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NUCLEAR REGULATORY COMMISSION

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Title: Crow Butte Resources, Inc.
Pre-hearing Conference

May 14, 2008 (11:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 40-8943-MLA

Location: (telephone conference)

Date: Thursday, May 8, 2008

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Pages 1-22

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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IN THE MATTER OF: :
CROWE BUTTE RESOURCES, INC. : Docket No.
: 40-8943-MLA
In-situ leach Uranium Recovery :
Facility, Crawford, Nebraska :
(License Amendment for the North :
Trend Expansion Area) :

-----X

Thursday, May 8, 2008

The above-entitled matter came on for
prehearing conference, pursuant to notice, at 2:00
p.m., via phone.

BEFORE:

ANN MARSHALL YOUNG, Chair, Administrative

Judge

RICHARD F. COLE, Administrative Judge

FREDERICK W. OLIVER, Administrative Judge

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1 APPEARANCES:

2 On Behalf of ASLBP:

3 BRADLEY W. JONES, ESQ.

4 ANDREA Z. JONES, ESQ.

5 MARCIA J. SIMON, ESQ.

6 of: Office of the General Counsel

7 Mail Stop - O-15 D21

8 U.S. Nuclear Regulatory Commission

9 Washington, DC 20555-001

10
11 On Behalf of Crowe Butte Resources, Inc.:

12 MARK D. McGUIRE, ESQ.

13 of: McGuire and Norby

14 605 South 14th Street, Suite 100

15 Lincoln, Nebraska 68508

16 TYSON SMITH, ESQ.

17
18 On Behalf of the Oglala Sioux Tribe:

19 ELIZABETH LORENA, ESQ.

1 APPEARANCES (CONT.)

2 On Behalf of Thomas Kanatakeniate Cook, Slim Buttes
3 Agricultural Development Corp., and Western Nebraska
4 Resources Council:

5 DAVID C. FRANKEL, ESQ.

6 Post Office Box 3014

7 Pine Ridge, South Dakota 57770

8
9 ALSO PRESENT:

10 Larry Dion for Crowe Butte

11 Stephen Cohen, Project Manager

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P-R-O-C-E-E-D-I-N-G-S

2:08 p.m.

1
2
3 JUDGE YOUNG: Hello. This is Judge
4 Young.

5 We apologize. Our contractor was not up
6 to snuff this morning.

7 Do we have all parties on?

8 MS. JONES: Yes, Judge. Andrea Jones
9 from the NRC staff is here.

10 MS. LORENA: Elizabeth Lorena for OST.

11 MR. McGUIRE: Mark McGuire Crowe Butte.

12 MR. FRANKEL: David Frankel, WNRC.

13 MR. SMITH: Tyson Smith for Crowe Butte
14 is here as well.

15 JUDGE YOUNG: Okay. And do we have the
16 court reporter?

17 COURT REPORTER: Yes, Your Honor.

18 JUDGE YOUNG: Okay. Very good.

19 MR. FRANKEL: I believe we're missing
20 Mr. Ellison, but I know a little of his schedule. I
21 hope he'll join us. He didn't tell me otherwise.

22 JUDGE YOUNG: Pardon?

23 MR. FRANKEL: I said we're missing Mr.
24 Ellison for Owe Aku and Ms. White Plume.

25 JUDGE YOUNG: We did not receive an

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1 email from him. We assumed that you were speaking on
2 his behalf since you had mentioned Ms. White Plume
3 and Owe Aku.

4 MR. FRANKEL: I will do my best, Your
5 Honor. I said I only know just a bit about Mr.
6 Ellison's schedule. But I'll do my best and,
7 hopefully, it won't interfere with what the Judge
8 and everybody needs for scheduling.

9 JUDGE YOUNG: Well, let me ask you two
10 questions. First, the two weeks that we appear to be
11 looking at now are the dates July 15th to the 17th
12 and July 22nd through the 24th. Can you schedule
13 for him during that time period?

14 MR. FRANKEL: I believe so. And I guess
15 I can --

16 JUDGE YOUNG: If not, can you call him
17 on a separate line and get him to call in?

18 MR. FRANKEL: I'll do that right now,
19 Your Honor.

20 MR. MCGUIRE: Judge, this is Mike
21 McGuire.

22 If you wanted to move us along while
23 we're waiting. Tyson, correct me if I'm wrong but
24 in terms of Crowe Butte I think either of those two
25 in July, July 16th or July 22nd would work for us.

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1 MS. LORENA: They work for OST, too.

