RAS 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 NRC STAFF RESPONSE TO PETITION OF OWE AKU AND DEBRA WHITE PLUME

Pursuant to [10 C.F.R. §2.309(h)], the Petitioners file this response to the above listed NRC Staff, dated December 7, 2007 (Staff 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 Petitions and Exhibits, 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.

For the reasons set forth below, the Petitioners respectfully submit that the original Petitions 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. Petitioners further submit that the Staff, in its December 7th response, failed to apply the correct legal standards with respect to the Petitioners' assertions of standing, disregarding the Atomic Safety and Licensing Board's precedential findings in *In the Matter of Hydro Resources, Inc.* LBP-98-9, 47 NRC 261, 269 (1998) [hereinafter, "*Hydro Resources* (I)"], perhaps the most germane decision with respect the Petitioners' request for intervention. Additionally, the Petitioners respectfully submit that their requests permitting 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.

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I. Standing

A. Overview of Standing Requirements

As correctly noted in the Staff's December 7th response, 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.

As the Staff correctly points out in its December 7th response, on 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'." *Hydro Resources* (I), *supra*, 47 NRC at 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 decision-maker. *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. As the Staff correctly points, 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 original 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 that, upon information and belief, mixes with the Chadron and/or Brule aquifers into which radioactive arsenic laden fluids has apparently leaked following "excursions" from CBR's ISL mining operations; and (3) her property values are adversely impacted by proximity to the CBR mine. Petition of Debra White Plume at A-1. See, attached Affidavit of Debra White Plume.

In light of the existing case law and, in particular, the Atomic Safety and Licensing Board's decision in *Hydro Resources* (I), there can little doubt that Ms. White Plume has met 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, the Staff repeatedly challenges Ms. White Plume's assertion regarding the dangers posed by the radon gas that has been emitted from CBR's ISL operations, and which 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, the Staff states that CBR's Application provides data which "demonstrates that doses [of radon] to the nearest residences from both the main and satellite facilities will be significantly less than the 100 mrem/yr public dose limit specified in 10 CFR 20.1301." TR at 7-32 (emphasis added). The Staff'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. In *HydroResources*, the mining

company seeking to establish an ISL operation, HRI, made a similar assertion with respect to the safety of the drinking water source which was adjacent to the proposed mining site. In summarily rejecting HRI's assertion, Judge Bloch stated that:

> 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 Hydro Resources, Inc.*, LBP-98-9 (Docket No. 40-8968-ML) at 11 (emphasis added).

In its December 7th response, the Staff also challenges Ms. White Plume's standing on the grounds that her allegations lack the requisite specificity to establish a "concrete and particularized" injury. Specifically, the Staff argues that Ms. White Plume fails to specify how the harms described in her original petition will occur, including (i) how radon gas will travel downwind from the site of CBR's operations to her residence, and (ii) how her drinking water on may mix with the Chadron aquifer or Brule aquifer. In rejecting Ms. White Plume's assertions, the Staff claims that her statements "contradict, without providing any basis, the statements in CBR's Application indicating that the Chadron Formation is a different aquifer than the High Plains Aquifer and that no reasonable mechanism for mixing has been identified due to the very low hydraulic conductivity of the confining layers between the Brule and Chadron Formations" (emphases added). Again, the Staff's arguments are based on a flawed articulation of the standard applicable to allegation of facts in a petition to intervene in a licensing amendment. CBR's assertions are not gospel simply because they are included in its application, and there is no basis in the applicable rules or regulations entitling the Staff to reject 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. *Hydro Resources* (I) at fn.20. In the *Hydro Resources* (I) case, 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 is inappropriate for the Staff 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 *Hydro Resources* (I): "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." *Ibid.* 47 NRC at 269.

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 Affidavit of Debra White Plume. Radon gas is admittedly a by product of CBR's ISL operations and admittedly released in to the air by its operations. Thus, it is reasonable to conclude that 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 application acknowledges that the geology and hydrology of the area connecting the Brule, Chadron and High Plains Aquifers is not completely understood. Again, the Staff's reliance on CBR's conclusory statements in its license application 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 claims. CBR's conclusory statement in its application that neither the Brule nor Chadron Aquifers mix with the High Plains Aquifer, and the Staff's bare reliance on that assertion in rejecting Ms. White Plume's concerns, is not altogether different than the argument that HRI made in the *HydroResources* case 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* (1) at 275.

The Staff also challenges White Plume's standing on the basis (i) that she fails to provide evidence that CBR's history of excursions has resulted in a release of radioactive constituents to underground sources of drinking water, and (ii) that she has not shown that her injury is fairly traceable to the challenged action because she has not shown a plausible basis for how airborne radon or allegedly contaminated groundwater from Crawford, Nebraska will travel approximately 60 miles to Manderson, South Dakota in a manner sufficient to cause her harm. Finally, the Staff argues that Ms. White Plume's alleged injuries derive from the existing Crow Butte operations and that her asserted basis for standing therefore does not show that the proposed North Trend expansion will create a "new and distinct harm, separate and apart from the continuing activities under the existing license and amendments. *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 218 (2001).

