UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 40-8943
CROW BUTTE RESOURCES, INC.	)	
	)	ASLBP No. 08-867-02-OLA-BD01
(License Renewal)	)	

APPLICANT'S RESPONSE TO PETITION TO INTERVENE FILED BY CONSOLIDATED PETITIONERS

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August 22, 2008

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), Crow Butte Resources ("Crow Butte" or "the Applicant") files this response to the consolidated request for hearing/petition to intervene ("Petition" or "Pet.") filed on July 28, 2008, by Beatrice Long Visitor Holy Dance, Joe American Horse, Sr., Debra White Plume, Loretta Afraid of Bear Cook, Thomas Kanatakeniate Cook, Dayton O. Hyde, Bruce McIntosh, Afraid of Bear/Cook Tiwahe, American Horse Tiospaye, Owe Aku/Bring Back the Way, and Western Nebraska Resources Council (collectively, "Petitioners").[1]

For the reasons discussed below, the petition should be denied for failing to comply with standing requirements set forth in 10 C.F.R. § 2.309(d) and for failing to meet the contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). Additionally, petitioners' requests for discretionary intervention fail to satisfy (or even address) the

[1] "Consolidated Request for Hearing and Petition for Leave to Intervene," dated July 28, 2008.

requirements under 10 C.F.R. § 2.309(e) and should be denied. Finally, the petitioners' requests for a hearing pursuant to Subpart G proceedings under 10 C.F.R. § 2.310(d) should also be denied.

II. BACKGROUND

Crow Butte Resources, Inc. is currently licensed to operate an in-situ leach ("ISL") uranium recovery facility near Crawford, Nebraska. On November 27, 2007, Crow Butte requested that the NRC renew its source material license. Ltr. from Stephen P. Collings to Charles Miller (ADAMS ML0734706415). Specifically, the application requests that the U.S. Nuclear Regulatory Commission ("NRC") renew Crow Butte's current license for a 10-year period. If the NRC approves the renewal request, the approval will be documented in an amendment to NRC License No. SUA-1534. The proposed action is therefore license renewal, and not an initial license or an expansion of the existing facility.[2]

Before approving the proposed amendment, the NRC must document its review in a Safety Evaluation Report and in a separate environmental review document. An NRC administrative review, documented in a letter to Crow Butte dated March 28, 2008, found the application acceptable to begin a technical review. Ltr. from William von Till to Stephen P. Collings (ADAMS ML080720341). A notice of opportunity to request a hearing was published

[2] On May 30, 2007, Crow Butte requested an amendment to its license that would allow the development of a satellite facility, the "North Trend Expansion Area" or "North Trend," near its existing ISL operation. That license amendment application is the subject of a separate ongoing licensing proceeding and is not at issue in the license renewal proceeding.

in the *Federal Register* with a deadline for filing petitions of July 28, 2008.[3] On July 28, 2008, consolidated petitioners timely filed a petition to intervene and request for hearing.

A. Standing Requirements

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). The Commission's regulations 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 Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right. Y*ankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). To establish standing, there must be an "injury-in-fact" that is either actual or threatened. *Id*., *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). As a result, standing will be denied when the threat of injury is too speculative. *Id.* Furthermore, the alleged "injury-in-fact" must

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[3] *See* "Notice of Opportunity for Hearing, Crow Butte Resources, Inc., Crawford, NE, In Situ Leach Recovery Facility, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation," 73 Fed. Reg. 30426 (May 28, 2008).

lie within the "zone of interests" protected by the Atomic Energy Act or the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq*. ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998).

Further, a petitioner must establish 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 depends, in part, on whether the chain of causation is "plausible." *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Judicial and Commission standing jurisprudence requires "realistic threat … of direct injury." *Int'l Uranium (USA) Corp*. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 254 (2001).

Finally, a petitioner must establish redressibility — that is, that the claimed actual or threatened injury could be cured by some action of the decisionmaker. *Sequoyah Fuels Corp*. (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

In materials licensing cases, there is no automatic presumption of standing based on geographic proximity. Rather, 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,* CLI-94-12, 40 NRC at 75 n.22.

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).

B. Admissibility Of Contentions

To gain admission to a proceeding as a party, a petitioner must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.309(f)(1). Section 2.309(f)(1) imposes the following requirements:

> A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
>
> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with

references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

The contention rule is "strict by design," *Dominion Nuclear Conn., Inc*., (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), and failure to comply with any of the above requirements is grounds for dismissal of a contention. *Private Fuel Storage LLC* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Louisiana Energy Servs.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 54 (2004). The Commission's procedures do not allow "'the filing of a vague, unparticularized contention,' unsupported by affidavit, expert, or documentary support." *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999), *quoting Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant), CLI-98-25, 48 NRC 325, 349 (1998). Likewise, Commission practice does not "permit 'notice pleading,' with details to be filled in later." *Id.*

To be admissible, contentions must fall within the scope of the proceeding as defined by the notice of hearing. *See Florida Power and Light Co*. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *LES*, LBP-04-14, 60 NRC at 55. Similarly, a contention must present a genuine dispute with the applicant on a material issue of law or fact, and any contention that fails directly to controvert the application or

that mistakenly asserts the application does not address a relevant issue can be dismissed. *See Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994). The petitioner must present the factual information and expert opinions necessary to support its contention adequately. *See Georgia Inst. of Tech.* (Georgia Tech Research Reactor), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). Failure to do so requires that the contention be rejected. *Palo Verde*, CLI-91-12, 34 NRC at 155.

Neither mere speculation nor bare assertions alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). "A petitioner's issue will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'" *Id.* If a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner. *See Georgia Tech*, LBP-95-6, 41 NRC at 305. Any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny. *Yankee Nuclear*, LBP-96-2, 43 NRC at 90. Likewise, providing any material or document as the foundation for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention. *Fansteel*, CLI-03-13, 58 NRC at 204.

In short, the information, facts, and expert opinions provided by the petitioner must be examined by the Board to confirm that the petitioner does indeed supply support for the contention adequate to establish a genuine dispute on a material issue.

C. Nexus Between Standing and Contentions in NRC Proceedings

The Commission in CLI-96-1 discussed the nexus between standing and contentions, stating that "once a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if proved, will afford the party relief from the injury it relies upon for standing." *See Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1 (1996). The Commission went on to specifically state that an intervenor's contentions may be limited to those that will afford it relief from the injuries asserted as a basis for standing. *Id*., at n.3.

The Supreme Court recently reaffirmed the principle that standing must be shown for every single claim in *Davis v. Federal Election Commission*.[4] The *Davis* Court reiterated that "standing is not dispensed in gross," and remarked that a party "must demonstrate standing for each claim he seeks to press" and "for each form of relief that is sought." __ U.S. __, slip op. at 7 (June 26, 2008) *citing DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) and *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 185 (2000); *see also Rosen v. Tenn. Commissioner of Finance and Admin.*, 288 F.3d 918 (6th Cir. 2002) ("It is black-letter law that standing is a claim-by-claim issue."). According to the Court, standing for one claim does not suffice for all claims even where those claims arise from the same nucleus of operative fact. *DaimlerChrysler*, 547 U.S. at 352. Because Article III standing is rooted in the

[4] The Commission has repeatedly and unambiguously stated that contemporaneous judicial concepts of standing should be applied by adjudicatory boards in determining whether a petitioner is entitled to intervene as of right under Section 189a of the Atomic Energy Act. *See, e.g., Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); *Atlas Corporation* (Moab, Utah), LBP-00-4, 51 NRC 53, 55 (2000); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 62 (2002).

need for an actual "case or controversy," holding otherwise, the Court noted, would undermine other important judicial principles and permit, for example, adjudication of moot or unripe claims. *Id*.

In articulating its reasoning for requiring standing for each claim, the Court explained that the actual-injury requirement would hardly serve its intended purpose of ensuring that there is a legitimate role for an agency adjudicatory body in dealing with a particular grievance if, once a party demonstrated harm from one particular inadequacy in government administration, the adjudicatory body were authorized to remedy all inadequacies in that administration. *Lewis v. Casey*, 518 U.S. 343, 357 (1996). As the Court emphasized in *Lewis*, "[t]he remedy must of course be limited to the inadequacy that produced the injury in fact that the [party] has established." *Id*. This statement echoes the description of the nexus between standing and contentions articulated by the Commission in *Yankee*: contentions must be limited to those that will afford relief from the injuries asserted as a basis for standing.

III. DISCUSSION

For the reasons set forth below, none of the petitioners have demonstrated standing or proffered an admissible contention.

A. None of the Petitioners Have Demonstrated Standing

A petitioner must demonstrate that the alleged injury is "concrete and particularized," not "conjectural" or "hypothetical." Conclusory allegations about potential radiological harm from the facility in general are insufficient to establish standing. Judicial and Commission standing jurisprudence requires "realistic threat … of direct injury." *White Mesa*, CLI-01-21, 54 NRC at 254.

As a result, a standing inquiry includes a threshold, fact-based question as to whether the alleged injury and causation are realistic or even plausible. As applied to the current

situation, this inquiry could include an assessment of matters such as the geological makeup of the area, the direction of flow of water from the licensed facility, and the time it takes for water to flow a certain distance. Without an understanding of these basic physical factors, a Board cannot properly assess whether an alleged injury or causal chain is realistic or plausible. This is particularly true where, as here, there is no evidence or data to suggest an offsite injury. In the absence of any information, evidence, or data regarding offsite impacts from Crow Butte's operations, petitioners fail to demonstrate either a concrete, non-hypothetical injury or a plausible chain of causal events.

Here, the geologic, hydrologic, and geographic differences between the mining area and the aquifers used for well water at the Pine Ridge Reservation undermine any claims of plausible injury or causation. The Basal Chadron ("basal" means base) is the aquifer in which uranium recovery operations are conducted. Application, at 2-105. It lies just above the Pierre Shale, which acts as a lower confining unit. *Id.*, at 2-84. A confining unit is a layer of sediment or lithologic unit of low permeability that effectively bounds an aquifer. Above the Basal Chadron lies the Middle Chadron (the upper confining unit), then the Upper/Middle Chadron, then the Upper Chadron (another confining unit). Above the Upper Chadron lies the Brule. The Arikaree Formation, which becomes the High Plains Aquifer (the source of well water at Pine Ridge), is not present at Crow Butte; it does not begin for several miles to the east of the existing operation.

The horizontal distance between Basal Chadron at Crow Butte and the Arikaree formation at Pine Ridge is on the order of 30-40 miles. This is not a trivial distance when the horizontal flow rate in the Basal Chadron is roughly 10 feet/year. In addition to being farther away horizontally, the elevation of the mining unit at Crow Butte is such that an Arikaree well

would be several hundred vertical feet above the mining units. Thus, contamination would have to travel a distance of 30-40 miles horizontally in an aquifer with a flow rate of 10 feet/year and flow several hundred feet vertically — against the natural groundwater flow direction. This is unrealistic and implausible, even before recognizing that such contamination would have to result from an uncontrolled excursion in the wellfield that was not captured by either the upper, lower, or mining unit monitoring wells or remediated. At bottom, a realistic assessment of local hydrology effectively eliminates any possibility of an impact from Crow Butte's operations on a well in the Arikaree aquifer.

Based on the above, the current circumstances are similar to those in *White Mesa*. There, the Commission declined to find standing even though the petitioner provided an expert affidavit concerning undetected potential leakage from the site. The Commission determined that, because the expert failed to establish a mechanism or pathway for contamination of groundwater used by petitioner, the injury and causation were "unfounded conjecture." *White Mesa*, CLI-01-21, 54 NRC at 253; *see also Sequoyah Fuels*, CLI-94-12, 40 NRC at 72.[5] Here, any injury based on possible groundwater contamination is similarly speculative. Based on the physical properties of the area, there is no obvious potential for offsite consequences.

With regard to surface water, any potential offsite consequences are likewise speculative and unfounded. The application explains that the license area is within the watershed of Squaw Creek and English Creek, which are small tributaries of the White River. Application, at 2-131. However, Crow Butte has taken affirmative steps to protect surface water quality in the

[5] In *Sequoyah*, the Commission found that petitioners had standing based on injuries due to groundwater contamination. Unlike the instant case and *White Mesa*, however, the individual standing affidavit in that case was accompanied by an expert declaration from a professional hydrogeologist who examined data regarding the flow paths of groundwater in the area and provided examples of flow paths that lead from the site towards the petitioner's well. *Id.*

event of a wellfield accident. In Section 7.4.2.2, Crow Butte notes that wellfield areas are installed with dikes or berms to prevent spilled solution from entering surface water features. Application, at 7-9. Process buildings are constructed with secondary containment, and a regular program of inspections and preventive maintenance is in place. *Id.* Moreover, *pre-operational* testing of sediment samples in Squaw and English Creeks indicated elevated uranium concentrations. Application, at 5-87. And, Squaw Creek samples showed elevated uranium concentrations upstream from the current operations. *Id*. This clearly undercuts petitioners' arguments that Crow Butte creates any obvious potential for offsite contamination of surface water resources. Thus, any alleged harm from surface water contamination is too speculative to support standing.