2 MR. DION: This is Larry Dion. I'm on
3 for Crowe Butte.

4 We have an NRC inspection scheduled for
5 the week of July 14th.

6 JUDGE YOUNG: Hello? Who just joined
7 us, please? Hello? Did we lose everyone?

8 ALL No.

9 MS. JONES: I know David was on the cell
10 phone, Your Honor. It's possible we may have lost
11 him.

12 JUDGE YOUNG: Well, we just heard a
13 beep.

14 Okay. So we have staff counsel? Yes,
15 staff counsel?

16 MS. JONES: Oh, yes. Yes. I'm here.
17 Andrea Jones.

18 JUDGE YOUNG: And we have Crowe Butte
19 counsel. I just hear Mr. McGuire.

20 And Mr. Smith, you're there right?

21 MR. SMITH: That's correct.

22 MS. JONES: And, Judge, I also have with
23 me just to let everyone know, Stephen Cohen the
24 Project Manager is also in here with me with his
25 calendar.

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1 JUDGE YOUNG: Okay. Mr. Frankel, do we
2 still have you? It sounds like he's the one we
3 lost. Hopefully, he'll call back in in a minute.

4 MR. FRANKEL: Hello, everybody. David
5 Frankel back.

6 JUDGE YOUNG: Okay. And as to Mr.
7 Ellison?

8 MR. FRANKEL: Well, I didn't reach him.
9 But I think we should proceed.

10 JUDGE YOUNG: Okay. Right before we
11 lost you, I think staff counsel or someone from the
12 staff was saying that you're going to be doing an
13 inspection or a visit or something during the week
14 of the 14th, is that correct?

15 MR. COHEN: Yes, that's correct.
16 This is Steve Cohen.

17 JUDGE YOUNG: Okay. It sounds as though
18 everyone's available the days July 22nd through the
19 24th.

20 I didn't mention the Oglala Sioux Tribe.
21 You're still there, right?

22 MS. LORENA: Yes.

23 JUDGE YOUNG: And you were all right for
24 those days as well?

25 MS. LORENA: Correct.

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1 MR. FRANKEL: Those are the best days
2 for me, Your Honor, those late July dates.

3 JUDGE YOUNG: Okay. Well then does
4 anyone have any preference between the 22nd and the
5 23rd or the 23rd and the 24th? It seems as though I
6 recall that there were something about the flights
7 were easier on Tuesday than Monday. And I think they
8 may be less expensive.

9 In any event, let me suggest that we do
10 it on the 23rd and the 24th of July.

11 ALL: Okay.

12 JUDGE YOUNG: And then the only other
13 thing that I think we could do today is Crowe Butte
14 in their response on the site visit indicated that
15 there were some issues with regard to numbers of
16 people and ultimately suggests that we have just
17 counsel for the parties. It didn't mentioned the
18 Oglala Sioux Tribe, but that was probably an
19 oversight, correct?

20 MR. SMITH: Yes, that's fine. Correct.

21 JUDGE YOUNG: So if we had the Licensing
22 Board that would be four, staff, counsel and one
23 person would be three. Applicant, but you were
24 going to have your two tour guides. Are you
25 counting those in the --

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1 MR. SMITH: In the 20, yes.

2 JUDGE YOUNG: Okay. So that would be
3 four from you?

4 MR. SMITH: Yes.

5 MR. FRANKEL: Your Honor. Dave Frankel.

6 I'm wondering are you including that one
7 representative from each of the petitioners and one
8 or two technical people from our side would also be
9 able to come?

10 JUDGE YOUNG: Well, the request that
11 they've made is that each party have counsel and one
12 other person. What I'm trying to do is count up how
13 many people we have and whether there's any leeway
14 there.

15 For the Oglala Sioux Tribe, you have two
16 counsel. Would both of you want to be attending?

17 MS. LORENA: It would probably be just
18 I.

19 JUDGE YOUNG: Okay. So just one person?

20 MS. LORENA: Yes.

21 JUDGE YOUNG: Let's see, that's eight,
22 twelve. That does appear to leave some leeway. If
23 the petitioners have your two counsel and you have--
24 how many other people would you like to bring with
25 you, WNRC?

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1 MS. LORENA: It would be just me.

2 MR. FRANKEL: I think WNRC would like
3 Buffalo Bruce and one technical person. And I
4 believe Owe Aku would like Debra White Plume and one
5 technical person.