With respect to the Staff's assertion that Ms. White Plume has failed to provide evidence that CBR's history of excursions has resulted in a release of radioactive constituents to underground sources of drinking water, the Staff has, once again, applied the incorrect legal standard as the basis for summarily rejecting an otherwise valid and pressing concern. Under applicable case law and the Commission's rules and regulations, Ms. White Plume is not required to prove with scientific accuracy that CBR's past excursions contaminated underground sources of drinking water in order to establish standing. Rather, she must provide a plausible like between the proven 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] resulting in some 98 private wells closed on the Pine Ridge Reservation following the 1997 Chadron well-casing failure. See, attached Oglala Sioux Tribal Resolution 05-46. 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.

With respect to the Staff's assertion that Ms. White Plume has not shown a plausible

basis for how airborne radon or allegedly contaminated groundwater migrated from Crawford to Manderson, South Dakota in a manner sufficient to cause her harm, the Petitioners respectfully submit that the information set forth in the Petition is indeed sufficient to provide a plausible basis for the migration of airborne radon and contaminated groundwater from the CBR site to Pine Ridge. She lives north, north east of the proposed mining site, well in the path of winds carrying airborne contaminants. Other Owe Aku members live closer and more immediately downwind. See, Affidavit of Debra White Plume. The Staff's reluctance to accept Ms. White Plume's assertion that contaminated groundwater traveled from CBR's site to Pine Ridge appears to be grounded in its unwillingness to acknowledge the connection between the Brule and/or Chadron Aquifer and the High Plains Aquifer. Regardless, Ms. White Plume need only provide a "plausible" basis in order to establish standing, which has been provided in this case.

The Staff also argues that Ms. White Plume's alleged injuries derive from CBR's existing operation and that her asserted basis for standing therefore does not show that the proposed North Trend expansion will create a "new and distinct harm, separate and apart from the continuing activities under the existing license and amendments, as required by *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 218 (2001). This argument is specious for several reasons. First, Ms. White Plume is seeking to intervene in the license amendment application because the expansion of CBR's existing operations will arguably expose additional dangers from increased excursions, water contamination and radon levels. Second, to argue that the increased frequency and severity of excursions, water pollution and radon emissions resulting from an expansion of CBR's operations do not provide a permissible basis upon which to establish standing because they are not a "new and distinct harm, separate and apart from the continuing activities under the existing license and amendments" is nonsensical. If the Commission were to apply that standard to every existing nuclear reactor or materials site under its jurisdiction, no person would ever be able to establish standing with respect to an existing site or activity because the harm, no matter how egregious, by definition, would not be considered "separate and apart from the continuing activities under the existing license and amendments." The Petitioners respectfully submit that the increased water consumption contemplated by the license amendment, the increased frequency of accidents, excursions, radon and other pollution are indeed new and distinct harms.

The Staff also argues that Ms. White Plume lives too far from the North Trend site to establish standing. The Staff correctly points out that there is no presumption of standing based on proximity in a materials licensing case. However, as the staff acknowledges, 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." *Georgia Tech,* CLI-95-12, 42 NRC at 116 (citing *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 n. 22); *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). 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. In the present case, Petitioners respectfully submit that water contaminated with radioactive materials can indeed travel approximately 60 miles to the site of Ms. White Plume's residence, given the perceived connection between the Brule and/or Chadron Aquifers and the High Plains Aquifer.

Finally, the Staff argues in its response that Ms. White Plume does not addressed the standard for "proximity plus" standing: "a significant source of radioactivity producing an obvious potential for offsite consequences." *Georgia Tech*, CLI-95-12, 42 NRC at 116. The Staff argues that the material at issue in this license amendment—unenriched, natural uranium (yellowcake)— is not a significant source of radioactivity and that, consequently, there is no "obvious potential" for harm at property that is approximately 60 miles from the proposed operation. If, as the Staff asserts, unenriched, natural uranium (yellowcake) is not a significant source of radioactivity, one must question why it is so heavily regulated by the Commission. If "yellowcake" is harmless, why did Congress direct the Commission to regulate virtually aspect of the yellowcake production cycle pursuant to the Atomic Energy Act and other statutes?

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 a "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

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.

The NRC Staff contend in their Response to that the issues raised by Petitioners in Contention (Exhibit) A are immaterial, not adequately supported, or inadmissible. Petitioners respectfully disagree.

With regard to groundwater use, the NRC Staff challenge the Petitioners' use of the term "pristine" to describe the water being removed to be mined by CBR, but does not challenge either the amount (another 4500 gpm on top of 9,000 gpm currently), that this is greater than the recharge rate. While the NRC Staff seem comfortable with the notion that such water loss is "nominal," this seems inconsistent with the Environmental Report's conclusion 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.

Although acknowledging that the USGS study: "Ground Water Atlas of the United States; Kansas, Missouri and Nebraska," HA 730-D, states that "water levels in the High Plains aquifer have declined in some locations, and that 'average annual withdrawals from the aquifer generally are much larger than recharge to the aquifer from precipitation,'" the NRC Staff then encourages the Board disregard questions raised by these findings as germane to the proposed expansion project since they are not site specific, but encompass the geography. The Staff makes no attempt to cite reference to this issuing having been addressed and how it was satisfactorily resolved by CBR. It seems to ignore and not feel important the potential impact of the CBR expansion's contribution to further lowering of the aquifer.