1. Beatrice Long Visitor Holy Dance

Ms. Long Visitor Holy Dance's assertions concerning her family farm at Slim Buttes are insufficient grounds for standing because she does not specify how the licensed activities might injure her. She does not specify the aquifer from which she draws her well water, much less demonstrate that this aquifer could potentially be contaminated by activities at the Crow Butte operation approximately 40 miles away. Ms. Long Visitor Holy Dance does not mention groundwater contamination or surface water spills in her affidavit or reference any particular source of contamination. Moreover, her affidavit states only that a *tributary* of the White River flows through her family land (which suggests that she is not actually "downstream" from Crow Butte), and fails to specify how this shows the potential for some injury from the project. Ultimately, there is nothing in her affidavit to support a finding that Crow Butte's continued operations will "cause" contamination or harm to her.

2. Joe American Horse, Sr.

Mr. American Horse has failed to demonstrate the requisite injury-in-fact, causation, or redressibility to support standing. Mr. American Horse's affidavit does not specify how the licensed activities might affect him. A generalized interest in a "clean environment" does not establish a concrete and particularized injury-in-fact. Similarly, general and speculative statements of possible injury (*e.g.*, "[t]here may be Indian graves or artifacts at the site") are insufficient to support standing. With respect to causation, Mr. American Horse does not include any mention of *how* Crow Butte's activities might cause him any injury. The Commission has held that, where a petitioner fails to establish a mechanism or pathway for contamination of surface or groundwater used by petitioner, the injury and causation are "unfounded conjecture." *White Mesa*, CLI-01-21, 54 NRC at 253. Conclusory allegations about potential harm to the petitioner or others are not sufficient.

In his affidavit, Mr. American Horse discusses the history of Fort Laramie treaties and states that the "Oglala Sioux Tribe, among other tribes of the Great Sioux Nation, possess superior water rights in the region, never quantified, arising from federal treaties with the Great Sioux Nation in 1851 and 1868." Neither of these statements is sufficient to establish an injury-in-fact within the zone of interests of the AEA or NEPA. As an initial matter, neither of the statements regarding the Fort Laramie Treaties alleges an injury-in-fact. Mr. American Horse references water rights "in the region." He does not provide any concrete or particularized injury associated with the specific activities at Crow Butte's operations. Thus, the references to the Fort Laramie treaties are insufficient to demonstrate the injury-in-fact required to support standing.

Likewise, the affidavit fails to raise an issue within the zone of interests of the AEA or NEPA. In the context of this licensing action, the AEA is concerned exclusively with

the radiological impacts of a proposed project.[6] Treaty issues are beyond the AEA. Similarly, the NRC Staff's environmental review under NEPA is focused on the environmental impacts of a project. To the extent that NEPA does extend to impacts on cultural and historic resources, no specific harm is alleged here. The mere reference to the Fort Laramie treaties adds nothing to establish individual standing on this basis.

Moreover, there is simply no role for the NRC under the AEA or NEPA in adjudicating or assessing inter-governmental agreements and treaties made by the U.S. Government with other tribes, nations, or sovereigns. *See Hydro Resources Inc.* (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 NRC __, slip op. at 4 (2006) ("While the NRC recognizes the tribal sovereignty of the Navajo Nation, it is not the function of the EIS process to resolve existing or potential jurisdictional disputes [over water rights]."). The NRC is not equipped, or authorized, to assess the Federal Government's compliance with its obligations under the Fort Laramie Treaties. Nor is there any indication that Crow Butte, as a private applicant, has any role or obligation under the treaties. Further, the petitioners, who are private individuals submitting affidavits, have made no showing that any rights or benefits under the treaty accrue to them, rather than to the tribal signatories of the treaties.

Finally, to the extent that petitioners have even alleged an injury, injuries to petitioners arising from the actions of parties other than the applicant (in this case, the Federal Government and/or States) are not a result of the disputed application. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-23, 52 NRC 114, 124 (2000). For these reasons, the Fort Laramie Treaties cannot be used in support of standing.

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[6] Some sections of the AEA address international trade and commerce in nuclear material and components. *See e.g.*, 42 U.S.C. § 2112 (export licensing). These sections, however, are unrelated to the licensing of a uranium recovery facility.

3. Debra White Plume

Ms. White Plume asserts individual standing based on the following statements: (1) she and her family drink water from a private well in the Arikaree aquifer; and (2) she and her family breathe air "that can be made to carry deadly radon" and are "down wind" from the Crow Butte mine.[7] These statements do not establish a "concrete and particularized" injury traceable to the Crow Butte operation.

Ms. White Plume's generalized statements never establish how any of the alleged harms will occur. While she states that she draws drinking water from a private well in the Arikaree aquifer, she never describes how this is relevant to Crow Butte's operation or points to any evidence that shows that Crow Butte's operations will cause her harm at her residence in South Dakota some 60 miles away.[8] Ms. White Plume's implicit claim of contaminated aquifer also contradicts, without providing any basis or support, the statements in the application indicating that the Chadron Formation is a different aquifer than the Arikaree Aquifer and that no reasonable mechanism for groundwater contamination has been identified.

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[7] Significantly, Ms. White Plume does not allege any injury related to potential surface water contamination. In LBP-08-06, the Licensing Board found that Ms. White Plume had established standing based on specific reference to the White River and statements that she fished in the White River. *See Crow Butte Resources* (License Amendment Application for North Trend Expansion Project), LBP-08-06, __ NRC __, slip op. at 55 (April 29, 2008). In contrast, her affidavit in this proceeding lacks any reference to using the White River or fishing in the White River. The lack of an injury in the present case is especially compelling where, as here, there is no regular discharge or known source of contamination of Wounded Knee Creek from Crow Butte's existing operations or even any information regarding the location of Wounded Knee Creek relative to the project.

[8] Lacking any specifics on Ms. White Plume's physical location, Crow Butte calculated the distance between Crawford, Nebraska (approximate location of the site) and Manderson, South Dakota (the address provided for Ms. White Plume), using the distance calculator at http://www.infoplease.com/atlas/calculate-distance.html. This calculator uses the latitude and longitude of two cities to determine the distance "as the crow flies" between them. The resulting distance was 60.8 miles (97.9 km).

The current circumstances are similar to those in *White Mesa*. There the Commission declined to find standing even though the petitioner provided an expert affidavit concerning undetected potential leakage from the site. The Commission determined that, because the expert failed to establish a mechanism or pathway for contamination of groundwater used by petitioner, the injury and causation were "unfounded conjecture." *White Mesa*, CLI-01-21, 54 NRC at 253; *see also Sequoyah Fuels*, CLI-94-12, 40 NRC at 72.[9] Here, we have no assessment of possible flow paths that could potentially permit the transfer of material from Crow Butte's operations to the White Plume's well. There are no expert affidavits supporting the standing declaration, and the affidavit itself does not even aver a link between Crow Butte's operations 60 miles away and any actual or threatened injury. This omission is especially glaring in light of the significant and uncontroverted information in the application.

In addition, Ms. White Plume alleges that she will be exposed to radon, but she never specifies where in the Application it shows that there is any possibility that radon will travel downwind to Ms. White Plume's residence some 60 miles away. Contrary to this claim, the application provides data which demonstrates that doses to the nearest residences from the facilities are significantly less than the public dose limit specified in 10 C.F.R. § 20.1301. *See* Application at 7-54 to 7-55. As one Licensing Board has noted, a showing that there *may* be

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[9] In *Sequoyah*, the Commission found that petitioners had standing based on hypothetical injuries due to groundwater contamination. Unlike the instant case and *White Mesa*, however, the individual standing affidavit in that case was accompanied by an expert declaration from a professional hydrogeologist who examined data regarding the flow paths of groundwater in the area and provided examples of flow paths that lead from the site toward the petitioner's well. *Id*.

some offsite radiological impacts to someone is not enough to establish standing. *Atlas*, LBP-97-9, 45 NRC at 425-26.[10]

Furthermore, Ms. White Plume has not shown causation — that her hypothetical injury is fairly traceable to the challenged action — because she has not shown a plausible basis for how allegedly contaminated groundwater or airborne radon from Crawford, Nebraska will travel over 60 miles. Ms. White Plume makes no allegations regarding potential release mechanisms — she does not mention surface water spills in her affidavit or reference any particular source of contamination. There is nothing in her affidavit to support a finding that Crow Butte's proposed operations will "cause" contamination. To constitute an adequate showing of injury-in-fact, "pleadings must be something more than an ingenious academic exercise in the conceivable. A plaintiff must allege that he has or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action." *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, 349 (2001), *citing United States v. SCRAP*, 412 U.S. 669, 688-89 (1973). In the complete absence of a plausible mechanism for exposure, Ms. White Plume fails to satisfy the requirements for standing.

Finally, Ms. White Plume states that she and her family travel to "the area" of Crow Butte's operations, and that Crow Butte's operation "impacts us Lakota families from access to the area impacting our freedom to practice our ancient way of life." Ms. White Plume

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[10] In *Atlas*, the Board held that a petitioner had not shown any reasonable nexus between herself and purported impacts when, despite assertions about potential facility-related waterborne radiological contacts, she had not delineated these with enough concreteness to establish an impact that is sufficient to provide standing. *Id.* By not providing any information that indicates whether her well draws water "upstream" or "downstream" from a facility, the petitioner fails to carry the burden of establishing the requisite "injury in fact." *Id.*

does not specify *where* or *how* Crow Butte's operations impact her, nor discuss how any such injury would be redressed in this proceeding. Vague and unparticularized injuries that lack any discussion of causation cannot support standing.

In sum, Ms. White Plume simply does not provide information to support a concrete injury at her home 60 miles away from Crow Butte operations. Nor does she provide a plausible basis for how license renewal will lead to contamination of her well or otherwise cause her injury.

4. Loretta Afraid of Bear Cook

Ms. Afraid of Bear Cook has not demonstrated an injury caused by Crow Butte's operations. As a factual matter, there is no regular surface water discharge from Crow Butte's operations and no known source of contamination flowing to the White River. But, to the extent that the affidavit is suggesting that Crow Butte's operations caused contamination of the White River that led to skin problems and allergic reactions for her daughter, such a link is also chronologically impossible. The affidavit states that Ms. Afraid of Bear Cook and her family moved to Slim Buttes in 1980, lived there for "about a year" before the alleged skin problems arose, and then moved to Chadron sometime in the mid-1980s. Crow Butte did not even begin to operate until 1991. Thus, Crow Butte cannot be the source of the condition.

To the extent Ms. Afraid of Bear Cook is alleging potential groundwater contamination as a basis for standing, any injury regarding groundwater contamination would be unsubstantiated and speculative. Ms. Afraid of Bear Cook does not allege that she currently uses groundwater from wells. And, even if she was using water from wells on her family land, she does not provide any information regarding the aquifer from which the well draws water nor posit any mechanism for contamination that is physically possible, much less realistic.

In addition, Ms. Afraid of Bear Cook makes no allegations regarding potential release mechanisms — she does not mention surface water spills in her affidavit or reference any particular source of contamination. There is nothing in her affidavit to support a finding that Crow Butte's proposed operations will "cause" contamination.[11] In the complete absence of a plausible mechanism for exposure, Ms. Afraid of Bear Cook fails to satisfy the requirements for standing.

To the extent that Ms. Afraid of Bear Cook's standing is based on use of family land at Slim Butte, the affidavit does not provide sufficient grounds for standing. Ms. Afraid of Bear Cook does not specify at what location on the White River she swam or the frequency with which this activity occurs. Most importantly, she does not indicate any current use of the White River.[12] In order to carry her burden, a petitioner must delineate the frequency and type of contacts. Otherwise, there is insufficient information to support a "concrete" injury. This is especially true where, as here, there is no surface water discharge or a known source of contamination of the White River from Crow Butte's operations.

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[11] In this regard, Ms. Afraid of Bear Cook's allegations do not resemble those the Supreme Court found sufficient for standing in *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.,* 528 U.S. 167 (2000). In that case, it was "undisputed that … unlawful conduct - discharging pollutants in excess of permit limits - was occurring at the time the complaint was filed" and nearby residents reasonably "curtailed" their use of the affected waterway (based on detailed affidavits regarding distance and frequency of use). *Id.* at 184-85. Here, there are no regular or ongoing discharges into the White River.

