

BEFORE THE UNITED STATES NUCLEAR REGULATORY COMMISSION

In re Crow Butte Resources Request )  
for License Amendment Lic. No. )  
SUA-1534 North Trend Expansion—Docket )  
No. 40-8943 (Adams No. ML072540671) )  
DOCKETED )  
USNRC )  
December 6, 2007 (4:35pm) )  
OFFICE OF SECRETARY )  
RULEMAKINGS AND )  
ADJUDICATIONS STAFF )

**Response of Applicant, Crow Butte Resources to Petitions to Intervene filed by Ms. Debra L. White Plume, Chadron Native American Center, Inc., High Plains Community Development Corporation, Thomas Kanatakeniate Cook, Slim Buttes Agricultural Development Corporation, Western Nebraska Resources Council**

COMES NOW Crow Butte Resources, Inc. (hereinafter "CBR"), and pursuant to

10 C.F.R. § 2.309 advises the Commission as follows:

A. Parties:

1. Various persons and/or entities have filed with the United States Nuclear Regulatory Commission Petitions seeking intervention and a public hearing on the matter of the application of Crow Butte Resources (hereinafter "CBR") to amend Lic. No. SUA-1534.

2. Those entities/persons appear to be:

Chadron Native American Center, Inc.	by Thomas K. Cook
High Plains Community Development Corporation	by Thomas K. Cook
Thomas Kanatakeniate	by Thomas K. Cook
Slim Buttes Agricultural Development Corporation	by Thomas K. Cook
Western Nebraska Resources Council	by Buffalo Bruce
Debra L. White Plume	by Debra White Plum

3. The foregoing entities/persons shall be referred to as Petitioners hereafter, unless the context requires otherwise.

4. This Response shall apply to each and all of the document the Petitioners have apparently filed with the NRC, due to the fact that such documents and each claim are substantially if not completely identical.

B. The Petitioners lack standing to intervene in this matter as required and defined by 10 C.F.R. § 2.309(d), for the reasons set forth hereafter:

1. Petitioners allege they live down wind from the proposed North Trend Expansion Project and will be exposed to increased levels of Radon (Exhibit "A" ¶ 1).

Petitioners fail to cite to any facts, independently established scientific evidence, or other authority to support such a claim. These claims are purely conjectural.

The facts are that at CBR's current facility, CBR has seven air monitoring stations located at the nearest residences and at the sites permit boundaries. These stations continually monitor for airborne-radionuclides, radon and gamma exposure. The samples are analyzed quarterly and semi-annually and the results are reported to the NRC in the Semi-Annual Radiological Effluent and Environment Monitoring Report. All measured concentrations are well below the effluent release limits.

2. Petitioners allege they drink water from wells that draw water from an aquifer that may mix with the Chadron Aquifer or the Brule Aquifer in which CBR mines uranium or has leaked radioactive arsenic laden fluids (Exhibit "A" ¶ 1).

The facts are the Brule Aquifer in this area is not hydrologically connected to the Arikaree Aquifer. The Arikaree is not present in the area at issue in this application.

The well field average for arsenic in the permit area ranges from 0.001 mg/l to 0.002 mg/l. The current drinking water standard for arsenic is 0.01 mg/l. Arsenic in this area occurs naturally at levels well below the drinking water standard.

3. Petitioners allege their property values are adversely affected by their proximity to the ISL Uranium Mine (Exhibit "A" ¶ 1).

The facts are Petitioners have identified no objectively confirmed data regarding property sales in both a pre- and post-mining by CBR market, nor have the Petitioners filed any

litigation or any claim against CBR or other entities claiming a diminution of his/her/their real property values. Petitioners' claims are wholly without merit and any factual data or support.

C. The Petitioners have not alleged in their Exhibit "B" at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f).

1. Petitioners' Exhibit "B," paragraph "A," subparts (i) through (iv) read in their entirety do nothing more than set forth Petitioners' attempt to characterize as a consumptive use the non-consumptive use of water CBR is permitted to withdraw and reinject. Ninety-nine percent (99%) of the water CBR withdraws is in fact reinjected.

2. In Exhibit "B," paragraph "A," subparagraphs (v) and (vi), Petitioners state they "... believe there is a slow moving plume of radioactive water in the High Plains Aquifer caused by CBR's current operations...." Their belief is misplaced.

First, the Brule Aquifer in the area in question is not hydrologically connected to the Arikaree Aquifer. The Arikaree is not present in the area in question.

Secondly, the NRC license requires CBR to collect quarterly uranium and radium<sup>226</sup> samples from the streams, impoundments and private wells located within one kilometer of an active mining unit. The radio-chemistry of water sample at these locations does not indicate the presence of any radioactive contamination. The private wells all have a uranium concentration below the drinking water standard of 0.03 mg/l.

Thirdly, as required by the NRC license and the Nebraska Department of Environmental Quality (hereinafter "NDEQ") permit, CBR is required to install monitor wells to monitor the horizontal or vertical movement of mining solutions in the Chadron and Brule formation. CBR collects bi-weekly water samples on 177 shallow monitor wells in the Brule formation and 142 deep monitor wells in the Chadron formation. In order for there to be a slow-

moving radioactive plume of contaminated water moving through the related aquifers, such phenomenon would have to have gone undetected by the 319 monitor wells installed and operating.