The NRC Staff note 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." However, the Staff apparently feel that Petitioners' contentions regarding the returning radioactive and chemically altered, heavy metal wastewater solution to the aquifer are not germane to issues before the Board, since CBR "'is committed'" by its Application "to return[ing] the groundwater to the restoration values set by the NDEQ in the Class III UIC Permit'."

According to the USGS, of concern are the "common" radioactive constituents:

> [W]hich may be mobilized by uranium ISL mining, including uranium, thorium, radium, radon, and their respective daughter products. Trace

elements of concern with respect to water quality include arsenic, vanadium, zinc, selenium, molybdenum, iron, and manganese (Kasper et al, 1979).

"Consideration of Geochemical Issues in Groundwater Restoration at Uranium In-Situ Leach Mining Facilities, NUREG/CR-6870 (USGS), p. 1-2. Indeed, in-situ mining has a recognized tendency "to contaminate the groundwater." *Ibid*, p. iii. For example, pursuant to the USGS Study, in 2000, while the baseline water quality for Radium-226 was 229.7 pCi/L, the "Post-Restoration Average" was 246.7 pCi/L. For uranium, there was a ten-fold increase after "restoration" from .092 mg/L to .963 mg/L. Arsenic also had a ten fold post-restoration level of .024 mg/L from a base-line of .002. Mg/L. Vanadium went from a pre-mining level of .066 mg/L to .26 mg/L. *Ibid*, Table 5, p. 21.

Thus it is not surprising that the immediately affected part of the aquifer involved in the CBR mining operation is required to be exempt from the standards under the Clean Water Act. "[T]here is no mechanism in EPA or NDEQ regulations to 'unexempt' an aquifer. Therefore, the groundwater in the immediate mining area will never be used as a USDW." ER 3.11.1.2. The NRC Staff apparently does not consider this to be "water depletion" or contamination and thereby rejects Petitioners' allegations.

The NRC Staff then dispute 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 this is of no concern, there is no hydrological connection between the Arikaree Aquifer and the Brule Aquifer. It ignores the ER's listing of some causes of possible excursion of uranium and other heavy metals in the re-injection of mine wastewater, 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.

The NRC Staff in its Response denigrates Petitioners' 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. For the Staff, this is not a problem since CBR in its Application states that this is a "low-hazard seismic area. Again, there is reliance on the company wanting to mine and profit from the operation, rather than independent oversight by a primary federal agency charged with protecting the health and safety of the public and the Earth from in-situ mining operations.

Indeed, the NRC Staff challenges Petitioners' contention that "the water from the Basal Chadron Formation at North Trend mixes with the Brule Formation." Response, p. 28. This despite the statement in the ER [3.4.3.3] that the "exact definition of the 'overlying aquifer' at the North Trend is somewhat difficult to determine." And, the CBR Technical Report (TR) 2.6.2.5, concluded that "the Upper Chadron/Lower Brule may be considered a single confining interval. See, also TR 2.6.2.8. Again, the Staff wants to minimize the area being examined and studies which treat the Chadron and Brule aquifers as essentially one and that "[f]ractures may increase Brule and Chadron permeability in localized areas. (Souders, 2004)." ER 3.4.3.1. It also fails to acknowledge that "[r]egional data regarding flow in the Basal Chadron are limited" and additional tests are necessary. ER 3.4.6.

Thus, the Staff reject any of Petitioners' concerns related to an area 80 km from the site and/or including the 174,000 sq. miles of the High Plains aquifer, claiming such is irrelevant absent evidence of intermixing, despite the potential effects of seismic and other fracturing faults, and the lengthy drought affecting the area.

In various references in its Response, the NRC Staff want the Board to be only site specific in its review of the expansion application, as though when pumps are turned off, or fail to contain the uranium wastewater and the natural flow of the aquifer takes over (or continues), there will be no possibility of intermixing. It wants to ignore unknowns within the stated expansion area. As required by Chapter 10, Appendix A to Part 40:

> The general goal or broad objective in siting and design decisions is permanent isolation of tailings and associated contaminants by minimizing and dispersion by natural forces, and to do so without ongoing maintenance.

The NRC Staff do 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. Thus, more information needs to be obtained to determine potential water quality/quantity impacts by the proposed expansion project.

The NRC Staff further ignore 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, the Staff's reliance on 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. Indeed, the dangerously high levels of uranium in the drinking water of some 26 Nebraska communities has, in part, resulted in the Nebraska Indian Commission recently calling for a public hearing on CBR's Application. See, "Uranium Levels Too High in 26 Nebraska Towns," by Tracy Overstreet, The Independent.com (Dec. 18, 2005).

What is known through an Indian Health Service study of the water in wells on the Pine Ridge Indian reservation have extra-ordinary levels of arsenic, including several wells on the southern Reservation border, north, northeast of the CBR mine site and proposed expansion. See, "Arsenic Levels of Individual Scattered Home Sites, Pine Ridge Reservation," by Anthony G. Kathol, P.E., Environmental Engineer Consultant, Indian Health Service, attached hereto as an exhibit.

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.