6 JUDGE YOUNG: So four in addition to
7 yourself?

8 MR. FRANKEL: Yes. And Bruce Ellison.
9 So that's makes six altogether.

10 JUDGE YOUNG: Six? So that would be 18
11 people altogether as I'm counting, unless I'm
12 missing something.

13 You have two separate technical people
14 that you know of at this point?

15 MR. FRANKEL: Yes.

16 MR. SMITH: Your Honor, this is Tyson
17 Smith.

18 I guess it's not clear to me why each of
19 the petitioners needs to have -- needs to attend
20 themselves and have technical staff attend as well.
21 I think it's usually somewhat common practice to
22 have one person represent all of the petitioners
23 together. And I would support a technical person
24 along with that. But I guess I'm not sure I see the
25 need for five other people.

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1 MR. FRANKEL: In the interests of
2 finding a reasonable solution, why don't we say that
3 if we want the second technical person, then Mr.
4 Ellison will give up his spot. So in other words,
5 you know, if you all can live with five spots for
6 us, that would be Ms. White Plume, Buffalo Bruce,
7 myself and two technical people or one technical
8 person and Mr. Ellison then I think that's a pretty
9 reasonable ratio.

10 JUDGE YOUNG: Given that there's three
11 petitioners, it seems that five total would be
12 reasonable for the three petitioners. And that would
13 cut the total down to 17 individuals. It's three
14 less than the 20 that you suggested, Mr. Smith,
15 right?

16 MR. SMITH: But, yes, that was an
17 absolute maximum. I mean I think that with five
18 it's going to be a bit of a logistical challenge to
19 make sure we can get everyone around in a half day
20 or so. But I think we can probably manage that.

21 JUDGE YOUNG: Okay. Now, are there any
22 other considerations with regard to the other
23 concerns that Crowe Butte raised about the certain
24 specifics having to do with the -- let' see, as far
25 as the safety procedures. Obviously, I think

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1 everyone needs to do what is required. Other people
2 may know this, but can you refresh my memory as to
3 what PPE is?

4 MR. FRANKEL: Personal protective
5 equipment.

6 JUDGE YOUNG: Okay. Do you provide that
7 or is that something --

8 MR. FRANKEL: I will have to check with
9 the plant. I think that was maybe one of the
10 logistical issues that was there for us. So I think
11 there's adequate PPE available.

12 JUDGE YOUNG: Okay. The evaporation
13 pots can be viewed from adjacent road, and adjacent
14 road that sounds reasonable. Does anyone have any
15 problem with that?

16 MS. LORENA: No.

17 JUDGE YOUNG: As to vehicles, does Crowe
18 Butte have sufficient vehicles and drivers to
19 support 17 people, which I don't know what size
20 vehicles you have and how many that would entail.
21 But do you think you can handle the 17 in your
22 vehicles?

23 MR. SMITH: We'll need to check. And I'm
24 not sure exactly what vehicles are available for
25 that. The typical vehicles at the site are trucks

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1 which just have cabs. So I'll have to look into
2 this a little more closely.

3 JUDGE YOUNG: Okay.

4 MR. FRANKEL: Depending on how many
5 we're expecting, I can see if we can't come up with
6 a solution.

7 MR. FRANKEL: David Frankel here,
8 Your Honor.

9 If it's permissible and accessible, I'm
10 sure that I can be driven around. One or two of us
11 on our petitioner side can have own vehicles. And if
12 need be, we can all show up in our vehicles. So let
13 us know what is most appropriate from the company
14 and safety standpoint and we're happy to oblige.

15 MR. SMITH: Okay.

16 JUDGE YOUNG: Well, Crowe Butte has said
17 that they don't allow private vehicles. And normally
18 when we do site visits the company provides a
19 vehicle or I'm not sure whether sometimes NRC -- I
20 think we may have driven NRC rented vehicles before.

21 Mr. Smith or Mr. McGuire, either one of
22 you?

23 MR. SMITH: I think the problem here is
24 that the roads are not such that I think you can
25 drive around in a passenger van or anything like

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1 that. So it's going to have to be something that
2 can't hold all of us. We'll endeavor to work it out.
3 I mean, I think we've got some time it looks like if
4 we're doing late July to try and come up with a
5 decent solution.

6 JUDGE YOUNG: Okay.

7 COURT REPORTER: This is the court
8 reporter. Sorry to interrupt, Your Honor.

9 If I could ask the people please
10 identify themselves when they speak. Because I
11 can't see, I can't always tell by voice alone.