[12] To the extent that the lack of use is based on the potential for allergic reactions such as those that affected her daughter in the past, there is no basis to conclude that this "injury" is caused by Crow Butte. As noted above, Crow Butte was not yet in operation when the alleged reactions first occurred.

Other portions of her affidavit are identical to that provided by Mr. American Horse (*e.g.*, discussion of treaty rights) and we incorporate by reference our arguments regarding the lack of standing discussed *supra*, Section III.A.2.

5. Thomas Kanatakeniate Cook

Mr. Cook's affidavit is substantially similar to that of Loretta Afraid of Bear Cook. According to Mr. Cook's affidavit, there is no ongoing use of the White River or well water from the Arikaree by him or his family. Further, to the extent that standing would be based on the use of well water from the Arikaree aquifer for ceremonial use, Mr. Cook's affidavit indicates that such use ceased in the mid-1990s when the water pipeline reached the relevant allotment. Cook Aff., at ¶8. Thus, there can be no injury to support standing. For this and the additional reasons discussed *supra*, Sections III.A.4 (Ms. Afraid of Bear Cook) and III.A.2 (Mr. American Horse), Mr. Cook has not demonstrated standing.

6. Dayton O. Hyde

Mr. Hyde has not demonstrated the injury-in-fact, causation, or redressibility that is necessary to support standing. In discussing his wild horse sanctuary, Mr. Hyde does not allege contamination of groundwater or surface water from Crow Butte's operations. Mr. Hyde does not indicate from which aquifer his wells draw water, nor explain the geographic relationship of the Cheyenne River to Crow Butte's operations (though he does indicate that he is "upstream" of Crow Butte — *see* Hyde Aff. at ¶11 — which would run counter to any injury based on water contamination). In the absence of any indication of how Crow Butte's operations might plausibly cause him injury, Mr. Hyde does not have standing.

In his affidavit, Mr. Hyde also asserts that he is concerned that atomic energy and uranium not be controlled by foreign persons and argues that foreign persons cannot be trusted to act in the best interests of the United States or to comply with United States laws and regulations.

Mr. Hyde also asserts that he is at risk from bioaccumulation because "the Mine predicts that its operations will increase the public dose of radiation to the entire North America population by 0.0023%."[13] Beyond the fact that Crow Butte is a U.S. company and that its employees and managers are subject to U.S. laws and regulations (criminal, civil, and administrative), Mr. Hyde's affidavit fails to demonstrate a particularized interest in support of standing. Merely being a U.S. citizen and a member of the public or a beneficiary of the national interest in protecting public health and safety is insufficient to support standing. Under longstanding NRC (and judicial) interpretations, standing cannot be based solely on a "generalized grievance" shared in substantially equal measure by all or a large class of citizens (*e.g.*, the "public"). *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983). Assertions of broad public interest do not establish the particularized interest necessary for participation by an individual or group in NRC adjudicatory processes. *Id*., at 332. A petitioner must establish that he will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. *Transnuclear, Inc*. (Ten Applications for Low Enriched Uranium Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977). Here, Mr. Hyde makes no showing of individualized harm and therefore fails to demonstrate that he has standing.

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[13] This is a slightly misleading characterization of the application, which in fact provides a maximum (*i.e.*, conservative) predicted impact. Application, at 7-60 ("The maximum radiological effect of the combined operation of the North Trend Satellite Plant and the Crow Butte Project would be to increase the dose to the bronchial epithelium of the continental population by 0.0023 percent.").

7. Bruce McIntosh[14]

As discussed above, in order to demonstrate standing, a petitioner must demonstrate injury, causation, and redressibility. The affidavit for Mr. McIntosh fails on all counts. First, Mr. McIntosh does not specify any injury related to Crow Butte's operations. He does not specify any activity that would be affected by Crow Butte or the frequency with which this activity occurs. Second, to the extent that he is alleging some injury related to the loss of surface flow in reaches of Pine Ridge streams, Mr. McIntosh fails to provide an explanation of how Crow Butte's operations caused or will cause such a loss of flow. There is no discussion of where these streams are located in relation to Crow Butte nor any discussion of how Crow Butte's operations might cause the streams to go dry. In the absence of any injury from or causal link to Crow Butte's operations, there can be no redressibility in this proceeding. Thus, Mr. McIntosh lacks standing.

8. Afraid of Bear/Cook Tiwahe (Tom Cook)

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 standing on its own behalf, it must satisfy the same standing requirements as an individual by showing a discrete institutional injury to the organization itself. *White Mesa*, CLI-01-21, 54 NRC at 252. 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

[14] Based on a comparison of the narrative description of the standing affiants (Pet., at 12) and the standing affidavits (*see* Buffalo Bruce Aff.), we presume that Bruce McIntosh is the same person as Buffalo Bruce.

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). The purpose of the third requirement is to ensure that an organization is truly representing the interests of the member and not "simply seeking the 'vindication of its own value preferences.'" *White Mesa*, CLI-01-21, 54 NRC at 250-51.

Here, Afraid of Bear/Cook Tiwahe apparently bases its standing on that of Mr. Thomas K. Cook. *See* Pet., at 12. For the reasons discussed above in Section III.A.5, Mr. Cook does not have standing as an individual and therefore cannot provide the necessary standing for Afraid of Bear/Cook Tiwahe.[15]

9. American Horse Tiospaye (Joe American Horse)

The American Horse Tiospaye apparently bases its standing on that of Joe American Horse, Sr. *See* Pet., at 13. For the reasons discussed above in Section III.A.2, Mr. American Horse does not have standing as an individual and therefore cannot provide the necessary standing for American Horse Tiospaye.[16]

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[15] There is no showing of organizational standing either. For an organization to assert standing on its own behalf, it must satisfy the same standing requirements as an individual by showing a discrete institutional injury to the organization itself. There is no affidavit from a representative of the Afraid of Bear/Cook Tiwahe describing the organization, its purpose, or its basis for standing. Moreover, the affidavit from Mr. Cook does not authorize Afraid of Bear/Cook Tiwahe to represent him.

[16] There is no showing of organizational standing either. For an organization to assert standing on its own behalf, it must satisfy the same standing requirements as an individual by showing a discrete institutional injury to the organization itself. There is no affidavit from a representative of the American Horse Tiospaye describing the organization, its purpose, or its basis for standing. Moreover, the affidavit from Mr. American Horse does not authorize American Horse Tiospaye to represent him.

10. Owe Aku (Debra White Plume)

Owe Aku apparently bases its standing on that of Debra White Plume.[17] *See* Pet., at 13. For the reasons discussed above in Section III.A.3, Ms. White Plume does not have standing as an individual and therefore cannot provide the necessary standing for Owe Aku.

11. Western Nebraska Resources Council (Bruce McIntosh)

Western Nebraska Resources Council ("WNRC") bases its standing on that of its member, Bruce McIntosh (Buffalo Bruce).[18] *See* Pet., at 14; Buffalo Bruce Aff., at ¶1. For the reasons discussed above in Section III.A.7, Mr. McIntosh does not have standing as an individual and therefore cannot provide the necessary standing for WNRC.

B. The Proposed Contentions Are Not Admissible

Each of the proposed contentions will be discussed below. However, three recurring defects occur throughout. First, many contentions on their face fail to address the contention pleading criteria set forth in 10 C.F.R. § 2.309(f)(1). These criteria are mandatory and must be scrupulously followed. As the Commission has stated with respect to these regulatory provisions, "[i]f any one of these requirements is not met, a contention must be rejected." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and

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[17] The affidavits attached to the request for hearing include one from Lester "Bo" Davis. Mr. Davis is not mentioned in the petition to intervene as a basis for standing for any party. Further, a reading of the affidavit shows that Mr. Davis did not authorize Mr. Frankel or Mr. Robinson to represent him in this proceeding. Moreover, neither Mr. Frankel nor Mr. Robinson claim to represent Mr. Davis in their notices of appearance. Thus, Mr. Davis cannot support representational standing for Owe Aku. Even if Mr. Davis were a petitioner, his affidavit is insufficient to support standing for similar reasons as the other petitioners.

[18] In the narrative discussion of standing for WNRC (Pet. at 14), petitioners refer to Dr. Francis Anders. Dr. Ander has not provided an affidavit in this proceeding, and the petition does not include information regarding his interest in the proceeding. Dr. Anders therefore cannot be a basis for representational standing for WNRC in this proceeding.

3), CLI-91-12, 34 NRC 149, 155 (1991).[19] Ultimately, it is the responsibility of the petitioners, not the Licensing Board, to provide the necessary information to satisfy the basis requirement for the admission of their contentions, including an explanation of the bases for those contentions. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 416-417 (1990).

Second, in many cases the petitioners have wholly failed to provide any discussion of the bases for the contentions or pointed to any specific deficiencies in the application. Instead, they simply attach — without explanation — various reports, affidavits, and other materials. A petitioner is not permitted to incorporate massive documents by reference as the basis for, or a statement of, his contentions. *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976); *compare,* Pet., at 4-8. Providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention. *See Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 205 (2003). Parties cannot be expected to sift unaided through large swaths of documents or filings in other proceedings in order to piece together and discern the intervenors' particular concerns or the grounds for their claims. *See Hydro Resources, Inc.*, CLI-01-4, 53 NRC 31, 46 (2001).

Third, the petitioners frequently raise historical or operational matters that they have not demonstrated are relevant during the license renewal period. These are therefore outside the scope of this proceeding. For environmental issues, the focus of license renewal is on updating or supplementing the information previously submitted to reflect any significant

[19] According to the Commission, the *Palo Verde* Licensing Board erred by inferring a basis for the petitioners' contention when the petitioners failed to comply with the requirements of 10 C.F.R. § 2.309(f) to clearly state the basis for its contention and to provide sufficient information to support its contention. *Palo Verde*, 34 NRC at 155-56.

environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities. 10 C.F.R. § 51.60(a). To be within the scope of the license renewal proceeding, a proposed contention must therefore allege that there is a new or different significant environmental impact not previously disclosed or considered.

The safety issues relevant to license renewal are significantly different from, and defined more narrowly than, those relevant during an original licensing proceeding. Based on that initial licensing determination, certain safety issues that were reviewed for the initial license have been closely monitored by the NRC and need not be reviewed again in the context of a license renewal application. Petitioners have not shown that there are any unresolved safety issues that would continue into the renewal period. Ongoing NRC oversight programs (reporting obligations, inspection, enforcement) are the mechanisms through which compliance with the current licensing basis is monitored and ensured.[20] Thus, the current licensing basis for Crow Butte need not be reviewed again and is not subject to attack in a license renewal proceeding.

Against this backdrop and for the reasons discussed below, none of petitioners' proposed contentions are admissible.

1. *Environmental A – CBR's License Application does not accurately describe the environment affected by its proposed mining operations or the extent of its impact on the environment as a result of its use and potential contamination of water resources, through mixing of contaminated groundwater in the mined aquifer with water in surrounding aquifers and drainage of contaminated water into the White River.*

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[20] An analogy can be drawn here to 10 C.F.R. Part 54 license renewal for power reactors. In promulgating those regulations, the NRC announced that the "first principle" of license renewal is that the ongoing regulatory process is adequate to ensure that currently operating plants provide and maintain an acceptable level of safety. 60 Fed. Reg. 22461, 22464 (May 8, 1995).

Environmental Contention ("EC") A is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). There is no discussion associated with EC-A at all and the contention is therefore flawed — both procedurally and substantively — on its face. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. There is no statement of alleged facts or expert opinion or any information to show a dispute with the application on a material fact.

The application specifically highlights the administrative and engineering features that are in place to protect surface water features and concludes that surface water impacts will be minimal. Application, at 7-9. For example, wellfield areas are installed with dikes or berms to prevent spilled solution from entering surface water features. *Id*. Process buildings are constructed with secondary containment, and a regular program of inspections and preventive maintenance is in place. *Id*. Crow Butte also discussed measures to protect against contamination of the shallow aquifer (Brule), which is referred to as the "White River alluvium" in the petition. *See* Application, at 7-13 to 7-14. These measures include use of high density polyethylene with butt welded joints and leak testing. *Id*., at 7-14. As for groundwater protection, the application highlights the geologic and hydrologic data that demonstrate control over mining fluids. *See id*., at 7-10 (referencing Sections 2.6 and 2.7). Other engineering controls are also in place (production bleed, adjust flow rates, monitoring wells) to prevent, detect, or mitigate potential groundwater contamination. Petitioners have failed to allege any deficiencies in these extensive protective measures.

