14848

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges

Ann Marshall Young, Chair
Dr. Richard F. Cole
Dr. Fred W. Oliver

In the Matter of	)	**Docket No. 40-8943**
CROW BUTTE RESOURCES, INC.	)	**ASLBP No. 07-859-03-MLA-BD01**
(In Situ Leach Facility, Crawford, Nebraska	)	
	)	**December 28, 2007**

REPLY TO CBR RESPONSE TO PETITIONS OF OWE AKU AND DEBRA WHITE PLUME

Pursuant to [10 C.F.R. §2.309(h)], the Petitioners file this response to the CBR's Response to the Petitioners' request for hearing/intervention and for discretionary intervention filed on November 12, 2007. For the reasons explained herein, the Petitioners respectfully submit that their original petitions, as amended by the information set forth herein, conform in all material respects to applicable legal requirements both regarding standing and admissible contentions and should therefore be granted in their entirety.

Petitioners respectfully submit that the original Petitions, together with the below discussion and authority, satisfy the requirements set forth in 10 C.F.R. §2.309(d) with respect to standing and 10 C.F.R. §2.309(f)(1) with respect to the contention admissibility requirements. Additionally, the Petitioners respectfully submit that their requests for discretionary intervention pursuant to 10 C.F.R. §2.309(e), should be granted for the reasons expressed in the Petition, and as otherwise discussed below.

I. Standing

A. Overview of Standing Requirements

AEC Rules require that any person who requests a hearing or seeks to intervene in a

Commission proceeding must demonstrate that he or she has standing. 10 C.F.R. § 2.309(a); *see also* 42 U.S.C. § 2239(a) ("the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding"). The regulations set forth in 10 C.F.R. § 2.309(d)(1) provide that a request for hearing or petition to intervene must state:

> (i) The name, address and telephone number of the petitioner;
>
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
>
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

The Petitioners respectfully submit that their Petition and attached Exhibits, herein incorporated by reference, provided such information.

In considering the question of standing, the presiding officer must "construe the [intervention] petition in favor of the petitioner." *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). To establish standing, there must be an "injury-in-fact" that is either actual or threatened. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998), citing *Wilderness Soc'y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987). The injury must be "concrete and particularized," not "conjectural" or "hypothetical." *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). The alleged "injury-in-fact" must lie within the "zone of interests" protected by the statutes governing the proceeding: either the Atomic Energy Act or the National Environmental Policy Act of 1969 (as amended) 42 U.S.C. §§ 4321, *et seq.* (2000) (NEPA). *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999). Although a petitioner's stake "need not be a 'substantial' one, it must be 'actual,' 'direct,' or 'genuine'." *In The Matter Of HydroResources, Inc.*, LBP-98-9, 47 NRC NRC 261, 269 (1998), citing *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, aff'd, ALAB-549, 9 NRC 644 (1979). A "mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requester must allege some injury that will occur as a result of the action taken." Id at 269, citing *Puget Sound Power and Light Co. (Skagit/ Hanford Nuclear Power Project, Units 1 and 2)*, LBP-82-74, 16 NRC 981, 983

(1982), citing *Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station)*, ALAB-328, 3 NRC 420, 422 (1976); id., LBP-82-26, 15 NRC 742, 743 (1982).

In addition, there must be a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998), *aff'd,* CLI-99-4, 49 NRC 185 (1999). A determination that the injury is fairly traceable to the challenged action, however, does not depend "on whether the cause of the injury flows directly from the challenged action, but **whether** the **chain of causation is plausible.**"(Emphasis added). *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 (emphasis added). The redressability element of standing requires a petitioner to show that the claimed actual or threatened injury could be cured by some action of the decisionmaker. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001). In a materials license amendment proceeding, the Petitioner must show that the amendment will cause a "'distinct new harm or threat' apart from the activities already licensed." *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999). Finally, a petitioner must show a "plausible chain of causation" for the new and distinct harm; conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing. *White Mesa*, CLI-01-21, 54 NRC at 251; *Zion*, CLI-99-4, 49 NRC at 192.

