

RAS 14901

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

DOCKETED
USNRC

January 7, 2008 (8:30am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

CROW BUTTE RESOURCES, INC.
(In Situ Leach Facility, Crawford, Nebraska)

Docket No. 40-8943

ASLBP No. 07-859-03-MLA-BD01

December 14, 2007

APPLICANT'S, CROW BUTTE RESOURCES, INC., RESPONSE TO AFFIDAVITS

The Applicant, Crow Butte Resources, Inc. (CBR), hereby responds to certain Affidavits filed herein as follows:

Procedural Background

Counsel for Thomas K. Cook, Slim Buttes Ag. Dev. Corp, and Western Nebraska Resources Council (WNRC) at the Licensing Board December 18, 2007, telephone conference requested leave of the Licensing Board to file Affidavits regarding identifying type information pertinent to organizational standing. (See December 18, 2007, telephone conference transcript, p. 44, line 14 to p. 47, line 24).

The request for leave to file narrowly defined Affidavits was granted by the Licensing Board. The NRC staff and Applicant were granted until January 4, 2008, to respond to such Affidavits. This is the response of the Applicant, CBR.

TEMPLATE = SECY-018

SECY-02

**Thomas K. Cook Affidavit
(Regarding Slim Buttes Agricultural Development Corporation)**

1. CBR does not object to paragraphs 1, 2, and the first sentence of paragraph 3 of Mr. Cook's Affidavit.

2. The second sentence of paragraph 3 of his Affidavit suggests Mr. Cook is an employee of Slim Butte Ag Development Corp, rather than having a membership status in the Slim Butte Ag Development organization.

3. With respect to paragraph 4 of the Cook Affidavit, the Affiant states that Slim Butte Ag Development has in the past established wells for other parties not involved in this action. As such no present organizational interests of Slim Butte Ag Development are alleged or demonstrated.

4. Paragraphs 5 and 6 of Mr. Cook's Affidavit addresses religious or cultural practices in which Mr. Cook claims to participate. There is no relationship whatsoever shown between Slim Butte Ag Development and Mr. Cook's religious practices. Paragraphs 5 and 6 of the Cook Affidavit should be stricken or disregarded as they do not have any relevance to the issue of standing of Slim Butte Ag Development

**Dr. Francis E. Anders Affidavit
(Regarding Western Nebraska Resources Council)**

1. CBR does not object to paragraphs 1, 2, 3, and 4 of Dr. Anders' Affidavit.

2. Paragraphs 5, 6, 7, and 8 are objected to for the reason they purport to claim water quality issues resulting from CBR's current mining activities. Paragraphs 5, 6, 7, and 8 set forth no information that is relevant to CBR's North Trend Expansion Area application or the standing of Western Nebraska Resources Council to intervene.

3. CBR's concerns regarding these Affidavits was clearly expressed at the December 18, 2007, telephone conference. Specifically objection was noted for statements that went beyond identifying information and particularly statements that were argumentative in nature. It was expressly represented that the proposed Affidavits would not be argumentative (Transcript of telephone conference of December 18, 2007; p. 46, lines 9-22).

4. Paragraphs 5, 6, 7, and 8 of Dr. Anders' Affidavit should be stricken or disregarded by the Licensing Board panel.

**Joseph R. American Horse, Senior Affidavit
(Regarding Slim Buttes Agricultural Development Corporation)**

1. CBR does not object to paragraphs 1, 2, and 3 of Joseph R. American Horse, Senior's Affidavit.

2. With respect to paragraph 4 of Mr. American Horse's Affidavit, it states that Slim Butte Ag Development has previously established wells for parties not involved in this action. As such, no current organizational interests of Slim Butte Ag Development are demonstrated.

3. Paragraphs 5 and 6 of Mr. American Horse's Affidavit address religious or cultural practices in which Mr. American Horse claims to participate. There is no relationship whatsoever shown between Slim Butte Ag Development and Mr. American Horse's religious practices. Paragraph's 5 and 6 of the American Horse Affidavit should be stricken and/or disregarded as they do not have any relevance to the issue of standing of Slim Butte Ag Development

4. The allegations in the American Horse Affidavit at paragraph 7 sets forth conclusory statements regarding alleged water rights the resolution of which is beyond the jurisdiction of the Nuclear Regulatory Commission and thus should be stricken.

**Bruce McIntosh Affidavit
(Regarding Western Nebraska Resources Council)**

1. CBR does not object to paragraphs 1, 2, 3, 4, and 5 of the McIntosh Affidavit.

2. Paragraph 6 of the McIntosh Affidavit purports to incorporate an alleged portion of some type of study. To the extent paragraph 6 is understandable, it does not present any information that is relevant to the issue of the standing of Western Nebraska Resources Council to intervene in this matter and thus should be disregarded and/or stricken.

3. CBR objects to paragraph 7 of the McIntosh Affidavit for the reason it lacks any foundation and lacks any relevancy with respect to the issue of standing of Western Nebraska Resources Council to intervene in this matter. As is such, it should be stricken and/or disregarded.

**Deborah White-Plume Affidavit
(Personal Intervention)**

1. Ms. White-Plume's Affidavit is not identified as being in support of any organization's standing to intervene. As such it is beyond the leave to file affidavits as requested by the Petitioners and granted by the Licensing Board panel.

2. Ms. White-Plume's Affidavit does not address specific identification types of information, but rather is speculative and conjectural as well as irrelevant.

3. For the foregoing reason, Ms. White-Plume's Affidavit should be stricken and/or disregarded.

Respectfully Submitted,

CROW BUTTE RESOURCES

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "APPLICANT'S, CROW BUTTE RESOURCES, INC., RESPONSE TO AFFIDAVITS" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail and by electronic mail as on this 4th day of January 2008:

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