Additionally, Petitioners' contentions regarding the potential impact of radon gas releases based on the potential pathways of exposure contained in ER 4-36 and Figure 4.12-1are rejected by the NRC Staff as only "impacts to humans" which "could occur," and "does not 'show[] ingestion of meat, air, dust, water would cause health impacts to residents...within 80 km radius from the site." Response, p. 39. This ignores the common reality that with 20 km/hr winds, radioactive dust, including radon, could reach Petitioner White Plumes residence within four hours. *Hydro Resources* (I), *supra*, recognized that inadequate air emissions control was a germane issue for adjudication. *Ibid,* 47 NRC at 282.

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 protects 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:

The NRC Staff, other than a general resistance, does not address Petitioners' request for discretionary intervention.

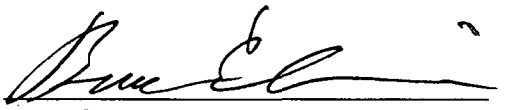
CONCLUSION

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 24th day of December, 2007.

Respectfully submitted,



BRUCE ELLISION
P.O. Box 2508
328 E. New York Street
Rapid City, SD 57709

Attorney for Debra White Plume and Owe Aku

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	)	
	)	

AFFIDAVIT OF DEBRA WHITE PLUME

STATE OF SOUTH DAKOTA)
) **SS:**
COUNTY OF PENNINGTON)

DEBRA WHITE PLUME, being duly sworn deposes and says:

I am a Petitioner in the above-entitled action and make this Affidavit in support of my standing and contentions, to supplement the Petition I filed in this matter.

I and my family live approximately 60 miles to the north, north-east of the CBR mining site and proposed expansion. Our family home, my computer, and all my files and belongings were completely destroyed in a house fire on December 20, 2007. Just taking care of my family after this tragedy has prevented me obtaining affidavits from several Owe Aku members who live just miles from the CBR mining operation and proposed expansion sites. With an extension of time, I can obtain such affidavits from Owe Aku members on the issue of the Organizations standing in this matter.

I and my family breath the air around our home and land. From life-long experience living in this area, I am aware that the winds blow from all directions, including from the south and sometimes the southeast. Contaminated wind from the CBR site and proposed North Trend operation, blowing at 15 miles an hour, not an unusual occurrence, can reach

my family land within four hours. I and my family will therefore be exposed to increased radon levels resulting from the expansion of the existing operations;

Radon gas has been detected in the vicinity of my residence, as shown by tests conducted on homes in nearby Sharp's Corner. Unfortunately, the documentation of the radon gas studies at Sharp's Corner residences was lost in the fire.

My family draws water from an aquifer on our land that, upon information and belief, mixes with the Chadron and/or Brule aquifers into which radioactive arsenic laden fluids has apparently leaked following "excursions" from CBR's ISL mining operations.

Any lowering of water tables or contamination of water will make the land less valuable for the farming and ranching operation and my property values are adversely impacted by proximity to the CBR mine and the proposed expansion.

The area where CBR is mining and proposes to expand its mine is within the 1851 and 1868 Ft. Laramie Treaty boundaries of which my ancestors, including Red Cloud, signed on behalf of the Lakota. It is also of historical significance to me and my family due to the murder of Crazy Horse in the relatively immediate area and the escape by my Cheyenne ancestors from Ft. Robinson. Also, my grandsons participate in the Crazy Horse Memorial Ride each year which goes through the area of the CBR site. If my grandsons cannot ride through the area due to the proposed expansion, it will interfere with their spiritual teachings.

My family also goes fishing in the White River, which drains from the project area and then flows through the Pine Ridge Reservation. If this River is contaminated, we will lose valuable fishing rights.

The proposed expansion area is also where my family gathers eagle feathers for ceremonial uses. I am concerned that the expansion will scare the eagles away and interfere with our religious practices thereby.

Debra White Plume

DEBRA WHITE PLUME

Sworn and subscribed to this 28th day of December, 2007.

Notary Public

My Commission Expires: 3-16-2009

(SEAL)

SEAL MURL L. WOODS NOTARY PUBLIC State of South Dakota SEAL

Arsenic Levels of Individual Scattered Home Sites
Pine Ridge Reservation
Shannon, Jackson, Bennett Counties, South Dakota

By
Anthony G. Kathol, P.E.
Environmental Engineer Consultant
Indian Health Service (IHS)

Introduction

During the summer of 2005, IHS Martin Field Office staff performed a file search of 1180 homes with individual private wells. The search was to gather data to determine the effect the new arsenic rule would have on the number of individual private wells that are kept on record at the Martin Field Office. Arsenic poses a lifetime exposure risk that is measured by 70-years of drinking two liters of water per day plus dietary sources of arsenic.

Investigative Research

The file search focused only on wells that were drilled by the Indian Health Service located within the Pine Ridge Indian Reservation dating from 1969 to July 2005 and based on records that were available at the time of the search. Arsenic results that were reviewed were strictly those that were made available in the homeowner files at the time of the record search. The IHS did not perform any follow up re-sampling for those wells which were identified to exceed the new EPA maximum contaminant level (MCL). Arsenic concentrations may have gone up or down over the years as a result of years of pumping. It is recommended that the wells be retested to confirm the validity of the water quality data, especially for the wells that were analyzed under the old (pre-1994) EPA analytical method for testing of arsenic.