B. "Proximity plus" standing requirements

With respect to a petitioner's proximity to a facility or source of radioactivity, a presumption of standing based on geographic proximity alone is not applied in materials licensing cases. In materials cases "a presumption of standing based on geographical proximity may be applied...where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences." *Georgia Tech,* CLI-95-12, 42 NRC at 116 (citing *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 n. 22). Whether a proposed action carries with it an "obvious potential for offsite consequence," and, if so, at what distance a petitioner can be presumed to be affected, must be determined "on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source." *Id.*; *see also Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005). In particular, how close a petitioner must live to the source "depends on the danger posed by the source at issue." *Sequoyah Fuels Corp.,* CLI-94-12, 40 NRC at 75 n. 22.

C. Discussion of Petitioners' Standing

1. Debra White Plume

As noted in her Petition filed on November 12, 2007, Ms. White Plume asserts individual standing to intervene in CBR's license amendment based, among other things, upon the following: (1) she lives downwind from CBR's proposed North Trend operation and will therefore be exposed to increased radon levels resulting from the expansion of the existing operations; (2) the well on her property draws water from an aquifer which may mix with the Chadron and/or Brule aquifers into which radioactive arsenic laden fluids has leaked following "excursions" from CBR's ISL mining operations; and (3) her property values are adversely impacted by proximity to the CBR mine. See, Petition of Debra White Plume at A-1. See, attached Affidavit of Debra White Plume.

In *HydroResources* (I), the Atomic Safety and Licensing Board left little doubt that where a potential intervenor has an interest in the impact of discharges potentially effecting the air, soil, water, or health of life in the area of a mining project, the intervenor has standing. Thus, Ms. White Plume meets the requirements of 10 C.F.R. § 2.309(d)(1) and has therefore established standing to intervene in CBR's license amendment proceeding. As Ms. White Plume states in her Petition, approval of CBR's license amendment would put her "at further risk of personal health problems associated with contamination of the air, surface water and groundwater," and that the value of her "real and personal property" would be reduced. Id.

In its response to Ms. White Plume's Petition, CBR challenges Ms. White Plume's assertion regarding the dangers posed by the radon gas that has been emitted from CBR's ISL operations. These radon gas emissions will arguably be released in greater quantities if CBR's operations are allowed to expand as contemplated by the pending license amendment. In seeking to refute Ms. White Plume's concern, CBR relies on its "seven" air monitoring stations and contends that measured concentrations are "within limits." CBR's argument, however, is fundamentally flawed in that it assumes that the mere inclusion of such an assertion in CBR's application renders such assertion true.

CBR also challenges Ms. White Plume's standing on the grounds that her drinking water may be contaminated due to intermixing of the Chadron or Brule Aquifer, contending the Brule Aquifer is not hydrologically connected to the Arikaree Aquifer.

Again, Petitioners submit that CBR's assertions are not gospel simply because alleged, and there is no basis for rejection a petitioner's assertion simply because contrary evidence has been submitted by an applicant seeking to amend its license. In this sense, CBR's assertion that the Brule and Chadron Aquifers are different from, or not connected to, the

High Plains Aquifer are no different than HRI's assurance in its Hydro Resources application that there would be no "degradation in the safety or environmental commitments made in the [COP] or in the approved reclamation plan," a claim that the Licensing Board clearly rejected. *HydroResources* (I) at FN20. In *HydroResources* (I), HRI sought to buttresses its argument that the public was adequately protect by pointing to the role of the Environmental Protection Agency in policing the Safe Drinking Water Act. HRI concluded that, since its proposed project was subject to regulation by the EPA "by definition, HRI's proposed...operations will not harm sources of drinking water." In rejecting HRI's argument, Judge Bloch states that "HRI takes credit for the regulatory process, even though that process will operate in the future. It is no wonder then that, when HRI applies this standard, it concludes that no petitioner has demonstrated "'injury in fact'."