Petitioners must allege deficiencies or errors in the application and also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), *petition for review denied,* CLI-03-12, 58 NRC 185, 191 (2003). The provisions of 10 C.F.R. § 2.309(f)(1)(ii), (v), and (vi) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334, 338 (1999). Yet, here, petitioners have provided no information regarding the bases for EC-A.

In short, the proposed contention wholly fails to comply with the NRC's procedural or substantive requirements for an admissible contention. As a result, the contention must be rejected for failing to satisfy the criteria in 10 C.F.R § 2.309(f)(1)(i)-(vii).

2. Environmental B – CBR's proposed mining operations will use and contaminate water resources, resulting in harm to public health and safety, through mixing of contaminated groundwater in the mined aquifer with water in surrounding aquifers and drainage of contaminated water into the White River.

Environmental Contention B is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). Petitioners do not explain how contamination of aquifers or surface water could occur or argue that Crow Butte's application is inadequate to protect public health and safety. Instead, petitioners merely cut and paste excerpts of documents without any explanation as to their significance. Petitioners must allege specific deficiencies or errors in the application and also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *Diablo Canyon*, LBP-02-23, 56 NRC at 439-41. "Notice" pleading is not permitted in NRC adjudications. *North Atlantic Energy Service*

Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999). Rather, the Commission insists on detailed descriptions of the petitioners' positions on proposed contentions. *Shieldalloy Metallurgical Corp.* (Cambridge Ohio Facility), CLI-99-12, 49 NRC 347, 353 (1999). Such a detailed description is lacking here.

While petitioners argue that the application "fails to disclose results of baseline operational sampling," there is no explanation as to how this supports the proposed contention. Obviously, baseline sampling results do not, by themselves, create contamination of water resources. As noted previously, providing any material as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention. *Fansteel*, CLI-03-13, 58 NRC at 205. Petitioners do not dispute any specific portion of the application or argue that any of the baseline samples taken by Crow Butte in the study area are incorrect. They point to no regulatory requirement to consider the results of a regional study that has no direct applicability to the Crow Butte site. Nor do petitioners demonstrate that any of the information is relevant or material to the findings that the NRC must make. Indeed, petitioners provide no explanation as to why use of site-specific data is inadequate and not, in fact, superior to regional data.

Finally, petitioners excerpt a portion of Crow Butte's *Semi-Annual Radiological Effluent and Monitoring Report for Third and Fourth Quarters 2008* (ML080710479) without any explanation as to its significance. A document put forth by an intervenor as supporting the basis for a contention is subject to scrutiny, both for what it does and does not show. Here, the full discussion in the report runs counter to petitioners' arguments that Crow Butte failed to take into account regional data. Specifically, in the same section cited by petitioners, Crow Butte states that "concentrations of natural uranium in several English Creek samples were well above

regional background levels." Section 3.3, at 4 (emphasis added). Moreover, the report notes that "samples obtained in 1998 before mining operations began in this area showed similar elevated uranium concentrations" and that samples for Squaw Creek showed elevated uranium concentrations upstream from the current operations. *Id.* (emphasis added); *see also* Application, at 5-87. This clearly undercuts petitioners' arguments that Crow Butte is causing contamination of surface water resources. And, again, petitioners fail to challenge, or even reference, any portion of the license renewal application.

For the above reasons, petitioners have failed to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(i)-(vii). Environmental Contention B is therefore inadmissible and must be rejected.

3. Environmental C – Failure to consider climate change.

Petitioners appear to take issue with the description of tornado frequency provided in Section 2.5.3. However, petitioners do not explain what information in the application is incorrect or inaccurate. Petitioners do not identify any defect in the values used for the frequency or intensity of tornados and do not provide any basis for changing any of the values in the application. The Commission has stated that a petitioner must "read the pertinent portions of the license application . . . [and] state the applicant's position and the petitioner's opposing view," and explain why it disagrees with the applicant. "Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process," 54 Fed. Reg. at 33170; *see also Millstone*, CLI-01-24, 54 NRC at 358. In contrast, petitioners merely offer general statements that climate change should be considered without explaining what information in the application is deficient or how it should be changed. Moreover, petitioners have not demonstrated that issues related to climate change cannot be addressed through the

NRC's normal regulatory processes or even that failure to consider climate change would result in any adverse environmental impact.[21]

At bottom, the contention is devoid of any factual support for its assertions and conclusions concerning the significance of climate change. For these reasons, the petitioners have failed to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(i)-(vii).

4. Environmental D – Changing geochemistry of water is equivalent to adulteration.

The proposed contention asserts that changing the geochemistry of water is equivalent to adulteration of the water. To the extent petitioners are challenging actions permitted under the aquifer exemption[22] or Class III permit[23] issued by Nebraska, the proposed contention raises issues outside the scope of this licensing proceeding, which is focused on compliance with the AEA and NRC regulations, not Nebraska permitting requirements. To the extent that petitioners are challenging actions permitted under the current NRC license, this is an

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21 In this regard, Chairman Klein recently addressed the issue of global warming and the safe operation of nuclear facilities. Ltr. from D. Klein, NRC, to E. Markey, House of Representatives (May 28, 2008) (ML081360313). He explained that NRC regulations already require design characteristics that specifically address severe weather events and other, slower changes in climate (*e.g.*, drought). *Id.*, Enclosure, at 1-2. Chairman Klein also explained: "[b]ased on NRC's activities related to climate change, and the relatively slow rate of this change, NRC is confident that any regulatory action that may be necessary will be taken in a timely manner to ensure the safety of all nuclear facilities regulated by the NRC." *Id.*, Enclosure, at 2.

22 In order to inject lixiviant into the mining zone, the aquifer must be exempted from Clean Water Act protections by the NDEQ and the USEPA. Thus, Crow Butte was required to obtain an aquifer exemption under the provisions of the State and Federal UIC regulations. *See, e.g.*, Application, at 10-1 (Table 10.1-1 lists aquifer exemption issued by Nebraska DEQ in 1984). The criteria for an exemption of an aquifer are found at 40 C.F.R. § 146.4, and include the requirement that the aquifer not currently be used as a source of drinking water and that the water quality be such that it would be technically or economically impractical to use the water to supply a public water system.

23 *See infra*, note 26 (discussing Class III permit issued to Crow Butte by Nebraska).

impermissible challenge to already-authorized activities and is outside the scope of the license renewal proceeding.

The proposed contention is inadmissible for other reasons as well. For example, the contention also does not specify which portion of the application it alleges to be inadequate or otherwise disputes. Nor does the proposed contention provide a basis or include any factual or expert support. General statements that a matter ought to be considered without explaining what information in the application is deficient or how it should be changed are insufficient to support a contention. Similarly, reflections on the importance of water do not raise a genuine dispute with the application.

Moreover, whether or not changing the geochemistry of the water is adulteration, petitioners have not shown that the issue is material to the findings that the NRC must make in order to issue the license. There is no correlation between this contention and any NRC regulatory requirements. If petitioners are arguing that NRC regulations should be changed to preclude changing the geochemistry of water, a license renewal proceeding is not the proper forum for such claims. A petitioner's differing opinion as to what applicable regulations should (but do not) require cannot serve as a basis for a contention. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 303 (1995). Instead, the petitioner should submit a petition for rulemaking under 10 C.F.R. § 2.802.

The proposed contention is therefore inadmissible for failing to address any of the admissibility criteria in 10 C.F.R. § 2.309(f)(1).

5. Environmental E – Cost benefits fail to disclose economic value of environmental benefits.

This proposed contention alleges that the cost/benefits in the application fail to include the economic value of environmental benefits. This contention is inadmissible.

Petitioners do not cite a regulatory or statutory requirement to consider the economic value of environmental benefits. Nor do petitioners dispute any portion of the calculation of costs or benefits in the application. Petitioners argue that the application fails to disclose the number of years it would take to complete decommissioning (Pet., at 29), but do not explain how this relates to the economic value of environmental benefits. Petitioners do not argue, much less show, that the applications failed to take into account any environmental costs or benefits of the project. Nor do petitioners include any factual or expert support to show that some environmental value was not considered or was underestimated.

Other "bases" for the proposed contention are inscrutable and have no obvious relationship to the proposed contention. For example, petitioners state that the application "gives the misimpression that this U is used in the U.S." *Id*. Beyond the fact that uranium from Crow Butte is sold to and utilized by U.S. utilities in U.S. reactors, there is no explanation as to how this supposed "basis" supports the proposed contention. Similarly, statements regarding Nebraska Alien Property Ownership Act have no bearing on the costs and benefits of the project. These issues are in any event outside the scope of this proceeding, which is limited to Crow Butte's compliance with the Federal AEA and NRC regulations. The requirements of State law are for State bodies to determine, and are beyond the jurisdiction of NRC adjudicatory bodies. *Northern States Power Company* (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978).

Finally, petitioners argue that the application fails to disclose "3 Crow and Marsland and other contemplated expansions." Again, there is no explanation as to how this supports the proposed contention. Regardless, an inchoate plan of the licensee cannot form the basis for an admissible contention. The contested issue must be a part of the current licensing

application that is docketed and under consideration. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002).

For all of these reasons, Environmental Contention E is inadmissible.

6. Technical B – CBR's proposed mining operations will use and contaminate water resources, resulting in harm to public health and safety, through mixing of contaminated groundwater in the mined aquifer with water in surrounding aquifers and drainage of contaminated water into the White River.[24]

Petitioners provide no information — no explanation, no basis, no facts, no expert opinion — in support of this contention. To the extent that petitioners intended to incorporate by reference Environmental Contention B, Technical Contention B is inadmissible for the same reasons discussed *supra*, Section III.B.2.

7. Technical C – Failure to consider climate change.

Here, petitioners merely incorporate by reference Environmental Contention C (climate change). Pet., at 30. For the reasons discussed above in Section III.B.3, Technical Contention C is inadmissible.

8. Technical D – Failure to follow statistical analysis protocols

Technical Contention D is inadmissible for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vii). The petition does not contain a specific statement of law or fact to be controverted. The requirement for basis with reasonable specificity mandates that a petitioner include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. The failure to allege a violation of the regulations or an attempt

[24] The Petition does not include a proposed Technical Contention A. *See* Pet., at 30.

to advocate stricter requirements than those imposed by the regulations results in rejection of the contention. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982).

Rather than articulate a basis for the contention or describe some dispute with the application on a material issue, petitioners simply refer to the Abitz opinion. Parties cannot be expected to sift unaided through documents or filings in other proceedings in order to piece together and discern the intervenors' particular concerns or the grounds for their claims. *See Hydro Resources*, CLI-01-4, 53 NRC at 46. Attaching a document in support of a contention without any explanation of its significance simply cannot provide an adequate basis for a contention. *Fansteel*, CLI-03-13, 58 NRC at 205.

In any event, the 14-page Abitz opinion does not establish a genuine dispute with the applicant on a material issue.[25] A long and detailed list of omissions and alleged problems does not, without more, provide a basis for believing that there is a safety issue. *Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1263 n.6 (1983); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 725 (1985). Petitioners must link an alleged deficiency with a regulatory violation or a substantial health and safety concern. Abitz's opinion as to what applicable regulations should (but do not) require cannot serve as a basis for a contention. *See G.I.T.*, LBP-95-6, 41 NRC at 303.

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[25] We note also that Dr. Abitz does not include a statement of experience or qualification with his opinion. He does not indicate that he is a licensed professional engineer or a licensed professional geologist. Registered Professional Engineers/Geologists have the authority to sign and seal or "stamp" engineering/geology documents (reports, drawings, and calculations) for a study, design, or analysis, thereby taking legal responsibility for it. In the absence of a professional license, it is not clear that Dr. Abitz is qualified to offer an opinion in this proceeding.

Further, the procedures used to develop the upper control limits are specified in the Class III permit issued by the State of Nebraska. That permit authorizes the underground injection and mineral production wells at Crow Butte.[26] *See* Permit No. NE0122611, at Part II.B. Likewise, the spacing of monitoring wells and the extent of screening in production wells is specified in the Nebraska permit. *Id*., at III.C. The requirements of State law are for State bodies to determine, and are beyond the jurisdiction of NRC adjudicatory bodies. *Northern States Power Company*, ALAB-464, 7 NRC at 375. To the extent that petitioners are challenging the adequacy of the state-issued permit, the matter is outside the scope of the proceeding, which is limited to compliance with the AEA and NRC regulations.