Because the new MCL set under the Safe Drinking Water Act for arsenic is 10 ppb (effective January 23, 2006), on behalf of the Tribe, the IHS was interested in determining the following:

1. Number of homes affected by the new drinking water standard for arsenic
2. Capability of predicting where the "hot zone" of arsenic was located within the reservation boundaries and at what depths within the Arickaree Aquifer.
3. To educate the tribe on the health effects associated with arsenic and to address the issue for those homes with high levels of arsenic in drinking water.
4. To begin identifying funding and establish priority with regards to the Mini Wiconi Project by extending water service connections to the affected homes with high levels of arsenic.

Note: Enforcement of the new MCL for arsenic applies only to public water systems and does not apply to individual (private) drinking wells; however, in the best of interest of public health,

the IHS defers to the EPA MCLs as guidelines when examining water quality data when drilling private water wells for individual home owners.

Conclusion

Based on the file search, the Indian Health Service Martin Field Office concluded that 123 water wells would be affected by the new arsenic level of 10 ppb. Prior to the new arsenic rule going into effect, there were 9 homes that were above the 50 ppb MCL level for arsenic, which is approximately a 10% increase in MCL violation because of the new arsenic rule change.

Out of the 123 wells identified in the file search, 25 were either no longer operational or abandoned in place because the home site received a water service connection to a community water system or the site had been abandoned by a deceased home owner.

Recommendations

IHS has taken a proactive approach and the Tribe was advised to explore a satisfactory resolution to the issue of how to provide water to homes with marginally high arsenic levels. Upon completing the file search, IHS field staff located the water wells with high arsenic using a GPS to identify the "hot zones" within the reservation. Staff members were able to locate a majority of the wells. See attached map and tables with corresponding ID numbers summarizing arsenic results in the individual private wells.

As a short term resolution, the Indian Health Service approached the Tribe and it was decided to install individual Point of Use (POU) devices for the removal of the arsenic. The POU is an NSP Certified filter cartridge with an inline sediment filter and meter to be installed under the kitchen sink with a faucet to obtain the filtered water. Refer to attachment. The meter regulates the amount of flow through the tap that will automatically shut off the POU. Once the POU device is shut off, the home owner is required to remove the contaminated filter from the cartridge and replace it with a new cartridge filter. The contaminated filter cartridge can be properly disposed by placing it in the trash.

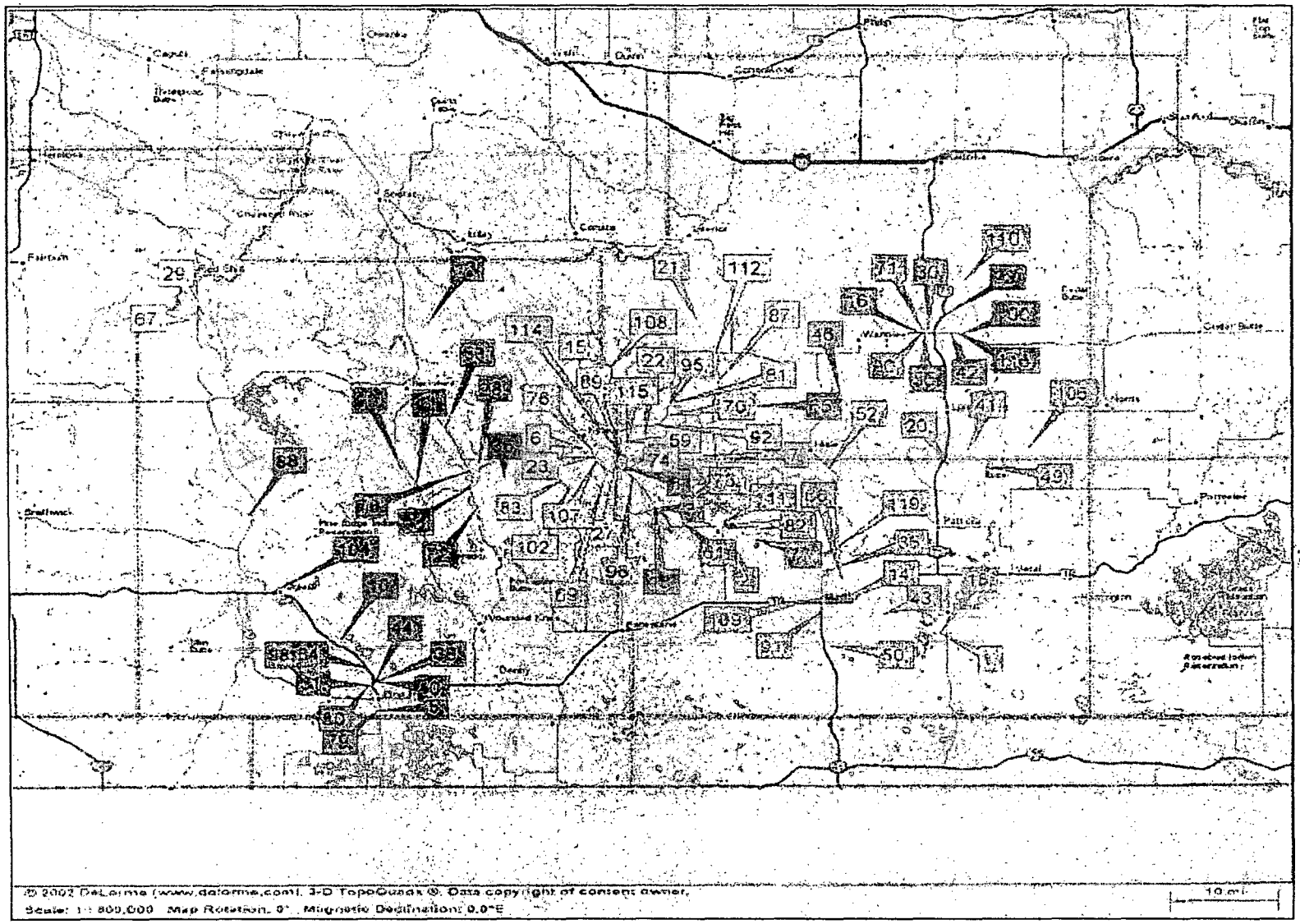
The IHS currently has a work order where 9 homes are currently to have installed a POU device. Many home owners with high levels of arsenic have opted out of the POU pilot installation program because of the undue burden of maintenance and costs associated with the replacement filter for the POU device. The cost to install one POU is $1000 and the cost to operate and maintain the POU is $85 annually. The POU device will remove arsenic from approximately 900 gallons of raw water run through the tap at the kitchen sink prior to disposal and replacement of the arsenic filter unit. The Indian Health Service pilot program currently provides a two-year supply of replacement filters for the POU user. After two years the homeowner will be responsible for the purchase of the filter units (Currently at $85 per unit). One home located on No Flesh Road has one POU device installed.