In short, it would be inappropriate to summarily reject Ms. White Plume's concerns and arguments regarding the presence of radon gas or the mixing of the Brule or Chadron Aquifer with the High Plains Aquifer, simply because CBR takes a contrary position in an application subject to the Commission's regulatory process. As Judge Block concluded in *HydroResources*. "Petitioners are not required to rely on the good will of HRI, the future decisions of the Staff of the Nuclear Regulatory Commission, or the staff of the Environmental Protection Agency. Petitioners who demonstrate that they rely on water supplies adjacent to the in situ leach mining project have a right to a hearing. In the Matter of *HydroResources*, Inc., LBP-98-9, 47 NRC 261, 269 (1998).

Ms. White Plume, like other members of the surrounding communities, relies on air to breath and water to drink. Radon gas has been detected in the vicinity of Ms. White Plume's residence in South Dakota, approximately 60 miles from CBR's operations. Unfortunately, the documentation of the radon gas studies at Sharp's Corner residences was lost in the fire. See, attached Affidavit of Debra White Plume. Radon gas is admittedly a by-product of CBR's ISL operations. Thus, it is reasonable to conclude that at least some of the radon gas present on Pine Ridge was transported there by existing wind patterns and, to the extent that greater quantities of radon gas are emitted as a result of the proposed expansion of CBR's ISL operations, the levels of radon should correspondingly increase at the location of Ms. White Plume's residence.

Ms. White Plume also relies on uncontaminated clean water to drink. Despite the fact that Ms. White Plume is some distance from CBR's current operations, she has reason to believe the Brule and/or Chadron Aquifer mixes with the High Plains Aquifer and that CBR's documented excursions have resulted in radioactive arsenic laden fluids traveling from CBR's operations to surrounding areas, including to wells on Pine Ridge. Indeed, CBR's own Application acknowledges that the geology and hydrology of the area connecting the Brule, Chadron and High Plains Aquifers is not completely understood.

CBR's conclusory statements in its Response regarding the Brule, Chadron and High Plains Aquifers is misplaced and does not provide a sufficient basis upon which to reject Ms. White Plume's standing in this matter. This is not altogether different than the argument HRI made in *HydroResources* (I) when it sought to establish that there was no danger to the source of drinking water, despite the lack of understanding with respect to local geological features. In rejecting HRI's position, the Licensing Board stated "Because knowledge of the relevant rock formations is still rudimentary and plans are incomplete, there are enough reasonable doubts to establish "injury in fact." *HydroResources* (I) at 275.

CBR does not deny Petitioner's contentions of a history of excursion of radioactive liquids from its operations to date. As the Licensing Board stated in Sequoyah Fuels, CLI-94-12, 40 NRC at 75 "A determination that the injury is fairly traceable to the challenged action...does not depend on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible" (emphasis added). In this case, it is not only plausible, but reasonable in light of the history of surface and subsurface excursions and the elevated levels of radioactive materials that have been documented in local drinking water, such as the contamination of the Brule Aquifer noted in the Environmental Report [3.4.4 and Table at 3.4-15] resulting in some 98 private wells closed on the Pine Ridge Reservation following the 1997 Chadron well-casing failure. As the Licensing Board stated in *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. "A determination that the injury is fairly traceable to the challenged action...does not depend on whether the cause of the injury flows directly from the challenged action, but whether the **chain of causation is plausible"** (*emphasis added*). In this case, it is not only plausible, but reasonable, to conclude that there is a causal connection between CBR's numerous excursions over the years and elevated levels of radioactive materials in local drinking water. Indeed, there have been documented leaks of radioactive liquid at CBR's facilities that went undetected for various periods of time resulting in the release of many tens of thousands of gallons of radioactive liquid directly onto the ground and into stream beds.

CBR finally contends that Petitioner lacks standing since she failed to "identify" any "objectively confirmed data" regarding property sales in the "pre- and post-mining by CBR Market." CBR chooses to ignore the general knowledge in the are of declining property values of farm/ranch land due to drought, which will be dramatically and negatively impacted by the continued lowering of water tables and water quality caused by CBR's operation and proposed expansion.

