

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL  
OF THE OGLALA SIOUX TRIBE  
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL OF THE OGLALA SIOUX TRIBE APPROVING LITIGATION AGAINST THE U.S. ENVIRONMENTAL PROTECTION AGENCY DECISION TO GRANT THE DEWEY-BURDOCK URANIUM MINE PROJECT AN AQUIFER EXEMPTION FROM SAFE DRINKING WATER ACT PROTECTION OF GROUNDWATER IN THE SOUTHERN BLACK HILLS.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934, and under Article III of the Oglala Sioux Tribe Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, under Article IV, Sections 1(f) and 1(w), of the Tribal Constitution, the Tribal Council has the authority to manage all economic affairs of the Tribe and to adopt laws protecting and promoting the health and general welfare of the Tribe and its members, and under Article IV, Section 1(b), of the Tribal Constitution, the Tribal Council has the authority to advance the rights of the Tribe and its members, and

WHEREAS, the United States recognized as Sioux territory a vast area of the northern plains in the Fort Laramie Treaty of September 17, 1851, and Article V defines the territory of the Great Sioux Nation as follows: The territory of the Sioux or Decotah Nation, commencing at the mouth of the White Earth River on the Missouri River: thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Butte, or where the road leaves the river; thence along the mountain range known as the Black Hills, to the headwaters of the Heart River; thence down Heart River to its mouth and thence down the Missouri River to the place of beginning. (11 Stat. 749), and

WHEREAS, violations of the 1851 Fort Laramie Treaty by trespassers, who were assisted by the U.S. Army, led to the Powder River War of 1866-1867, in which Sioux forces under the Oglala War Chief Red Cloud defeated the cavalry led by Capt. William Fetterman. This significant military victory prompted the United States to pursue a peace treaty with the Sioux Nation, leading to the Fort Laramie Treaty of April 29, 1868, and

WHEREAS, the 1868 Fort Laramie Treaty established the Great Sioux Reservation, comprised of present-day South Dakota from the Wyoming border to the east bank of the Missouri River. This land, including the Black Hills, ...shall be and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named... and the United States now solemnly agrees that no persons, except those herein designated and authorized so to do... shall ever be permitted to pass over, settle upon, or reside in the territory described in this article (15 Stat. 635), and

WHEREAS, the Lakota and Dakota Nation consider the Black Hills to be sacred; the Black Hills are integral to our creation story, and remain an important place for pilgrimage and ceremony today, and

WHEREAS, Powertech, Inc. applied to the U.S. Environmental Protection Agency for an aquifer exemption under the federal Safe Drinking Water Act to allow the operation of an *in situ* leach uranium mine to pollute groundwater in the Dewey-Burdock area of the southern Black Hills. This proposal would also desecrate sacred lands of the Oglala Sioux Tribe, and

WHEREAS, the *in situ* leach process for the proposed uranium mine would inject hazardous leach fluid (lixiviant) into otherwise stable subsurface uranium formations to mobilize uranium into the aquifers for extraction by production wells, along with extremely toxic radioactive byproducts of the *in situ* process, and

WHEREAS, the injection wells would deliberately contaminate aquifers in the upper Cheyenne watershed, an area where ground water formations interact with one another and with surface waters that flow into the Cheyenne River, an important water of the Oglala Sioux Tribe, and

WHEREAS, on November 24, 2020, the U.S. Environmental Protection Agency approved an aquifer exemption associated with its approval of Class III permits for 14 production well fields for the underground injection of uranium mine leach fluid and Class V disposal permits for up to eight injection wells, and

RESOLUTION NO. 21-16

Page Three

WHEREAS, the government-to-government relationship established in the 1851 Fort Laramie Treaty and 1868 Fort Laramie Treaty is carried out by executive branch agencies of the United States pursuant to Executive Order 13175, which provides: The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian treaty and other rights. Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights... (and) ensure meaningful and timely input by tribal officials. (65 Fed. Reg. 67250), and

WHEREAS, the EPA approval of the aquifer exemption for the Dewey-Burdock uranium mine triggers federal consultation duties and federal trust responsibilities that EPA has not met and violates the requirements of E.O. 13175, and

WHEREAS, the EPA Region 8 has developed its Indian Policy for implementation of E.O. 13175, and the Region 8 Policy provides that: Region 8 will seek tribal government agreement before making decisions on environmental matters... affecting Tribal natural resources. If no agreement can be reached, then a formal dispute resolution process can be invoked by the tribal government ([https://www.epa.gov/sites/production/files/201804/documents/1996\\_r8\\_indian\\_country\\_environmental\\_protection\\_policy.pdf](https://www.epa.gov/sites/production/files/201804/documents/1996_r8_indian_country_environmental_protection_policy.pdf)), and

WHEREAS, EPA failed to properly consult with the Oglala Sioux Tribe prior to issuing the aquifer exemption for the Dewey-Burdock proposal, and

WHEREAS, the Oglala Sioux Tribe has filed a Petition for Review with the EPA Environmental Appeals Board challenging the Class III and Class V UIC permits that require a Safe Drinking Water Act aquifer exemption, and

WHEREAS, the Western Mining Action Project and Energy & Conservation Law have offered to provide pro bono legal representation in this matter in bringing a federal lawsuit challenging the aquifer exemption, and


WHEREAS, the costs associated with this matter will not involve any attorney fees, but only the standard filing fees and record production fees in the vicinity of \$3,000; now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribal Council authorizes Western Mining Action Project and Environment & Conservation Law to commence a federal lawsuit on behalf of the Oglala Sioux Tribe challenging the U.S. Environmental Protection Agency's violation of federal laws and federal duties owed to the Oglala Sioux Tribe in issuing its Safe Drinking Water Act aquifer exemption determination for the Dewey-Burdock In-Situ Leach uranium mine, and

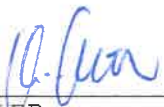
BE IT FURTHER RESOLVED, that the Tribal Treasurer shall make \$3,000.00 available from the General Fund to cover the cost of filing fees and record production fees for the federal lawsuit.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as the undersigned Secretary of the Oglala Sioux Tribal Council, of the Oglala Sioux Tribe hereby certify that this Resolution was adopted by a vote of: 21 For; 0 Against; 0 Abstain; and 0 Not Voting; during a SPECIAL SESSION held on the 15<sup>th</sup> day of JANUARY, 2021.

  
STACY L. TWO LANCE  
Secretary  
Oglala Sioux Tribe

A-T-T-E-S-T:

  
\_\_\_\_\_  
KEVIN KILLER  
President  
Oglala Sioux Tribe