12 JUDGE YOUNG: Thank you very much. And
13 we apologize.

14 This is Ann Young. And I've probably
15 been doing most of the talking, than Mr. Frankel,
16 Mr. Smith and Mr. McGuire a little bit have been the
17 main people talking. Although Ms. Jones from the
18 staff, Mr. Cohen from the staff and -- for the
19 tribe, what's your name?

20 MS. LORENA: Elizabeth Lorena.

21 JUDGE YOUNG: Elizabeth Lorena also
22 spoke briefly.

23 Did I leave anyone out? Okay.

24 Now, as to the Indian Camp Site, it
25 sounds as though that may be problematic. Does

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1 anyone have a suggestion for a solution or is that
2 maybe something that we just need to forego at this
3 point?

4 MS. JONES: Judge, I believe Mr. Cohen
5 has a little bit of information to sort of shed a
6 little light on --

7 JUDGE YOUNG: Excuse me. Excuse me.

8 MS. JONES: Judge Young?

9 JUDGE YOUNG: This is Ms. Jones
10 speaking?

11 MS. JONES: Yes. This is Ms. Jones.

12 JUDGE YOUNG: Okay. Start over. I'm
13 sorry.

14 MS. JONES: Okay. My apologies. I
15 should have identified myself.

16 Mr. Cohen I think has a little bit of
17 information, at least that maybe that might help
18 shed a little light on that particular issue. I'm
19 going to let him explain that.

20 JUDGE YOUNG: Thank you.

21 MR. COHEN: I had a conversation with
22 the Nebraska State Historical Society, their State
23 Archeologist. Basically there is no actual location
24 of the site. What she told me was all -- the most
25 specific location they have is a quarter section,

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1 which I believe that encompassed about 160 acres.
2 So in a sense what we would have to do is find a
3 very small site on 160 acres that was identified
4 back in 1959.

5 I'm really not sure we're going to be
6 able to do that..

7 JUDGE YOUNG: You know, one thing that
8 strikes me is that this is something that the NRC
9 staff will be addressing in your review. So it may
10 be that when you get to that point if there's any
11 further information or further -- I mean, you may
12 actually be consulting with the tribe at that point,
13 we don't know that. But if you do, that might
14 resolve some of those issues.

15 It sounds as though we may need to put
16 that part off and see whether and how that may get
17 resolved later when the staff does its environmental
18 review.

19 MR. FRANKEL: Dave Frankel here. Let me
20 just interject.

21 If we're able, if through tribal leaders
22 or the tribe itself we can help pinpoint a location,
23 then perhaps we could pursue that. But I think that
24 your suggestion is reasonable from my perspective.

25 If we can get any of that information,

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1 we can try to get it to you fairly quickly and just
2 make sure that we're not leaving that one
3 unnecessarily aside.

4 JUDGE FRED OLIVER: This is Judge Fred
5 Oliver.

6 Approximately how far is the prehistoric
7 site from the permit area?

8 MR. COHEN: I have to tell you, Judge
9 Oliver, that when I spoke to the State Archeologist
10 I was told that I am not allowed to discuss
11 location. That that's privileged information. The
12 only thing I can tell you is that if the Tribe
13 itself, they can contact the State Archeologist and
14 talk to her, she could probably give you the
15 information at that point. But I'm forbidden from
16 doing so, which is why I haven't already.

17 JUDGE YOUNG: That was Mr. Cohen.

18 MR. COHEN: Oh, I'm sorry. I'm sorry.

19 JUDGE YOUNG: Okay. All right. If the
20 parties are able to work together and come up with
21 something, you're free to do that and let us know.
22 But otherwise I think we'll assume that that won't
23 be part of the visit when we're there in July.

24 Now as to which day we do which thing,
25 it may be better to do the argument on the first day

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1 and the site visit the second day. Does that make
2 sense to everyone?

3 MR. FRANKEL: I have no objection, Your
4 Honor. David Frankel.

5 MR. MCGUIRE: Yes, that sounds fine.

6 JUDGE YOUNG: All right. We had checked
7 on availability of the rooms at Chadron State
8 College for June. We have not yet checked for July,
9 but we will check and notify everyone of exact
10 location for July 23rd for the oral argument and
11 provide more information on that in the next week or
12 two. As soon as possible.

13 And then with regard to the site visit
14 on the 24th, I guess I would ask Crowe Butte counsel
15 to let us know what final arrangements you come up
16 with and when would be a good time for you to let us
17 know about that. I mean, I don't think that there's
18 any usual rush. We want you to be able to work
19 everything out in a way that works for you and
20 everyone else.