Abitz's claim that there is not enough information to allow independent evaluation of certain technical portions of the application likewise fails to support an admissible contention. *See* Abitz Opinion, at 1. Petitioners cannot dictate what they would like to see in an application prior to submitting contentions. That is, in essence, an objection to the long-standing NRC requirements that a petitioner file proposed contentions based on the license application at the start of the NRC Staff review, rather than after the Staff review is completed. *See* 10 C.F.R. §§ 2.104, 2.309.[27] Moreover, petitioners' position would be tantamount to allowing discovery

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[26] The regulations in Title 122 of the Nebraska Administrative Code ensure proper well construction and regulate the injection of fluids into the subsurface. The Nebraska Department of Environmental Quality ("NDEQ") approves injections wells, which must be operated and managed in accordance with applicable Nebraska regulations. NDEQ issues and approves Underground Injection Control ("UIC") permits, conducts inspections, and performs compliance reviews for injection wells to ensure that injection activities comply with State and Federal regulations and to ensure that groundwater is protected from potential contamination sources. NDEQ has authority over Class I, III, and V wells in Nebraska.

[27] Furthermore, petitioners' insistence on the right to dictate what must be present in the application to permit an "independent evaluation" is inconsistent with the Staff's discretion to docket an application. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 337 (1999).

before the admission of a contention: "neither Section 189a. of the Act nor Section [2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff." *Duke Power Co.*. (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983). If Petitioners believe there is insufficient information in an application to meet NRC requirements, it must examine the publicly available information and identify with specificity each alleged deficiency and the bases for their assertions.

Having failed to satisfy the criteria in 10 C.F.R. § 2.309(f)(1), Technical Contention D must be rejected.

9. Technical E – Failure to use best available technology such as 3D computer modeling or SCADA; Failure to maintain back-up power in case of power outages.

Technical Contention E is inadmissible for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vii). The petition does not contain a specific statement of law or fact to be controverted. The requirement for a basis with reasonable specificity mandates that a petitioner include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. *Seabrook*, LBP-82-106, 16 NRC at 1656. Here, there is no regulatory requirement that an applicant use the "best available technology" and petitioners point to no such obligation. They also point to no deficiencies in the technology used by Crow Butte. Thus, the contention must be rejected for this reason alone.

Rather than articulate a basis for the contention or describe some dispute with the application on a material issues, petitioners simply refer the parties to the JR Engineering

opinion. As mentioned previously, a document cited in support of a contention must be scrutinized for what it does and does not state. The JR Engineering opinion recognizes that "[t]here is an Allen-Bradley PLC-5 based control system in place," but goes on to note that "[JR Engineering] has no information about the level of system detail that this provides." JR Engineering Opinion, at 2. JR Engineering simply lists some attributes that it believes a generic control system should include. Neither the petition nor the JR Engineering opinion dispute any particular portion of the application or demonstrate that the controls at Crow Butte are inadequate to protect public health and safety. In any event, the application states that Crow Butte "plant operators monitor and control every aspect of the operation on a real time basis" and maintain capabilities to review historic data. Application, at 3-33. Accordingly, there is neither a genuine dispute on a material issue nor a factual or expert basis for the proposed contention.

The proposed contention also mentions a "[f]ailure to maintain back-up power in case of power outages." Pet., at 30. There is no regulatory or safety basis provided, nor any expert or factual support, for this portion of the contention. A contention that simply alleges that some matter ought to be considered, without more, does not provide the basis for an admissible contention. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 246 (1993). Moreover, the implicit thrust of the comment appears to be incorrect. In discussing the control system used at Crow Butte, the application states that "[a]ll critical equipment is equipped with UPS [(Uninterruptible Power Supply)] systems in the event of a power failure." Application, at 3-33.

For all of these reasons, Technical Contention E is inadmissible.

10. Technical F – Failure to include recent research.

Technical Contention F is inadmissible for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vii). The petition does not contain a specific statement of law or fact

to be controverted. The requirement for a basis with reasonable specificity mandates that a petitioner include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. *Seabrook*, LBP-82-106, 16 NRC at 1656. The petition does not identify a specific requirement that Crow Butte include recent research nor demonstrate that incorporating new regional research would undermine the site-specific data used by Crow Butte or otherwise change the conclusions in the application.

Rather than articulate a basis for the contention or describe some dispute with the application on a material issues, petitioners simply refer the parties to the LaGarry opinion without any explanation as to how it raises a dispute with the findings in the application. The LaGarry opinion does not take issue with any specific portion of Crow Butte's application.[28] Instead, it is nothing more than an overview of regional geology. This is no substitute for the detailed, site-specific investigations performed by Crow Butte. Indeed, the portion of the application excerpted by petitioners specifically notes that "new information from exploratory drilling/logging activities with the License Area" was used to describe the geology and seismology of the area. Pet., at 30; Application, at 2-76.

Finally, to the extent that LaGarry identifies a "wish list" of activities and investigations that Crow Butte ought to undertake, petitioners cite no regulatory provision in

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[28] We note also that Dr. LaGarry's research has an academic, rather than an engineering, focus. His opinion does not indicate that he is a licensed professional engineer or a licensed professional geologist. Registered Professional Engineers/Geologists have the authority to sign and seal or "stamp" engineering/geology documents (reports, drawings, and calculations) for a study, design, or analysis, thereby taking legal responsibility for it. In the absence of a professional license, it is not clear that Dr. LaGarry is qualified to offer an opinion in this proceeding.

support of their position. LaGarry's opinion as to what applicable regulations should (but do not) require cannot serve as a basis for a contention. *See G.I.T.*, LBP-95-6, 41 NRC at 303.

For all of these reasons, Technical Contention F is inadmissible.

11. Technical G – Failure to analyze mine unit activities in correlation with excursion and radiological emissions.

Technical Contention G is inadmissible for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vii). The petition does not contain a specific statement of law or fact to be controverted. The requirement for a basis with reasonable specificity mandates that a petitioner include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. *Seabrook*, LBP-82-106, 16 NRC at 1656. The petition does not identify a specific requirement that Crow Butte analyze mine unit activities in correlation with excursions[29] and radiological emissions or otherwise show that data used by Crow Butte is inadequate. A contention that simply alleges that some matter ought to be considered, without more, does not provide the basis for an admissible contention. *Rancho Seco*, LBP-93-23, 38 NRC at 246.

Rather than articulate a basis for the contention or provide any factual or expert support, petitioners simply ask a series of questions without any explanation as to how they support or otherwise provide a basis for the proposed contention. A list of alleged omissions does not, without more, provide a basis for believing that there is a safety issue. *See Comanche*

[29] To the extent petitioners are complaining about historical events that took place at Crow Butte, operational activities are addressed through the normal NRC oversight programs and are outside the scope of this proceeding.

Peak, LBP-83-75A, 18 NRC at 1263 n.6. For an admissible contention, petitioners must link an alleged deficiency with a regulatory violation or a substantial health and safety concern.

In any event, Crow Butte did correlate mine unit activities to radiological emissions, and the answers to the "questions" asked by petitioners can be found in the application. For example, petitioners ask "why radon levels spiked in 2003" and complain that Section 5.8 fails to show the location of the Air Monitoring stations. With respect to the first question, Crow Butte addresses this issue in multiple portions of the application. In Section 5.8.7.2 (page 5-64, 5-77), Crow Butte notes that "[r]adon release levels from the Crow Butte project from the period are consistent with those since increased process flows were approved in 1998" and concludes that project releases do not appear to be the source of the unusual readings. *See also* Application, at 7-59 (same). Crow Butte noted that sampling or analytical errors could have been the cause of the anomalous results and deployed duplicate monitors to the air monitoring sites for comparison of results. *Id*., at 5-77. Moreover, even though there were elevated measurements in 2003, the levels were still below levels considered protective of the public. *Id*. at 7-59.

As to the location of the air monitoring stations, the application states that the three stations with elevated radon in 2003 "are located along the eastern and northern boundaries of the License Area and Section 19." Table 5.8-5 (page 5-65) identifies the location of six air monitoring stations as the "nearest residences and in the prevalent wind direction" and the location of the background air monitoring station as the environmental control station near Crawford, Nebraska. Thus, there is no genuine dispute with the application on a material issue.

For all of these reasons, Technical Contention G is inadmissible.

12. Miscellaneous A – Reasonable consultation with Tribal Leaders regarding the prehistoric Indian camp located in the area surrounding CBR's proposed North Trend Expansion Project has not occurred as required under NEPA and the National Historic Preservation Act.

Miscellaneous Contention A is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). As an initial matter, to the extent petitioners purport to challenge consultation regarding the pending amendment application for the North Trend Expansion, such a challenge is outside the scope of this license renewal proceeding, which is focused on renewal of the current license.

The contention is also inadmissible for other reasons. There is no discussion associated with the proposed contention at all. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. There is no statement of alleged facts or expert opinion or any information to show a genuine dispute with the application on a material fact. Petitioners do not even cite any portion of the application that they allege to be deficient.

In contrast to the absolute lack of discussion in the petition, the license application describes the results of two separate field investigations conducted within the Crow Butte license area by the University of Nebraska and the Nebraska State Historic Society. Application, at 2-48. The application notes that the current commercial operation has not directly affected any of the six potentially significant sites identified in those surveys. *Id*., at 2-53. Moreover, Crow Butte is required by License Condition 9.9 to complete a cultural resources inventory prior to engaging in any construction activity not previously assessed by the NRC. SUA-1534, at ¶9.9 (ML081000241). In order to ensure that no unapproved disturbance of cultural resources occurs, any work resulting in the discovery of previously unknown cultural artifacts shall cease. *Id*. The

artifacts shall be inventoried and evaluated, and no disturbance shall occur until the licensee has received authorization from the NRC to proceed. *Id*. Petitioners have not shown these efforts to be inadequate.

Petitioners must allege deficiencies or errors in the application and also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *Diablo Canyon*, LBP-02-23, 56 NRC at 439-41. The provisions of 10 C.F.R. § 2.309(f)(1)(ii), (v), and (vi) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Oconee*, CLI-99-11, 49 NRC at 334, 338. Yet, here, petitioners have provided no information regarding the bases for the proposed contention. None of the opinions attached to the petition address consultation either. And, in light of the ongoing operations at the site, there is nothing to suggest that there will be any new or different impacts to cultural resources during the renewal period. In short, the proposed contention wholly fails to comply with the NRC's procedural or substantive requirements for an admissible contention. As a result, the contention must be rejected for failing to satisfy 10 C.F.R § 2.309(f)(1)(i)-(vii).

Furthermore, as discussed *supra*, Section II.C, standing must be shown for every claim. Here, none of the petitioners have asserted an injury-in-fact associated with a failure to consult. Although several affidavits state that "[t]here may be Indian graves or other Indian artifacts at the site near the Mine that are of historic and/or cultural significance," they do not specify how the project might harm such graves or artifacts even if present or suggest that mitigation measures (including avoidance) would be inadequate. *See, e.g.*, Loretta Afraid of

Bear Cook Aff. at ¶17. Miscellaneous Contention A must be rejected because, even if proved, it will not afford the petitioners relief from an injury it relies upon for standing.

13. Miscellaneous B – Failure to Consult with Tribal Authorities.

Miscellaneous Contention B is nearly identical to Miscellaneous Contention A. The only difference between the two is that Miscellaneous Contention A focused on the North Trend Expansion, which is outside the scope of this license renewal proceeding. In any event, this distinction is irrelevant to the admissibility of Miscellaneous Contention B, which suffers from the same deficiencies as Miscellaneous Contention A — that is, the contention fails to satisfy 10 C.F.R. § 2.309(f)(1) and petitioners lack standing to support the proposed contention. Accordingly, Crow Butte adopts the discussion *supra*, Section III.B.12.

14. Miscellaneous C – Failure to Abide Trust Responsibility.

Miscellaneous Contention C is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). There is no discussion associated with the proposed contention at all. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. There is no statement of alleged facts or expert opinion or any information to show a genuine dispute with the application on a material issue. Petitioners do not even cite any portion of the application that they allege to be deficient. Petitioners must allege deficiencies or errors in the application and also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *Diablo Canyon*, LBP-02-23, 56 NRC 413, at 439-41.

The provisions of 10 C.F.R. § 2.309(f)(1)(ii),(v), and (vi) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice

pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Oconee*, CLI-99-11, 49 NRC at 334, 338. Yet, here, petitioners have provided no information regarding the bases for the proposed contention. None of the opinions attached to the petition address trust responsibilities either.

Further, petitioners lack standing with respect to any trust responsibilities. Trust responsibilities accrue to *the tribe*, not to individuals. An injury to tribal interests cannot support standing for individuals in an NRC proceeding. Petitioners must allege an "injury-in-fact" which they will suffer as a result of a Commission decision; they may not derive standing from the interests of another person or organization, nor may they seek to represent the interests of others without their express authorization. *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *see also, Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, *aff'd*, ALAB-470, 7 NRC 473 (1978) (denying standing asserted by a mother on behalf of her son who attended medical school near a proposed facility).

