

June 22, 2001

Crow Butte Resources, Inc.  
ATTN: Mr. Michael L. Griffin  
Manager of Environmental  
and Regulatory Affairs  
274 Union Boulevard, Suite 310  
Lakewood, CO 80228

Dear Mr. Griffin:

I am responding to your letter dated January 30, 2001, which provided additional information to support your November 14, 2000, contention that certain costs under Invoice No. FL0031-01 should not be billed. You requested an exemption under 10 CFR 170.11 for the disputed fees (\$33,329) related to the review of your January 14, 2000, request for an amendment to License No. SUA-1534, and an extension to the interest waiver period under 10 CFR 15.31 until we complete our review. In our February 7, 2001, letter, we advised you that the interest waiver was extended until we provided a response to your concerns. As explained below, your request for an exemption from the Part 170 fees is denied and the interest waiver period is extended to 30 days from the date of this letter.

The bases for your fee exemption request are: (1) much of the staff effort in reviewing your amendment request was spent reviewing generic issues that apply to the entire *in situ* leach (ISL) uranium mining industry and which were not specific to Crow Butte; and (2) the effort currently being expended by NRC staff on reviewing the amendment request is redundant.

We requested the assistance of the Office of Nuclear Material Safety and Safeguards (NMSS) in responding to your January 30, 2001, letter. Enclosed is their response to the specific issues you raised. Your request for an exemption from the Part 170 fees is denied based on NMSS' determination that the review of your amendment request was not related to generic activities and was not redundant.

You also expressed concern that the NRC does not provide the type of supporting detail with invoices that would be necessary to accurately determine the proportion of the staff's time spent on generic issues. Part 170 invoices do not include costs for generic activities. Rather, costs for generic activities are recovered through Part 171 annual fees assessed to all licensees in

M. L. Griffin

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the class subject to annual fees. Part 170 fees recover the costs of services provided to identifiable beneficiaries, such as licensing and inspection services.

The remaining balance due for Invoice FL0031-01 is \$33,329. Payment must be received within 30 days from the date of this letter to avoid interest and late charges.

Sincerely,

/RA/

Jesse L. Funches  
Chief Financial Officer

Enclosure: NMSS Review of Fee Dispute

M. L. Griffin

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/RA/

Jesse L. Funches  
Chief Financial Officer

Enclosure: NMSS Review of Fee Dispute

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Invoice File FL0031-01  
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**Review of January 30, 2001, Fee Dispute Letter from Crow Butte Resources, Inc.**  
**Docket No. 40-8943**  
**Invoice FL0031-01**

**1. Generic Groundwater Restoration Issues**

**CBR's Contention:**

CBR contends that much of the effort expended by NRC staff reviewing its amendment request was spent reviewing generic issues that apply to the entire *in situ* leach uranium extraction industry and which were not specific to CBR. In support of this contention, CBR states that:

1. On July 13, 2000, NRC staff met with representatives of the Groundwater Program at the Nebraska Department of Environmental Quality. CBR claims that six questions discussed in this meeting were generic questions about the Underground Injection Control Program and were not specific to CBR or the State of Nebraska. CBR further states that it is arguable whether NRC has any regulatory basis for their interest in these issues.
2. NRC staff prepared briefing materials for an August 9, 2000, meeting between NRC Commissioners and Senior CBR and Power Resources, Inc., management. Topics discussed during these visits were in part related to dual regulation of groundwater restoration at *in situ* leach facilities by the NRC and the States of Nebraska and Wyoming. Pre-meeting briefings of the Commission Staff included briefings on the Underground Injection Control Program and NRC's role in this regulatory scheme.
3. CBR's amendment request is unique, because it is the first request to approve restoration of a commercial well field at a uranium *in situ* leach facility. This proposal is unique because it is the first submittal and NRC is embarked on a learning curve, the cost for this process will ultimately benefit other *in situ* leach licensees and should not be charged to CBR.

**Staff Response:**

CBR's January 14, 2000, amendment request asked the NRC to amend their license to state that, "The secondary goal of groundwater restoration shall be on a parameter-by-parameter basis to return the average mine unit concentration to the class-of-use standards established by the Nebraska Department of Environmental Quality in Underground Injection Control Permit NE0122611." If this amendment request were incorporated into the license, it would mean that the groundwater restoration secondary goal would be determined by the Underground Injection Control Permit administered by the State of Nebraska. It would also mean that any future amendments by the State of Nebraska to CBR's Underground Injection Control Permit would automatically, without NRC staff approval, become the secondary goal in the NRC license.

The Underground Injection Control Program is an EPA program that in the State of Nebraska is solely administered by the State. In effect, CBR's amendment request asks for the NRC license to rely on an EPA program, implemented by the State of Nebraska. Therefore, in reviewing this amendment request, the staff coordinated with the State of Nebraska and the EPA to understand the technical and regulatory basis for the current groundwater standards in CBR's underground injection control license and how those standards were previously developed and might be developed in the future. Basically the staff was trying to decide if the methodology used by the State of Nebraska to set a secondary goal for the Crow Butte facility under EPA's Underground Injection Control Program was acceptable to the NRC staff.

We agree CBR's request was unique; however, it is not unique for the reasons stated in CBR's January 30, 2001, fee dispute letter. Rather it is the type of secondary goal asked for in CBR's amendment request that makes it unique. The NRC has previously approved secondary restoration goals at other *in situ* leach facilities and has approved the successful restoration of a commercial scale uranium *in situ* leach well field (Bison Basin Site in Wyoming, approved by the NRC on February 20, 1990). Contrary to statements in CBR's letter, the NRC did not state in its January 13, 2001, letter to Crow Butte Resources that "it is the first request to approve restoration of a commercial well field at a uranium *in situ* leach facility." Instead it was stated that "CBR submitted a unique proposal, one that would allow restoration of groundwater to a poorer water quality than the NRC has allowed for any other commercial facility." The request is also unique because it is the first time a licensee has asked the NRC to amend its license to rely on EPA's Underground Injection Control Program. No other licensee has requested NRC to rely on a State water use standard.

Although CBR's request was unique, it did not result in a review of generic issues that apply to the entire *in situ* leach industry. The request involved issues specific to the CBR License.

## **2. Redundant Review of Groundwater Standards**

### **CBR's Contention:**

CBR contends that all costs being expended by NRC staff on reviewing their amendment request are redundant, because in their opinion, the 1998 Environmental Assessment considered the impacts of a secondary goal based on groundwater restoration values set by the Nebraska Department of Quality. Furthermore, CBR contends that any effort expended by the NRC staff on CBR's amendment request is driven by an arbitrary decision by the NRC staff at the time of license renewal to disregard secondary restoration goals which were acceptable in the 1998 Environmental Assessment.

### **Staff Response:**

License Condition 10.3C requires CBR to restore the groundwater quality to baseline conditions. The same license condition also references CBR's Groundwater Restoration Plan, which does contain a secondary goal description. However, license conditions take precedence over any documents referenced by a license. Therefore, CBR's license must be amended to allow restoration to a secondary restoration goal. The current staff effort to review the amendment request is a separate and distinct review to look at the reliance on the State permit. We recognize that the initial amendment request lacked specificity of this request and CBR withdrew

their initial request after the amendment was issued indicating the amendment received was not the amendment sought or desired. The first amendment request used the water use standards from the State of Nebraska, not the Nebraska licensing standards. The current request wants to rely on the State's permit. Staff is looking at reliance on EPA to see if it is feasible for Nebraska to take their authority from EPA. The ongoing licensing review is not redundant or a repeat of the initial amendment review.