoma Tribes	November 6, 2015	
Sent out letter inviting 38 tribes to participate in the NHPA 106 and the EPA consultation process	November 25, 2015	
Webinar with Environmental Director of Santee Sioux Tribes	February 19, 2016	Web conference
Webinar with THPOs from MN Sioux Tribes	February 22, 2016	Web conference
Consultation Meeting with the Crow Tribe in Billings, MT	March 1, 2016	Meeting in person at the BIA Building

ACTIVITY	DATE	NOTES
Consultation Meeting with the Northern Arapaho Tribe	March 2, 2016	Conference call and webinar
Consultation Meeting with the Assiniboine and Gros Ventre Tribes of Fort Belknap in Billings, MT	March 3, 2016	Meeting in person at the BIA Building
Consultation meeting scheduled with the Cheyenne River Sioux Tribe	March 8, 2016	Meeting was cancelled by Tribe on March 7
Web conference with Tribal Historic Preservation Officer of Standing Rock Sioux Tribe	April 22, 2016	Provided background information on the Dewey-Burdock project
Consultation meeting with the Oglala Sioux Tribe in Pine Ridge, SD	April 28, 2016	In person meeting at the Oglala Sioux Justice Center
Consultation meeting with the Standing Rock Sioux Tribe in Fort Yates, ND	May 5, 2016	In person meeting at the Standing Rock Sioux Tribe Administration Building
Meeting with Oglala Sioux Tribal leaders in Denver, CO	June 17, 2016	Presented community outreach plan. Tribal leaders requested that we present the plan to the Land and Natural Resources Committee
Presentation of the EPA community outreach plan to Land and Natural Resources Committee	July 18, 2016	