In the long term, the IHS will continue to propose short water service main extensions and laterals from the Mini Wiconi Project core line managed by Oglala Sioux Rural Water Supply System (OSRWSS) to homes affected with high arsenic in their private wells. Because of the

costs involved and annual maintenance of a POU device, a water main extension will provide the necessary water to the affected home without any maintenance required by the home owner. Homes with wells high in arsenic could either be abandoned or be used for irrigation or livestock purposes.

Kyle-No Flesh Road Proposed Water Main Extension Project

One project of particular interest to the Tribe and the IHS is the No Flesh Road Water Main Extension Project. This project would extend a 12-inch water main from the Kyle community water system east 2.2 miles to the intersection of No Flesh Road and then run a 6-inch water main south parallel No Flesh Road 5.5 miles, serving homes along the proposed alignment. See attached drawing of proposed alignment. This project would provide first time community water service to 49 homes on individual private wells, of which 7 of the homes have recorded high levels of arsenic exceeding the MCL of 10 ppb. The Kyle to No Flesh Road area appears to have the highest density of homes with individual private wells that exceed the new MCL for arsenic. Note: It is expected that more homes may have high levels of arsenic if further testing was done. Funding for this project is estimated at $1,056,500. This project has recently become a priority of the Oglala Sioux Tribe. Currently, this project is on the IHS Sanitation Deficiency System (SDS) unmet needs list with a total score of 30, which is unlikely to receive IHS funding in the short term unless other matching sources of funding are made available. Refer to attached SDS narrative.



Map of homes on Pine Ridge Reservation with High Levels of Arsenic in Excess of 10 ppb (Based on IHS Inventory File Search Performed June/July 2005). Color coded numbers above correspond to home site location identified in tables below under table heading "Map ID".

Chief Oliver Red Cloud
Black Hills Sioux Nation Treaty Council
PO Box 846
Pine Ridge, SD 57770

27 December 2007

Office of the Secretary
U.S. Nuclear Regulatory Commission, 16th. Flr.
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Hau: (Greetings in the Lakota language)

The Crow Butte Resources, Inc. North Trend Uranium Mine Expansion planned for the Crawford, Nebraska, Dawes County area, is located within Ft. Laramie Treaty Territory.

The United States government entered into the 1868 and 1851 Ft. Laramie Treaties with our ancestors. A Lakota organization Owe Aku (Bring Back the Way in the Lakota language) based on the Pine Ridge Reservation is seeking a hearing regarding this proposed uranium mine expansion that is within our Treaty Territory as part of their work in protecting and preserving Treaty Rights and Human Rights.

The Oglala Lakota Oyate (people, nation) deserve to be heard as the wind blows over our land from the direction of where CBR plans to put the North Trend Uranium Mine and the water flows to our land from that direction and the groundwater beneath us is also under the area where the planned mine will be located.

Our ancestor Crazy Horse was killed in that area, our people have ancestral, sacred, historical, and spiritual relationship to that part of Mother Earth and it deserves to be protected and preserved and Owe Aku has a right to be heard at a hearing regarding this proposed North Trend Uranium Mine Expansion.

Next page, please...

The Black Hills Sioux Nation Treaty Council took action to declare our Treaty Territory nuclear free, I have attached the document for your convenience.

Ho, hecetuyelo. (It is so, in the Lakota language).