In sum, Ms. White Plume respectfully submits that she has alleged sufficient facts to establish standing pursuant to 10 C.F.R. § 2.309(a). Not only has she alleged more than one "concrete and particularized" injury pursuant to the requirements of Sequoyah Fuels Corp. & Gen. Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994), but she has

demonstrated that her interest is much more than "mere academic interest in the outcome of a proceeding or an interest in the litigation." In The Matter Of HydroResources, Inc., LBP-98-9, 47 NRC 261, 269 (1998), citing Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, aff'd, ALAB-549, 9 NRC 644 (1979). Finally, Ms. White Plume has demonstrated a "plausible" causal connection between the alleged injury and the challenged action, as required by Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998), aff'd, CLI-99-4, 49 NRC 185 (1999).

Organizational Standing

CBR does not address the organizational standing of Owe Aku, of which Petitioner White Plume is the Director.

An organization may demonstrate standing by showing "either immediate or threatened injury to its organizational interests or to the interests of identified members." Georgia Tech, CLI-95-12, 42 NRC at 115. For an organization to assert "representational standing" on behalf of one or more of its members, the organization "[m]ust demonstrate how at least one member may be affected by the licensing action, must identify that member by name/address, and must show that the organization is authorized to request a hearing on that member's behalf." N. States Power Co. (Monticello; Prairie Island, Units 1 & 2; Prairie Island ISFSI), CLI-00-14, 52 NRC 37, 47 (2000). As discussed below, Owe Oku, High Plains Development Corp., Slim Buttes Agricultural Development Corp. and Western Nebraska Resources Council each have representational standing based on the standing of one of their members. In each case, such member's name, address and delegation of authority to its organization to request a hearing on such member's behalf is set forth. Due to the White Plume fire, to date, Ms. White Plume has authorize Owe Aku to represent her interests.

1. Owe Aku

As the attached Affidavit of Debra White Plume reflects, there are a number of Owe Aku members within miles of the CBR mine site who want to provide affidavits, but due to the house fire, they have not been able to be obtained. Each considers themselves to be a member of and consents to representation by Owe Aku. Each lives within miles of the existing and/or proposed mining site. Each is downwind and therefore breaths air from the direction of the mining operation and proposed operation and drinks water from a well into the Brule Aquifer or an aquifer which may intermix with the aquifer being and to be mined. With a granting of the requested Extension of Time, such affidavits can be obtained and submitted.

2. Petitioners Are Entitled To A Hearing

In *Hydro Resources* (I), the Atomic Safety and Licensing Board established that in ruling on any request for a hearing as in this instance, the Presiding Officer, pursuant to 10 C.F.R. §2.1205(h), "is to determine `that the specified areas of concern are germane to the subject matter of the proceeding'." The Board noted *In the Matter of Hydro Resources*, LBP-03-27 (2003) [hereinafter, "*Hydro Resources* (II)"], that "[t]his rule imposes a `modest' burden on a petitioner, with a `low' threshold showing required." *Ibid*, FN.33. An area is considered "germane" if it is "`truly relevant' to the subject matter of the proceeding." *Ibid*, FN.34. Continued the *Hydro Resources* (II) Board:

> Areas of concern need not meet the same detailed pleading requirements applicable to contentions in formal adjudications pursuant to 10 C.F.R. §2.714(b)(2). The statement `need not be extensive, but...sufficient to establish that the issues the requester wants to raise regarding the licensing action fall generally within the ranger of matters that are properly subject to challenge in such a proceeding.'

Ibid.

CBR contends that Petitioners have "not alleged" in "Exhibit B" [attached to the Petition], "at least one admissible contention that meets the requirements of 10 C.F.R. §2.309(f)." Petitioners respectfully disagree.