Moreover, there is simply no role for the NRC under the AEA or NEPA in adjudicating or assessing inter-governmental agreements and treaties made by the U.S. Government with other tribes, nations, or sovereigns. *See Hydro Resources Inc.* (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 NRC __, slip op. at 4 (2006) ("While the NRC recognizes the tribal sovereignty of the Navajo Nation, it is not the function of the EIS process to resolve existing or potential jurisdictional disputes [over water rights]."). The NRC is not equipped, or authorized, to assess the Federal Government's compliance with its trust obligations. Nor is there any indication that Crow Butte, as a private applicant, has any role or obligation as a trustee.

Finally, to the extent that petitioners have even alleged an injury (*e.g.*, a failure to abide trust responsibilities), injuries to petitioners arising from the actions of parties other than the applicant (in this case, the Federal Government and/or States) do not fall within the zones of interest arguably protected by the AEA or NEPA. In short, the injury of which the petitioners complain was not a result of the disputed application. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-23, 52 NRC 114, 124 (2000).

For these reasons, Miscellaneous Contention C is inadmissible.

15. Miscellaneous D – Failure to respect Winters Rights.

Similar to Miscellaneous Contention C, Miscellaneous Contention D is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). There is no discussion associated with the proposed contention at all. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. There is no statement of alleged facts or expert opinion or any information to show a genuine dispute with the application on a material issue. Petitioners do not even cite any portion of the application that they allege to be deficient. Petitioners must allege deficiencies or errors in the application and also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *Diablo Canyon*, LBP-02-23, 56 NRC 413, at 439-41.

The provisions of 10 C.F.R. § 2.309(f)(1)(ii), (v), and (vi) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Oconee*, CLI-99-11, 49 NRC at 334, 338. Yet, here, petitioners have provided no information

regarding the bases for the proposed contention. None of the opinions attached to the petition address *Winters* rights either.

Further, petitioners lack standing with respect to any *Winters* rights. Those rights accrue to *the tribe*, not to individuals. An injury to tribal interests cannot support standing for individuals in an NRC proceeding. Petitioners must allege an "injury-in-fact" which they will suffer as a result of a Commission decision; they may not derive standing from the interests of another person or organization, nor may they seek to represent the interests of others without their express authorization. *FP&L*, CLI-89-21, 30 NRC at 329-30.

As discussed previously, there is simply no role for the NRC under the AEA or NEPA in adjudicating or assessing inter-governmental agreements and treaties made by the U.S. Government with other tribes, nations, or sovereigns. *Hydro Resources*, CLI-06-29, 64 NRC __, slip op. at 4 ("[I]t is not the function of the EIS process to resolve existing or potential jurisdictional disputes [over water rights]."). The NRC is not equipped, or authorized, to assess the Federal Government's compliance with the *Winters* doctrine. Nor is there any indication that Crow Butte, as a private applicant, has any role or obligation in assessing or evaluating *Winters* rights.

To the extent that petitioners have even alleged an injury (*e.g.*, a failure to respect *Winters* rights), injuries to petitioners arising from the actions of parties other than the applicant (in this case, the Federal Government and/or States) do not fall within the zones of interest arguably protected by the AEA or NEPA. In short, the injury of which the petitioners complain was not a result of the disputed application. *See PFS*, LBP-00-23, 52 NRC at 124.

For these reasons, Miscellaneous Contention D is inadmissible.

16. Miscellaneous E – Failure to respect Treaty Rights.

Similar to Miscellaneous Contentions C and D, Miscellaneous Contention E is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). There is only limited discussion associated with the proposed contention. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. Although petitioners apparently "dispute" that no "Indian lands" are present in the 8-km radius of the License Area (Pet., at 31), petitioners do not provide facts or expert opinion or any information to show that the application is inaccurate. Nor do they state where any Indian lands are allegedly located in relation to the project. Thus, there is no genuine dispute with the application.

The provisions of 10 C.F.R. § 2.309(f)(1)(ii), (v), and (vi) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Oconee*, CLI-99-11, 49 NRC at 334, 338. Here, petitioners have provided no information regarding the bases for the proposed contention. None of the opinions attached to the petition address treaty rights either.

Further, petitioners lack standing with respect to any treaty rights. Treaty rights accrue to *the tribe*, not to individuals. An injury to tribal interests cannot support standing for individuals in an NRC proceeding. Petitioners must allege an "injury-in-fact" which they will suffer as a result of a Commission decision; they may not derive standing from the interests of another person or organization, nor may they seek to represent the interests of others without their express authorization. *FP&L*, CLI-89-21, 30 NRC at 329-30.

As discussed previously, there is simply no role for the NRC under the AEA or NEPA in adjudicating or assessing inter-governmental agreements and treaties made by the U.S. Government with other tribes, nations, or sovereigns. *Hydro Resources*, CLI-06-29, 64 NRC __, slip op. at 4 ("[I]t is not the function of the EIS process to resolve existing or potential jurisdictional disputes [over water rights]."). The NRC is not equipped, or authorized, to assess the Federal Government's compliance with treaties. Nor is there any indication that Crow Butte, as a private applicant, has any role or obligation in assessing or evaluating treaty rights.

To the extent that petitioners have even alleged an injury (*e.g.*, a failure to respect treaty rights), injuries to petitioners arising from the actions of parties other than the applicant (in this case, the Federal Government and/or States) do not fall within the zones of interest arguably protected by the AEA or NEPA. In short, the injury of which the petitioners complain was not a result of the disputed application. *See PFS*, LBP-00-23, 52 NRC at 124.

For these reasons, Miscellaneous Contention E is inadmissible.

17. Miscellaneous F – Failure to respect Hunting and Fishing Rights.

Similar to Miscellaneous Contentions C, D, and E, Miscellaneous Contention F is inadmissible for failing to address the factors in 10 C.F.R. § 2.309(f)(1)(i)-(vii). There is no discussion associated with the proposed contention at all. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. There is no statement of alleged facts or expert opinion or any information to show a genuine dispute with the application on a material issue. Petitioners do not even cite any portion of the application that they allege to be deficient. Petitioners must allege deficiencies or errors in the application and also indicate some significant

link between the claimed deficiency and either the health and safety of the public or the environment. *Diablo Canyon*, LBP-02-23, 56 NRC 413, at 439-41.

The provisions of 10 C.F.R. § 2.309(f)(1)(ii),(v), and (vi) were specifically added by the Commission "to raise the threshold bar for an admissible contention," and prohibit "notice pleading, with the details to be filled in later" and "vague, un[-]particularized contentions." *Oconee*, CLI-99-11, 49 NRC at 334, 338. Yet, here, petitioners have provided no information regarding the bases for the proposed contention. None of the opinions attached to the petition address hunting and fishing rights either.

Further, petitioners lack standing with respect to any hunting and fishing rights. Assuming that the hunting and fishing rights to which petitioners refer are tribal hunting and fishing rights, those rights accrue to *the tribe*, not to individuals. An injury to tribal interests cannot support standing for individuals in an NRC proceeding. Petitioners must allege an "injury-in-fact" which they will suffer as a result of a Commission decision; they may not derive standing from the interests of another person or organization, nor may they seek to represent the interests of others without their express authorization. *FP&L*, CLI-89-21, 30 NRC at 329-30.

As discussed previously, there is simply no role for the NRC under the AEA or NEPA in adjudicating or assessing inter-governmental agreements and treaties made by the U.S. Government with other tribes, nations, or sovereigns. *Hydro Resources*, CLI-06-29, 64 NRC __, slip op. at 4 ("[I]t is not the function of the EIS process to resolve existing or potential jurisdictional disputes [over water rights]."). The NRC is not equipped, or authorized, to assess the Federal Government's compliance with hunting or fishing rights. Nor is there any indication that Crow Butte, as a private applicant, has any role or obligation in assessing or evaluating tribal hunting or fishing rights.

To the extent that petitioners have even alleged an injury (*e.g.*, a failure to respect hunting and fishing rights), injuries to petitioners arising from the actions of parties other than the applicant (in this case, the Federal Government and/or States) do not fall within the zones of interest arguably protected by the AEA or NEPA. In short, the injury of which the petitioners complain was not a result of the disputed application. *See PFS*, LBP-00-23, 52 NRC at 124.

For these reasons, Miscellaneous Contention F is inadmissible.

18. Miscellaneous G – Failure to Disclose in violation of 40.9.

In Miscellaneous Contention G, petitioners assert that a violation of 10 C.F.R. § 40.9, entitled "Completeness and accuracy of information," represents an independent basis for the admission of their contentions, *i.e.*, a mere allegation that some substantive information is, in their view, incomplete or inaccurate, represents an independent reason to deny the application. However, no such independent basis exists. Section 40.9 presents no substantive standards or criteria for determining whether the applicable provisions of 10 C.F.R. Part 40 have been met.[30] *Cf.*, 10 C.F.R. §§ 40.31, 40.32 and 10 C.F.R. Part 40, Appendix A. Section 40.9 is simply not material to a finding the NRC must make to support the action that is involved in the proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iv).

To the contrary, 10 C.F.R. § 40.9 is tied to an enforcement mechanism whose use is within the sole discretion of the Commission through its Staff and which has not been delegated to the Board.[31] As stated in the Commission's General Statement of Policy and

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[30] 10 C.F.R. § 40.9 merely references "information required by statute or by the Commission's regulations, orders, or license conditions . . . ."

[31] *Advanced Medical Systems, Inc.*, CLI-94-6, 39 NRC 285, 312-313 (1994), *aff'd Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (6th Cir. 1995). The appropriate mechanism to pursue this matter would be a petition under 10 C.F.R. § 2.206. *See, e.g.*, DD-03-02, License No. SNM-770. *Westinghouse Electric Company LLC*, Waltz Mill Service Center, Madison, PA; Notice of Issuance of Director's Decision Under 10 CFR

Procedures for NRC Enforcement Action: "A violation of the regulations involving the submittal of incomplete and/or inaccurate information . . . can result in the full range of enforcement sanctions." NRC Enforcement Policy, at 43.[32]

In essence, the reliance by Petitioners on § 40.9 is an attempt to litigate the completeness of the application and its docketing by the Staff. This is beyond the scope of the matter before this panel. As another Licensing Board explained, "[t]he completeness of [an application] is not a matter that this Board should or can decide . . . [as the] decision whether to accept the [application] for docketing is made by the NRC Staff . . . ."[33] Additionally, the "NRC does not 'violate[] any clear legal duty by proceeding first to docket [an application] and thereafter to request additional information.'"[34] Mere citation of § 40.9 by the Petitioners should not allow them to shortcut pleading requirements that they independently review the application, as filed, and identify with particularity any substantive deficiencies they assert are present. As discussed further below, petitioners have failed in this regard.

First, petitioners make several unsupported and inflammatory allegations regarding ownership of Crow Butte and Crow Butte's compliance with NRC regulations.[35] Pet.,

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2.206, 68 Fed. Reg. 52432 (September 3, 2003) (requesting to abate a violation of 10 CFR 50.5).

32 The most recent version of the Enforcement Policy can be found on the NRC's website at http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html (last visited 8/16/08).

33 *Id*., at 336 (quoting *Concerned Citizens of Rhode Island v. NRC*, 430 F. Supp. 627, 634 (D. R.I. 1977)).

34 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 95-96, *aff'd* CLI-04-36, 60 NRC 631 (2004).

35 Although there is no discussion of foreign ownership in the text associated with Contention G, petitioners may be referring to the discussion on pages 51-60 of the petition. The discussion on these pages appears to be random excerpts cut and pasted

at 32. These allegations are flatly inaccurate and consist of nothing more than baseless speculation. Crow Butte did not conceal any change in ownership. On May 13, 1998, Crow Butte notified the NRC "pursuant to 10 CFR § 40.46" of an upcoming change in the ownership of the shareholders of Crow Butte Resources.[36] In that letter, Crow Butte informed the NRC that Cameco had agreed to purchase all of the shares of Uranerz U.S.A., Inc. — 79 of 100 shares, which would give Cameco a controlling ownership interest in Crow Butte. The letter also sought NRC confirmation that the notification satisfied 10 C.F.R. § 40.46. On June 5, 1998, the NRC responded, notifying Crow Butte that "the NRC staff finds the proposed change in shareholder ownership to be acceptable" and consenting to the change.[37] The NRC also determined that no amendment to Crow Butte's source material license was necessary and attached a Technical Evaluation Report assessing the proposed change in ownership. Thus, contrary to petitioners' unsupported arguments, Crow Butte clearly notified the NRC of the proposed change in ownership, and sought (and received) prior approval, in writing, of the proposed change in

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from other filings and lacks any correlation to a specific contention. Although it is incumbent on petitioners to explain the basis for any contention, we nevertheless have responded to the information in these pages because it is so obviously contrary to the actual events that took place.