Chief Oliver Red Cloud
Black Hills Sioux Nation Treaty Council

Attest, Notary Public

My commission expires on 11 day of May 2010.

BLACK HILLS SIOUX NATION TREATY COUNCIL
RESOLUTION REGARDING Uranium Mining and Sacred Water
WITHIN THE BOUNDARIES OF THE
1851 & 1868 FT. LARAMIE TREATY TERRITORIES

Whereas, the 1851 & 1868 Ft. Laramie Treaties are the Supreme Law of the Land, entered into by our ancestors and their Allies to protect our freedom and sovereignty, our land, air, water, all of natural creation as well as our people and our future generations.

Whereas, The territorial relationship of the Great Sioux Nation to the land of the 1851 & 1868 Ft. Laramie Treaties predates the Congress of the United States, the Indian Reorganization Act Tribal Governments, and the Bureau of Indian Affairs. It is the responsibility of the Black Hills Sioux Nation Treaty Council to actively protect and preserve Treaty Territory and the integrity of our relationship to these Territories and to the 1851 & 1868 Ft. Laramie Treaties.

Whereas, the Black Hills Sioux Nation Treaty Council believes it is necessary to actively protect and preserve the environment of the 1851 & 1868 Ft. Laramie Treaty Territory and the health of the tribal membership and all living natural creation, including the groundwater source of drinking water.

Therefore Be It Resolved, that the Black Hills Sioux Nation Treaty Council stands forever opposed to the mining of Uranium within the boundaries of the 1851 & 1868 Ft. Laramie Treaties and declares this Territory to be a Nuclear Free Zone and requires all BHSNTC member delegates' Indian Reorganization Act Tribal Governments to enact Tribal Legislation and Laws to support this Resolution and to develop and fund endeavors which will protect this Territory, Treaty Rights, and our environment, people, and coming generations.

Be It Further Resolved, that the Black Hills Sioux Nation Treaty Council forever opposes, within the boundaries of the 1851 & 1868 Ft. Laramie Treaties, the In Situ Leach Mining of Uranium, also known as In Situ Leach Recovery, as it poses significant environmental and health risks and involves injecting various substances into the aquifer as part of the extraction process and requires all of its membership delegates to work together to oppose In Situ Leach/Recovery Mining including the Crow Butte Resources, Inc. Uranium Mine and its expansion plan, the Powertech Uranium Mine, the Neutron Uranium Mine and any other Uranium mining projects that may arise in order to protect our respective landholdings and the sacred Black Hills area.

Be It Further Resolved, that any future exploration, drilling, testing, and mining must be thoroughly scrutinized and investigated by the Black Hills Sioux Nation Treaty Council prior to any such entity gaining through any IRA Governments approval in our Territory: residence within our boundaries; hiring of any tribal member; development or any draft contracts and/or agreements, pilot projects, fundraising endeavors, or any such action which may in any manner or method impact the environment, natural creation, and people within our boundaries.

October 14, 2007 CONSENSUS DECISION:

ORDINANCE NO. 07-40

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

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL ENACTING THE OGLALA SIOUX TRIBE NATURAL RESOURCES PROTECTION ACT OF 2007.

WHEREAS, the Oglala Sioux Tribe has 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 (25 U.S.C. § 476), and under Article IV of the Oglala Sioux Tribe Constitution the Oglala Sioux Tribal Council is the governing body of the Pine Ridge Indian Reservation, and

WHEREAS, the Oglala Sioux Tribal Council is vested with authority "to protect and preserve the natural resources of the Tribe, and to regulate the use and disposition of property upon the reservation" under Article IV, Section 1(m) of the Oglala Sioux Tribal Constitution, and (n) "to protect the health and general welfare of the Tribe", and

WHEREAS, the purpose of the Oglala Sioux Tribe's Natural Resources Protection Act of 2007 is to ensure that no damage will come to the people, the culture, the environment, including the air and water, and economy of the Oglala Sioux Tribe because of uranium mining or processing in the region of the Upper Midwestern United States, and

WHEREAS, the Oglala Sioux Tribal Council finds that the wise and sustainable use of the Natural Resources traditionally has been and remains a matter of paramount governmental interest to the Oglala Sioux Tribe and a fundamental exercise of Oglala Sioux Tribal sovereignty, and

WHEREAS, the Oglala Sioux Tribal Council supports preserving and protecting all of the natural resources within the confines of the Pine Ridge Indian Reservation especially the air, water, and earth as these resources are the foundation of life, and

WHEREAS, the Oglala Sioux Tribal Council affirms that it is the duty and responsibility of the Oglala Sioux Tribe to protect and preserve the natural world in its purest form for the life of future generations, and

WHEREAS, the Oglala Sioux Tribal Council upholds the right and freedom of the people to be respected, honored and protected with a healthy physical and mental environment, and

WHEREAS, the Oglala Sioux Tribal Council finds that there is a reasonable expectation that future mining and processing of uranium in the region of the Upper Midwestern United States will generate

economic hardships to the Oglala Sioux Tribe. These economic hardships include but are not limited to the potential damage to the land, air, water, vegetation, and other natural resources of the Oglala Sioux Tribe, now

THEREFORE BE IT ORDAINED, that the Oglala Sioux Tribal Council does hereby declares the Pine Ridge Indian Reservation, including it aboriginal territory boundaries to be a nuclear-free area for the protection of the people and the Natural Resources of the Oglala Sioux Tribe. Any person, agency or entity, including federal, state, and county governments, or corporations, businesses, or companies who shall cause any nuclear pollution or contamination to enter the confines of the Pine Ridge Indian Reservation, including its 1851 & 1868 Treaty boundaries and aboriginal territory boundaries, shall be prosecuted to the fullest extent of the law.