Citing Exhibit B, ¶A (i)-(iv), CBR then rejects Petitioners' allegation that the CBR withdraws water from the aquifer and returns by injection, a chemically altered and radioactive solution of somewhat less equal volume. As the Environmental Report [5.4.1.3.2] concluded: "Since ISL operations alter the groundwater chemistry, it is unlikely that restoration efforts will return the groundwater to the precise water quality that existed before operations." The fact that the total volume may be only somewhat less than original, fails to explain the inconsistency with the conclusion in the Environmental Report that the aquifer to be mined will draw down water some 20 feet from the water supply of the town of Crawford, 3 miles away. ER 4.4.3.1. In *Hydro Resources* (I), the ASL Board recognized that degradation of ground water and various related matters was a "germane" issue ripe for a hearing. *Ibid*, 47 NRC at 282. Petitioners are concerned about the loss of billions of gallons of usable water per year in an area plagued by drought.

Citing Exhibit B, ¶¶ A(v)-(vi), CBR disputes Petitioners' contention of the potential of a slow-moving plume of radio-active water from CBR's operation in the Brule Aquifer to the High Plains Aquifer. It repeats its contention that there is no hydrological connection

between the Arikaree Aquifer and the Brule Aquifer.

It also ignores the ER's listing of some causes of possible excursion of uranium and other heavy metals including:

> [I]mproper balance between injection and recovery rates, undetected high permeability strata or geologic faults, improperly abandoned exploration drill holes, discontinuity and unsuitability of the confining units which allow movement of the lixiviant out of the ore zone, poor well integrity, and hydrofracturing of the ore zone or surrounding units.

Ibid, 4.4.3.2.

CBR in its response further it ignores the citation to the USGS study: "Ground Water Atlas of the United States; Kansas, Missouri and Nebraska," HA 730-D, which notes the Arikaree aquifer running under eastern portion of the Pine Ridge Indian Reservation, where Petitioner White Plume resides. If further ignores the Study's reference to mixing between the Brule Aquifer and the Arikaree Aquifer, which mixes with the High Plains Aquifer. As the Environmental Report noted, the unknown factor is fracturing. "Fractures may increase Brule and Chadron permeability in localized areas." ER 3.4.3.1.

CBR does not address the ER's statement that "[r]egional data regarding flow in the Basal Chadron are limited," with additional information and "investigation" to be provided. ER 4.3.6. CBR further ignores the potential problems due to water contamination of caused by unknown (but known to exist) fracturing between the Brule aquifer and the upper aquifer used by private wells in the North Trend area. As the ER [3.4.3.3] noted: "The exact definition of the 'overlying aquifer' at North Trend is somewhat difficult to determine." Thus, the ER wanted "additional future testing" prior to any mining in the proposed expansion area.

Then there are other unknowns including the White River Fault through the Brule/Chardon aquifer. "Changes in aquifer pressure potentially could impact activity related to the fault and the transmissive characteristics of the fault (E.G., resistance to flow). There are numerous documented cases where injection in the immediate vicinity of the fault has caused an increase in seismic activity." ER 4.3.1.

In light of the unknowns regarding fracturing and potential intermixing of aquifers, together with the history of releases of radioactive and other heavy metals, CBR's contentions that "quarterly" testing of wells, streams, impoundments within a kilometer of its operations did "not indicate the presence of radioactive contamination," only enhances the

germane nature of the Petitioners' contentions in this regard.

Again, in *Hydro Resources* (I), the ASL Board recognized that degradation of ground water and various related matters was a "germane" issue ripe for a hearing. *Ibid*, 47 NRC at 282. Similarly, potential violations of the National Historic Preservation Act and the Native American Graves Protection Act are recognized a involving issues germane for a hearing. *Ibid.*

The NRC Staff does not address the "public interest" which must be considered by the ASL Board. Congress made a specific finding that "source...material must be regulated in the national interest and in order to provide for the common defense and security **and to protect the health and safety of the public.**" (Emphasis added). 42 U.S.C. §2012(d), as quoted in *Riverkeeper, Inc v. Collins,* 359 F.3d 156, 169 (2nd Cir. 2004). The NRC Staff and CBR are silent as to how it would in furtherance of the protection of the health and safety of the public to grant a foreign owned Applicant's amendment to expand to the North Trend area. Included in the public interest aspect is the interest of Petitioners to protect the air, land, and water, as well as all living things within the 1868 Ft. Laramie Treaty boundaries, including the CBR operation and proposed expansion site. See, Affidavit of Chief Oliver Red Cloud, attached hereto as an Exhibit.