36 *See* Ltr. from Stephen P. Collings, President, Crow Butte Resources, to Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, dated May 13, 1998 (Accession No. 9805260014) (Exhibit "A").

37 *See* Ltr. from Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, to Stephen P. Collings, President, Crow Butte Resources, dated June 5, 1998 (Accession No. 9806120319) (Exhibit "B"). The NRC also found that Crow Butte provided the information identified in NRC Information Notice (IN) 89-25, "Unauthorized Transfer of Ownership or Control of Licensed Activities," dated March 7, 1989 (Accession No. ML031180579) (Exhibit "C").

conformance with 10 C.F.R. § 40.46.[38] Thus, there is no basis for a contention and no genuine dispute on a material issue of law or fact.

Second, petitioners allege suppression of geological data. However, there is no discussion associated with this basis. Petitioners have not provided a specific statement of law or fact or an explanation of the proposed contention, nor have they demonstrated that the contention is within the scope of the proceeding or that it raises issues that are material to the findings that the NRC must make. Petitioners do not even cite any portion of the application that they allege to be deficient. Petitioners must allege deficiencies or errors in the application and also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. *Diablo Canyon*, LBP-02-23, 56 NRC 413, at 439-41. Rather than articulate a basis for the contention or describe some dispute with the application on a material issue, petitioners simply refer the parties to the Whistleblower letter/LaGarry opinion. Parties cannot be expected to sift unaided through documents in order to piece together and discern the intervenors' particular concerns or the grounds for their claims. *See Hydro Resources*, CLI-01-4, 53 NRC at 46. Attaching a document in support of a contention without any explanation of its significance simply cannot provide an adequate basis for a contention. *Fansteel*, CLI-03-13, 58 at 205. Moreover, historical oversight-related issues have no bearing on the instant application.[39]

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[38] Inexplicably, petitioners continue make these inaccurate assertions despite having been made aware of the NRC's specific approvals of the ownership change on several prior occasions. *See*, *e.g.*, "Applicant's Reply Brief Regarding Foreign Ownership and Hearing Procedures," dated June 16, 2008 (ML081760300). In fact, petitioners even cite to Crow Butte's notice to the NRC regarding the ownership change as well as the NRC's approval of the change in ownership in footnote 16 in their petition. Pet., at 58.

[39] To form the basis for an admissible contention, allegations of improprieties must be of more than historical interest: they must relate directly to the proposed licensing action. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001).

Such issues are addressed through the NRC's normal oversight programs and are outside the scope of this license renewal proceeding.

Third, petitioners allege that the application fails to adequately disclose the flow of the White River into the Pine Ridge Indian Reservation. Here, petitioners fail to show a genuine dispute with the application or assert that this omission is material to the findings that the NRC must make. Petitioners do not dispute the accuracy of the statements in the application — that is, petitioners acknowledge that the White River flows across Dawes County into South Dakota as stated in the application. Yet, they assert that the application should have gone on to note that the White River flows from South Dakota into the Pine Ridge Indian Reservation (from there, the White River eventually flows into the Missouri River). This omission is not material because it does not change any of the conclusions in the application or suggest some impact that was not considered by Crow Butte. Nor do petitioners point to any regulatory requirement to describe local hydrology at the regional level of detail they would prefer. As a result, this issue cannot form the basis for an admissible contention.

The remainder of the text associated with Miscellaneous Contention G likewise fails to show a genuine dispute with the application on a material issue. If a petitioner submits a contention of omission, but the allegedly missing information is indeed in the license application, then the contention does not raise a genuine issue. *Turkey Point*, LBP-90-16, 31 NRC at 521, n.12. For example, the petition states: "Dispute: Brule sands may receive inflow from the creek during period of high low [sic]." Pet., at 32. Strangely, however, petitioners overlook this very statement in Section 2.7.1.1: "The latter [(Brule sands)] may receive inflow from the creek during periods of high flow." Application, at 2-131. The petition also argues that Section 2.7.1.1 fails to disclose that surface water spills could be carried into Squaw Creek and on to the

White River. Chapter 2 of the application discusses site characteristics. The environmental impacts of the project are discussed in Chapter 7. There, the application notes that surface water quality could be impacted by accidents such as an uncontrolled release of process liquids, but then goes on to describe measures used to control wellfield spills. Application, at 7-9 to 7-10. Petitioners never explain how these measures are inadequate.

The petition also argues that the application fails to discuss fracturing and faulting relative to flow and conductivity discussion. Pet., at 33. This is also incorrect. These issues are addressed in the application:

> It is recognized that small faults and fractures may occur in the sediments overlying the Chadron Sandstone unit. Additionally, there may be areas of secondary permeability within isolated areas of the Brule Formation. However, two pump tests conducted in the Area of Review indicate no faulting or fracturing which affects the confinement of the Chadron Sandstone or which would affect in-situ mining of the uranium mineralization

Application, at 2-114.

> Fractures may increase Brule and Chadron permeability in localized areas (Souders 2004). It is noted that CBR operations in the [Commercial Study Area] to date do not support evidence of fracturing in the Pierre to a degree such that it would impact the designation of the Pierre as a lower confining unit below the Basal Chadron Sandstone.

Application, at 2-140.

Next, petitioners mistakenly assert that the application fails to disclose the aquifer test results or disclose the standards they use to assess the integrity of the confining layer. Pet., at 34. However, Section 2.7.2.3 of the application describes in detail the four aquifer tests conducted by Crow Butte. *See* Application, at 2-153 to 2-166. The application identifies the radius of influence for each pump test (Figure 2.7-8) and the pump test methodology. Then, the application provides a detailed discussion of each pump test and the bases for the conclusions.

As the application addresses the very issues that petitioners allege to be absent, there is no genuine dispute.

The last two items in proposed Miscellaneous Contention G simply pose questions (ecological monitoring and baseline sample results) and do not provide a basis for a genuine dispute with the application. Moreover, there is no factual or expert support for these bases. Nor is there any correlation between this contention and any NRC regulatory requirements. General statements that a matter ought to be considered without explaining what information in the application is deficient or how it should be changed are insufficient to support a contention.

For all of these reasons, Miscellaneous Contention G is inadmissible.

19. Miscellaneous H – Failure to Update in violation of Part 40, App. A; 51.45.

Miscellaneous Contention H alleges that Crow Butte has failed to update its application in violation of 10 C.F.R. Part 40, Appendix A and 10 C.F.R. § 51.45. This contention is inadmissible because it fails to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). The petition does not contain a specific statement of law or fact to be controverted. The requirement for a basis with reasonable specificity mandates that a petitioner include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. *Seabrook*, LBP-82-106, 16 NRC at 1656. Although petitioners point to 10 C.F.R. Part 40, Appendix A and 10 C.F.R. § 51.45, nothing in those provisions requires an applicant to provide updated information as part of license renewal in the absence of any indication of a new or significant change in the environment. Moreover, petitioners do not allege that the application failed to address some specific change in uses of adjacent lands or waters that

bear on the environmental impacts of the project. General statements that a matter ought to be considered without explaining what information in the application is deficient or how it should be changed are insufficient to support a contention. Thus, petitioners have failed to demonstrate a genuine dispute on a material issues.

At bottom, the contention is devoid of any factual support for its assertions and conclusions concerning the need to update information on uses of adjacent lands. For these reasons, the petitioners have failed to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(i)-(vii).

20. Miscellaneous I – Failure to Include Recent Research; Use of Obsolete Data and Information in violation of AEA 182 or 184.

Miscellaneous Contention I is inadmissible for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vii). The petition does not contain a specific statement of law or fact to be controverted. The requirement for a basis with reasonable specificity mandates that a petitioner include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. *Seabrook*, LBP-82-106, 16 NRC at 1656. The petition does not identify a specific requirement that Crow Butte include recent research. It also does not demonstrate any new research that would undermine the data used by Crow Butte or otherwise change the conclusions in the application. Thus, the proposed contention fails both procedurally and substantively.

Further, the references to Sections 182 and 184 of the Atomic Energy Act are inscrutable. Section 182 simply states the non-controversial proposition that applicants must include the information in an application that the Commission determines to be necessary.

Section 184 does not even apply to source material licensees such as Crow Butte; it only applies to licenses to possess or use special nuclear material.

Finally, to the extent that the petition is raising an issue similar to Technical Contention F (Failure to include recent research), Crow Butte incorporates the discussion *supra*, Section III.B.10.

21. Miscellaneous J – Missing Pages – incomplete – violation of 40.9.

Miscellaneous Contention J is apparently based on the absence of page 3-22 from the application (application includes two identical pages labeled page 3-23). This omission was obviously the result of an unintentional administrative error. A copy of page 3-22 is attached as Exhibit D. In any event, this error cannot support an admissible contention. An omission in an application does not, without more, provide a basis for believing that there is a safety issue. *Comanche Peak*, LBP-83-75A, 18 NRC at 1263 n.6. Petitioners must link an alleged deficiency with a regulatory violation or a substantial health and safety concern. Barring such a showing, the contention is inadmissible.

22. Miscellaneous K – Lack of Authority to Issue License to US Corporation which is 100% owned, controlled and dominated by foreign interests; voidability of mineral and real estate leases due to Nebraska Alien Ownership Act.

Miscellaneous Contention K alleges that the NRC lacks authority to issue a license to a U.S. corporation that is owned, controlled and dominated by foreign interests. This contention is inadmissible because it lacks a basis in law or fact and fails to demonstrate a genuine dispute with the application. Petitioners point to no statutory prohibition on foreign ownership of a source material license.[40] Instead, petitioners point to 10 C.F.R. § 40.38 and state

[40] Section 103d. of the AEA does not prohibit foreign ownership of source material licensees. Section 103d. only applies to production and utilization facilities. 42 U.S.C. § 2133a. ("The Commission is authorized to issue licenses to persons applying therefore to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire,

that "a fair reading of Section 40.38 also supports a bar to the issuance of the sought license." Pet., at 38. This is gross misrepresentation of the regulation.

Section 40.38 provides that a source material license "may not be issued to the Corporation, if the Commission determines that: (A) The Corporation is owned, controlled or dominated by . . . a foreign corporation." That provision was added to implement the statutory changes to the AEA associated with the USEC Privatization Act (Pub. L. 104-134). According to the Statements of Consideration accompanying the direct final rule, the language in 10 C.F.R. § 40.38 was added to conform to the legislation, which specifically restricted issuance of a certificate or license to USEC if issuance would be inimical to maintenance of a reliable and domestic source of enrichment services. 62 Fed. Reg. 6664, 6665 (Feb. 12, 1997). That same rulemaking defined "Corporation" to mean "the United States Enrichment Corporation (USEC), or its successor." 10 C.F.R. § 40.4. Thus, by the plain language of 10 C.F.R. § 40.38, the regulation does not apply to Crow Butte or to any uranium recovery facility; it only applies to USEC and its successors.

Although petitioners make arguments regarding the export of uranium from Crow Butte (Pet., at 50-51), the export of source material produced at Crow Butte is outside the scope of this license amendment proceeding. Except in limited circumstances, distribution of source material requires an export license. *See* 42 U.S.C. § 2094 (requiring an export license generally). The NRC implements its statutory obligation with respect to source material through 10 C.F.R. § 40.51, which states in relevant part that no licensee shall transfer source material to any person

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possess, use[,] import, or export under the terms of an [Agreement for Cooperation], *production or utilization facilities* for commercial or industrial purposes.") (emphasis added). Utilization facilities include nuclear power reactors, while production facilities generally include enrichment plants. *See* 42 U.S.C. §§ 2014v. (production facility) and 2014cc. (utilization facility).

abroad except pursuant to an export license issued under 10 C.F.R. Part 110. To the extent that petitioners' proposed contention is based on the export of uranium mined at Crow Butte, it raises an issue that is outside the scope of this license amendment proceeding, which only authorizes possession and use or source material — not the export of the source material.

To the extent that the petitioners allege the voidability of mineral and real estate leases due to the Nebraska Alien Ownership Act, that portion of the contention is likewise outside the scope of this NRC proceeding. This proceeding is limited to Crow Butte's compliance with the Federal AEA and NRC regulations. The requirements of State law are for State bodies to determine, and are beyond the jurisdiction of NRC adjudicatory bodies.[41] *Northern States Power Company*, ALAB-464, 7 NRC at 375. Thus, this portion of the contention cannot support an admissible contention.