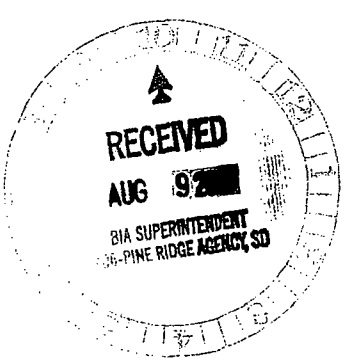
C-E-R-T-I-F-I-C-A-T-I-O-N

I, as the undersigned Secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe hereby certify that this Ordinance was adopted by the vote of: 16 for; 0 against; 0 abstaining; 1 not voting during a REGULAR SESSION held on the 7th day of AUGUST 2007.

ELIZABETH WATERS
Secretary
Oglala Sioux Tribe

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

JOHN W. YELLOW BIRD-STEELE
President
Oglala Sioux Tribe



RESOLUTION NO. 05-46

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

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL DECLARING AN EMINENT THREAT ON ALL INDIVIDUAL SERVICES PROGRAM (PL 86-121) WELLS AND ALL COMMUNITY WATER WELLS DRILLED WITH INDIAN HEALTH SERVICE OFFICE OF ENVIRONMENTAL HEALTH CONTRACT DOLLARS WHICH FAILED TO MEET THE ENVIRONMENTAL PROTECTION AGENCY'S NATIONAL PRIMARY DRINKING WATER STANDARDS AND ARE ABOVE THE RECOMMENDED MAXIMUM CONTAMINANT LEVEL (MCL) IN AREAS OF GROSS ALPHA PARTICLE ACTIVITY LEVEL, (RADIONUCLIDE) AS WELL AS EVIDENCE OF ARSENIC WHICH DO NOT MEET THE ENVIRONMENTAL PROTECTION AGENCY'S PRESENT SAFE DRINKING WATER STANDARDS AS WELL AS THE NEW STANDARDS WHICH WILL TAKE EFFECT IN 2006.

WHEREAS, the Oglala Sioux Tribe has adopted it's Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476) and under Article IV of the Constitution, the Oglala Sioux Tribal Council is the governing body of the Pine Ridge Indian Reservation, and

WHEREAS, recently there has been letters sent out from the Indian Health Service-Office of Environmental Health, Martin Office to some Tribal Members notifying them of the dangers to their drinking water drilled by contractors from the Indian Health Service-Office of Environmental Health, and

WHEREAS, there are some concerns from the members of the Oglala Sioux Tribe Health and Human Services Committee about these letters and the lack of safety considerations in place prior to hook-up to individual homes by the contractors and the Indian Health Service-Office of Environmental Health, and

WHEREAS, because of the negligence in the process of testing for safe drinking from these wells, a number of tribal members may have become ill, now

THEREFORE BE IT FURTHER RESOLVED, that the Oglala Sioux Tribal Council does hereby declare an Eminent Threat on all Individual Service Programs (PL 86-121) Wells and all community water wells drilled with Indian Health Service-Office of Environmental Health contract dollars which failed to meet the current Environmental Protection Agency National Primary Drinking Water Standards and are above the recommended Maximum Contaminant Level (MCL) in areas of Gross Alpha Particle Activity Level, (Radionuclide) as well as evidence of arsenic which do not meet the Environmental Protection Agency's present safe drinking water Standards as well as the new standards which will take effect in 2006, and

BE IT FURTHER RESOLVED, that the Oglala Sioux Tribal Council directs the Aberdeen Area Indian Health Service-Office of Environmental Health to plan and establish a safe drinking water testing process prior to hook-up of all future water wells under the Individual Services Program (PL 86-121) and to meet with individual Tribal members and communities who's wells are not fit for consumption in order to resolve this issue.

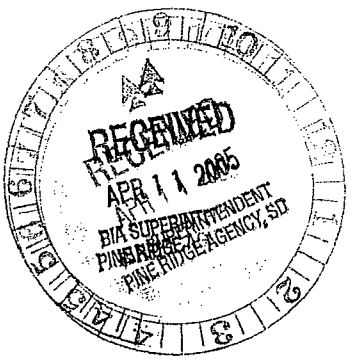
C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe hereby certify that this resolution was adopted by the vote of: 17 FOR; 0 AGAINST; 0 NOT VOTING during a REGULAR SESSION held on the 7TH day of APRIL 2005.

RHONDA J. TWO EAGLE
Secretary
Oglala Sioux Tribe

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

CECELIA J. FIRE THUNDER
President
Oglala Sioux Tribe



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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "REPLY TO NRC STAFF 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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E-Mail: AMY@nrc.gov

Judge Fred W. Oliver **
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