The final point to be replied to concerns the NRC Staff's rejection of Petitioner White Plume's and Owe Aku's concerns about the sufficiency of the study and preservation of an ancient indigenous camp and artifacts, together with other concerns, in the general CBR operational area. Particularly, the Staff ignore the consultation requirements embodied in the UN Declaration on the Rights of the World's Indigenous Peoples, Art. 32, which requires consultation with traditional Chiefs prior to development of resources within indigenous land. In this regard, the 1868 Ft. Laramie Treaty sets the southern boundaries of Lakota lands as including the CBR project area. In addition, the Oglala Sioux Tribe, of which Petitioner White Plume is a member and Owe Aku which seeks to protect the traditional way of life and the lands, has passed a resolution banning uranium mining within the 1851 and 1868 Treaty boundaries. See, attached OST Resolution 07-40. See, also, attached Black Hills Sioux Nation Treaty Council Resolution.

3. Petitioners' Requests for Discretionary Intervention.

Each Petitioner has established that she or it has standing to intervene or, in the case of Owe Aku, that a member has standing to intervene. Pursuant to 10 C.F.R. § 2.309(e), a request for discretionary intervention can only be considered when "at least one requestor/petitioner has established standing and at least one admissible contention has been

admitted so that a hearing will be held." However, should the Board decide that one or both Petitioner does not have standing to intervene, Petitioner White Plume and Owe Aku respectfully submit that they meet the criteria and respectfully request discretionary intervention under 10 C.F.R. §2.309(e), to wit:

(a) factors weighing in favor of allowing intervention:

Petitioners live within 80 km of the current mine site and proposed expansion. Petitioners breath the air, drink the water, and some raise livestock and crops on the land, utilizing the water for irrigation and are therefore concerned about airborne and surface and subsurface water contamination and loss. As people of the land they are familiar with the impact that such contamination and water loss can have on the land and its inhabitants. They are also concerned about the potential direct impact on them and their neighbors, for many generations to come, resulting from this uranium mining operation and proposed expansion. As Lakota members of Owe Aku, they have an ancestral and legal interest in protecting the air, water, land, and historical sites and artifacts within the boundaries of the 1868 Ft. Laramie Treaty. As members of Owe Aku, they are interested in the preservation of identified and as yet unfound "pre-historic" sites of their ancestors and protecting the Earth. They can contribute much to the hearing by way of questions and information. For them, these responsibilities of the protection of their land on behalf of the future generations are of paramount interest and value. This necessarily, for Petitioner White Plume and others who consider themselves members of Owe Aku who live off the land, for its "value" as well.

Petitioners are particularly concerned about CBRs proposed expansions increased impact on the air, water, and soil. Due to fracturing of aquifers including the Brule/Chardon aquifer being mined, they are concerned about lowering of water tables and contamination of water supplies from the mining operation due to unknown and fracturing and other sources of intermixing of aquifers.

A granting of the proposed CBR expansion will threaten the land-use interests of the future generations of Petitioner White Plume and other members of Owe Aku of lowered water tables and increasing the area of underground water sources which are so contaminated as to require exemption from the Clean Water Act and can no longer be a domestic water source.

(b) factors weighing against allowing intervention:

CBR in its Response, other than generally resisting intervention, does not address Petitioners' request for discretionary intervention.

CONCLUSION

For all the above reasons, the Petitioner Debra White Plume and Petitioner Owe Aku have standing and have raised at least one admissible area of contention, requiring a hearing.

In the alternative, should the Board determine that either Petitioner does not have standing, discretionary intervention is requested.

Dated this 26 day of December, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "REPLY TO CBR RESPONSE" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 28th day of December, 2007:

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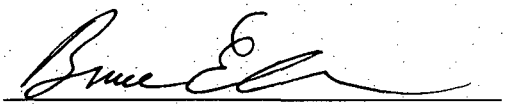
Respectfully submitted,



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