D. The balance of Petitioners' filing are not factually based. Petitioners erroneously allege and mischaracterize a former well leak in 1996 (Letter, page 3, ¶ (4)). The facts are:

1. During 1996 injection well I 196-5 failed the five year mechanical integrity test. Subsequent investigation determined that the leak had contaminated an area in the shallow aquifer around the well. Wells were drilled in the area to delineate the area of contamination. A remediation plan was prepared and submitted to NRC and the NDEQ on May 28, 1996. On August 19, 1999, the NDEQ, upon review of the restoration data, determined that the affected waters had been returned to or brought within acceptable levels of baseline conditions and declared that the restoration efforts had been successful. This excursion and all other excursions have been successfully remediated.

2. Petitioners' absence of valid admissible contentions are demonstrated on page 4 of their introductory letter, paragraph 12 where they state: "There is no assurance that Yellowcake Uranium products from the CBR operation will not be used for nuclear weapons of a foreign country or terrorists." On page 5, ¶ 16 of their letter states "The proposed plan to truck radioactive material back and forth between the current facility and the North Trend facility exposes the community to the substantial risk of terrorist attack and/or criminal interference resulting in a release of radioactive material – the equivalent of a 'dirty bomb.'" Such fabricated sensationalism which is perhaps politically expedient, is not an admissible contention within the strict requirements of § 2.309(f). Nevertheless Petitioners' allegations regarding "terrorist

attacks” and “dirty bombs” are precisely what they claim should be the subject matter of the hearing they requested.

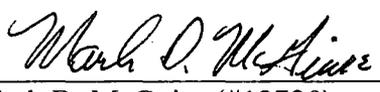
3. Except as admitted herein, CBR specifically denies each and every allegation, contention and statement contained in each of Petitioners’ Requests for Hearing and/or Petition to Intervene.

E. The applicant, Crow Butte Resources, Inc., respectfully requests that the Petitioners’ Requests for Hearing and/or Petition to Intervene is denied by the Commission.

Respectfully Submitted,

CROW BUTTE RESOURCES

BY: McGUIRE and NORBY  
Its Attorneys  
605 South 14th Street  
Suite 100  
Lincoln, Nebraska 68508  
Telephone (402) 434-2390

By   
Mark D. McGuire (#12738)  
One of Said Attorneys

**CERTIFICATE OF SERVICE**

On this 6<sup>\*</sup> day of December, 2007, a copy of the foregoing Response of Applicant, Crow Butte Resources, to Request for Hearing and/or Petition to Intervene was served by regular United States Mail, postage prepaid, to:

Ms. Debra L. White Plume  
Director  
Owe Aku, Bring Back the Way  
PO Box 325  
Manderson SD 57756

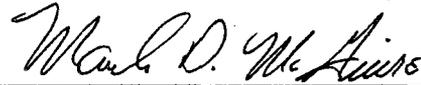
Slim Buttes Agricultural Development Corporation  
1705 S Maple St  
Chadron NE 69337

High Plains Community Development Corporation  
130 E 2<sup>nd</sup> St  
Chadron NE 69337

Thomas Kanatakeniate Cook  
1705 S Maple St  
Chadron NE 69337

Chadron Native American Center, Inc.  
502 W 2<sup>nd</sup> St  
Chadron NE 69337

Western Nebraska Resources Council  
PO Box 612  
Chadron NE 69337.



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Mark D. McGuire

**McGUIRE AND NORBY**  
**ATTORNEYS AT LAW**

605 South 14th Street, Suite 100  
Lincoln, Nebraska 68508  
Telephone (402) 434-2390  
Facsimile (402) 434-2393

Mark D. McGuire  
Scott J. Norby  
Rick G. Wade

December 6, 2007

Office of the Secretary  
US Nuclear Regulatory Commission, 16<sup>th</sup> Flr  
Attn: Rulemakings & Adjudications Staff  
One White Flint North  
11555 Rockville Pike  
Rockville MD 20852

RE: Crow Butte Resources Request for License Amendment Lic. No. SUA-1534 North Trend  
Expansion – Docket No. 40-8943 (Adams No. ML072540671)

Dear Secretary:

Our firm represents Crow Butte Resources, Inc., Applicant, in the above-captioned matter. Crow Butte Resources received various Requests for Hearing and/or Petitions to Intervene at its Denver office on November 16, 2007. Pursuant to 10 C.F.R. § 2.309(h)(1), we submit Crow Butte Resources Answer to the Requests/Petitions you received.

Because all of the Requests filed were nearly identical, we are filing a single response applicable to all of the Requests. I trust this approach is acceptable. If a different style is preferred, please let me know.

Thank you for your attention to this matter.

Sincerely,

McGUIRE and NORBY

By:   
Mark D. McGuire

MDM:jls/usnrc12-6.ltr

Enclosure

cc: Thomas Cook  
Buffalo Bruce  
Debra White Plum