21 MR. SMITH: Okay. I can do that. It'll
22 take us probably a little while to get it all in
23 place, but I think we've got some time. It shouldn't
24 be a problem.

25 JUDGE YOUNG: Okay. Probably during

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1 June you'll be able to do that, you think?

2 MR. SMITH: Oh, I would hope so.

3 JUDGE YOUNG: Okay. Great. All right.

4 Is there anything else that anyone
5 thinks we need to address today?

6 MR. MCGUIRE: This is Mike McGuire.

7 I thought I saw in either an order or
8 something reference to the North Trend area. Judge,
9 were you contemplating that that was going to be
10 part of this process? I'm not saying it should or
11 shouldn't be, but if it is it simply includes more
12 logistically issues because there's some driving
13 distance between the two and some time involved.

14 I can fairly tell you now that you drive
15 by it, and it's just a big open field. I mean,
16 there's nothing there but field. But I think --

17 JUDGE COLE: Is there a road going by?

18 MR. MCGUIRE: Larry, can you address
19 that?

20 JUDGE YOUNG: That's Judge Cole.

21 MR. DION: This is Larry Dion, Crowe
22 Butte.

23 Yes, there's a county road going by it.

24 JUDGE COLE: But I think if we could
25 just get a view of it, a quick view would be

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1 sufficient.

2 MR. MCGUIRE: Okay.

3 JUDGE YOUNG: Anything else from any of
4 the parties?

5 MR. SMITH: No, Judge.

6 I just wanted to add that we didn't --
7 as we were going through the list of the --

8 JUDGE YOUNG: Mr. Smith?

9 MR. SMITH: -- the items we listed about
10 the tour, I just wanted to remind everyone here that
11 we will need a list of people's name and Social
12 Security numbers in advance of the tour so that we
13 can make sure we comply with security related
14 requirements.

15 JUDGE YOUNG: Right. And that's fairly
16 standard. And how soon would you need those?

17 MR. SMITH: Well, I thin we say in here
18 at least five days prior to the site visit. But,
19 obviously, it's a little bit easier on us if we can
20 do it a week or two before that.

21 JUDGE YOUNG: Okay. So let's say two
22 weeks before?

23 MR. SMITH: That would be fine.

24 JUDGE YOUNG: Which would be -- I should
25 be calculate that very easily. But that would be

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1 July 10th.

2 MR. FRANKEL: David Frankel here.

3 There's no problem We can do that, Your Honor.

4 JUDGE YOUNG: All right. And everyone's
5 fine with the deadlines we set for briefing on the
6 foreign ownership issue?

7 MS. JONES: Oh, yes, I'm fine, Judge.

8 This is Andrea Jones for NRC staff.

9 MR. SMITH: This is Tyson Smith for
10 Crowe Butte.

11 That is also acceptable.

12 MR. FRANKEL: This is David Frankel
13 here.

14 MS. LORENA: It's fine for OST.

15 MR. FRANKEL: I'm sorry, Ms. Lorena.

16 MS. LORENA: Oh, that's fine. It's fine
17 for OST, too.

18 MR. FRANKEL: All right. David Frankel
19 here.

20 It's fine for WNRC and speaking for Mr.
21 Ellison for Owe Aku.

22 JUDGE YOUNG: Very good.

23 And thank you all. I think that takes
24 care of everything. Can you think of anything,
25 Judge. Judge Oliver.

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1 JUDGE FRED OLIVER: No.

2 JUDGE YOUNG: Thank you all for your
3 time.

4 And in the next week or so you should be
5 receiving an order confirming all this. And if in
6 your discussions among the parties you come up with
7 a suggestion about the Indian Camp, feel free to
8 bring those to let us know about those. Otherwise,
9 we will leave that with you or to be addressed later
10 when the staff does it for you.

11 All right. Thank you much. Bye-bye.

12 (Whereupon, at 2:31 p.m. the prehearing
13 conference was concluded.)
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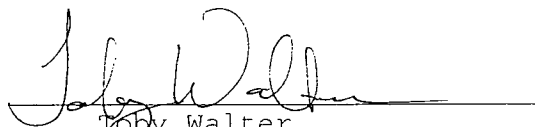
This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Crow Butte Resources, Inc.

Name of Proceeding: Pre-hearing Conference

Docket Number: 40-8943-MLA

Location: (telephone conference)

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
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transcript is a true and accurate record of the
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Toby Walter
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