Further, the proposed contention raises an issue outside the scope of this license renewal proceeding. The ownership of Crow Butte will not change as a result of license renewal. In effect, petitioners are challenging the NRC's prior approval of a change in the ownership of shares in Crow Butte in 1998. Anyone who seeks the suspension of a license should not file a petition for intervention, but, instead, must file a petition under 10 C.F.R. § 2.206 requesting that

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[41] Although petitioners cite a "press release" for the proposition that Crow Butte violated Nebraska law (Pet. at 52-53), they do not disclose a subsequent determination by the Nebraska Attorney General that Crow Butte came into compliance. *See* Exhibit "E." In any event, the issue was litigated in Nebraska State Court. The result of that litigation was an Order of the District Court of Lancaster County, Nebraska, dated September 29, 1993, dismissing WNRC's Amended Petition for Writ of Mandamus (attached as Exhibit "F"). The District Court's Order clearly held "on April 9, 1990, neither FEN nor CBL [(the owners and operators of the project at that time)] were in violation of § 76-406; therefore, the [Nebraska Secretary of State] was under no duty to certify said corporations for dissolution." WNRC appealed this decision to the Nebraska Court of Appeals. The Secretary of State moved for summary affirmance on January 18, 1994. In response, WNRC (the petitioner in the instant case) requested, and the State granted, a stipulation so that WNRC could dismiss its appeal. The stipulation was granted, and the appeal was dismissed February 1, 1994.

the Commission initiate enforcement action pursuant to 10 C.F.R. § 2.202. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 67, 77-78 (1992).

Finally, petitioners do not have standing to support this contention. As discussed above, petitioners must establish standing for every single claim. The alleged injuries based on foreign ownership of Crow Butte (see Hyde Aff. at ¶7) do not support the particularized showing of harm needed to support an injury-in-fact. Merely being a U.S. citizen and a member of the public or a beneficiary of the national interest in protecting public health and safety is insufficient to support standing. Under longstanding NRC (and judicial) interpretations, standing cannot be based solely on a "generalized grievance" shared in substantially equal measure by all or a large class of citizens (*e.g.*, the "public"). *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983). Assertions of broad public interest do not establish the particularized interest necessary for participation by an individual or group in NRC adjudicatory processes. *Id.*, at 332. A petitioner must establish that he will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. *Transnuclear, Inc.* (Ten Applications for Low Enriched Uranium Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977).

Moreover, a generalized interest in minimizing danger from proliferation is insufficient to confer standing. *See Transnuclear Inc.* (Export of 93.15% Enriched Uranium), CLI-94-1, 39 NRC 1, 5 (1994); *see also, Dellums v. NRC*, 863 F.2d 968, 972 (D.C. Cir. 1988) (stating that "opposing nuclear proliferation and ensuring proper safeguards for nuclear energy" is only a generalized goal). The petitioners fail to show any evidence of a specific threat to national nonproliferation objectives and do not go beyond mere speculations and unsupported

and undefined potential threats. *See U.S. Department of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 365 (2004). This is inadequate to support the concrete and particularized injury that is needed to support standing.

For all of these reasons, Miscellaneous Contention K is inadmissible.

23. Miscellaneous L – Calculation of Surety Bond Fails to Consider Reasonably Foreseeable Costs of Restoration and Decommissioning.

Miscellaneous Contention L asserts that Crow Butte's surety bond fails to consider post-restoration, post-decommissioning, or related ecological monitoring. This proposed contention is inadmissible because it lacks a basis and otherwise fails to demonstrate a genuine dispute with the application on a material issue.

Petitioners do not cite any statutory or regulatory provision that requires Crow Butte to provide post-restoration, post-decommissioning, or related ecological monitoring. Criterion 9 of 10 C.F.R. Part 40, Appendix A, states that surety arrangements must be established to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the buildings and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan for (1) decontamination and decommissioning of buildings and the site to levels which allow unrestricted use of these areas upon decommissioning, and (2) the reclamation of tailings and/or waste areas in accordance with technical criteria in Appendix A. Appendix A does not require post-restoration, post-decommissioning, or related ecological monitoring.

Crow Butte has followed Appendix A. Chapter 6 of the application describes in detail groundwater quality restoration, surface reclamation, and facility decommissioning. According to the application, the surety includes funds for groundwater restoration,

decontamination and decommissioning and surface reclamation costs for all areas to be affected by the installation and operation of the proposed mine plan. Application, at 6-44. The detailed calculations utilized in determining the bonding requirements for the Crow Butte Project are submitted annually. *Id.* To the extent that petitioners argue that additional activities — beyond those required by Part 40, Appendix A — are required, the proposed contention is an impermissible challenge to NRC regulations. *See* 10 C.F.R. § 2.3335(a).

Moreover, petitioners have not shown that post-restoration, post-decommissioning, or related ecological monitoring is necessary. They do not allege that the funds set aside for groundwater restoration are inadequate or provide a basis for performing post-decommissioning or ecological monitoring. Nor do they challenge any of the proposed methodologies for conducting post-reclamation and decommissioning radiological surveys. *See* Application, at 6-39 to 6-42. Petitioners must link an alleged deficiency with a regulatory violation or a substantial health and safety concern. Having done neither, there is no basis for the proposed contention.

C. Discretionary Intervention Is Not Warranted

Petitioners also seek discretionary intervention in the event that the Board finds no standing. Pet., at 8. This request should be denied. Under 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." *See also* "Final Rule: Changes to Adjudicatory Process," 69 Fed. Reg. 2,182, 2,189 (January 14, 2004) ("Discretionary intervention, however, will not be allowed unless at least one other petitioner has established standing and at least one admissible contention.").

To gain discretionary standing a petitioner must address other Commission requirements. Under 10 C.F.R. § 2.309(e), a petitioner must, in addition to addressing the

standing requirements under Section 2.309(d)(1), address in the initial petition: (1) factors weighing in favor of allowing intervention, and (2) factors weighing against allowing intervention. Here, petitioners have not addressed the required factors. Thus, even if the Board determines later that there is standing/admissible contention, the petitioners' request should be denied for failure to comply with Section 2.309(e).

D. Subpart G Procedures Are Not Available

In their request for a hearing, the petitioners request that the hearing be conducted under 10 C.F.R. Part 2, Subpart G, "[p]ursuant to Section 2.310(d) … because [its] contentions necessitate resolution of issues of material fact relating to the occurrence of past events, *i.e.*, whether CBR disputes any of the Relevant Facts and/or Positions stated therein [by petitioners]." Pet. at 8, 60.

As an initial matter, petitioners' reliance on Section 2.310(d) is misplaced as, by its clear terms, it applies only to nuclear power reactors and not to license renewal proceedings under 10 C.F.R. Part 40. License renewal proceedings under Part 40 are conducted pursuant to the procedures in 10 C.F.R. Part 2, Subpart L or Subpart N. *See* 10 C.F.R. §§ 2.310(a) and (h). Moreover, 10 C.F.R. § 2.1200 provides that Subpart L procedures govern all but a select few proceedings. In promulgating Section 2.310, the Commission stated that unless one of the applications specified in paragraphs (b) through (h) are at issue, "the listed proceedings are to be conducted under Subpart L."[42] *See* "Final Rule: Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2206 (Jan. 14, 2004) (emphasis added). Thus, according to the plain language of the

[42] The regulations governing the selection of hearing procedures authorize use of Subpart G procedures in only four circumstances: (1) enforcement matters, § 2.310(b); (2) licensing and construction of enrichment facilities, § 2.310(c); (3) certain power reactor licensing proceedings, § 2.310(d); and (4) high-level waste repository proceedings, § 2.310(f). None of these provisions apply to a Part 40 source material license amendment proceeding.

Commission's regulations, the only available hearing procedures in the instant case are those in Subpart L.[43]

Even if Subpart G procedures were hypothetically available, the Commission's rules of practice at 10 C.F.R. § 2.310(d) list only two criteria that would entitle a petitioner to a hearing under Subpart G procedures:

> (1) The Board finds that (a) a contention necessitates resolution of "a dispute of material fact concerning the occurrence of a past activity" *and* (b) that "the credibility of an eyewitness may reasonably be expected to be an issue" in resolving that dispute; or
>
> (2) A proceeding issue involves "issues of motive or intent of the party or eyewitness material to the resolution of the contested matter."

See Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 694-695 (2004). Subpart G is not appropriate here because petitioners did not allege existence of issues that satisfy the criteria for Section 2.310(d). First, with respect to the first criterion, the petitioners only alleged resolution of facts relating to past events — facts that are not even material to the specific license amendment request at issue. The petitioners did <u>not</u> address the second prong of that test in their request for hearing — that is, the petitioners failed to allege that the credibility of an eyewitness may be at issue. Moreover, with respect to the second criterion, the petitioners did not assert in their petition that that the proceeding involves the motive or intent of Crow Butte or eyewitnesses.

Petitioners are not entitled to a Subpart G hearing because of a high degree of public interest in the proceeding, because the issue is controversial, or because discovery and cross-examination are allegedly required to assure public confidence in the proceeding and its

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[43] Under certain circumstances not present here (*e.g.*, agreement among the parties), the procedures in 10 C.F.R. Part 2, Subpart N, could be used.

decisions. *Vermont Yankee*, 60 NRC at 697. Alleging generalized aspersions on the tactics or motives of the parties, their employees, members, lawyers, or representatives will not satisfy the "credibility" or "motive" elements of either criterion so as to trigger a Subpart G proceeding. *Id*., at 700. Further, the fact that a witness may be a paid employee or dedicated member of a party, does not, *per se*, create a presumption that his or her credibility or motives are in such doubt that a Subpart G proceeding is required. *Id.*

Accordingly, even if Subpart G procedures were available for Part 40 license amendment proceedings, the petitioners would not have satisfied the criteria for conducting the hearing under Subpart G.

IV. CONCLUSION

For all of the above reasons, petitioners lack standing and have not submitted an admissible contention. Nor have petitioners demonstrated that discretionary intervention is warranted. Accordingly the petition to intervene and request for hearing should be denied. In the event that the Licensing Board finds that petitioners have standing and have offered one admissible contention, any hearing should be held under the procedures in 10 C.F.R. Part 2, Subpart L.

Respectfully submitted,

/s/ signed electronically by
Tyson R. Smith
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COUNSEL FOR CROW BUTTE RESOURCES, INC.

Dated at San Francisco, California
this 22nd day of August 2008

EXHIBIT A

CROW BUTTE RESOURCES, INC.

216 Sixteenth Street Mall, Suite 810
Denver, Colorado 80202

(303) 825-2266
(303) 825-1544 - FAX

May 13, 1998

Mr. Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management,
NMSS (T-7-J9)
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20850

40-8943

Re: Docket No. 40-8943
License No. SUA-1534

Dear Mr. Holonich:

Crow Butte Resources, Inc. (CBR) is the operator of the Crow Butte *in-situ* leach (ISL) uranium mine near Crawford, Nebraska. CBR holds Source Material License SUA-1534 with the USNRC for the operation of the Crow Butte mine. This letter is written pursuant to 10 CFR §40.46 to inform the U.S. Nuclear Regulatory Commission (USNRC) of an upcoming change in the ownership of one of the shareholders of CBR.

Currently, the shareholders of CBR are Geomex Minerals, Inc., a Delaware Corporation, (16 shares); Kepco Resources America, Ltd., a Colorado Corporation, (5 shares); and Uranerz U.S.A., Inc., a Colorado Corporation, (79 shares). Cameco Corporation has entered into an agreement to purchase all of the shares of Uranerz U.S.A., Inc. with closing likely to occur in late summer or early fall of this year pending completion of the due diligence process. Both before and after the purchase is complete, the shareholders of CBR and their share ownership will be the same; only the ownership of one of the CBR shareholders will have changed.

In keeping with the information requirements of 10 CFR §40.46, as outlined in NRC Information Notice 89-25, Rev. 1, the following points detail the effects of the share transfer on the license:

1) There will be no change to the name of CBR or its shareholders. Rather, Cameco Resources (U.S.) Inc., a Nevada Corporation and a wholly owned subsidiary of Cameco Corporation, will acquire 100% of Uranerz U.S.A., Inc.

2) There will be no change in the regulatory contacts at CBR.

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3) There will be no changes to the personnel listed in the license responsible for radiation safety or licensed material use. In addition, it is not contemplated at this time that changes will be made to the officers of CBR so that current officers (named below) will continue to serve following the purchase. The officers of CBR will be:

Steve Collings	President and CEO
Steve Magnuson	Vice President and Secretary
Ralph Knode	Vice President
William Doty	Treasurer
Jeff Welborn	Assistant Secretary

If the transaction closes, the three current appointees of Uranerz U.S.A., Inc. to the CBR Board of Directors will resign from the Board as a condition of the closing, and three new directors will be appointed by Uranerz after the purchase has been completed. The CBR Board of Directors will then consist of the three new appointees together with four of the current directors, Steve Collings, Crew Schmitt, B. Y. Lee and Gerald Grandey. The names of the new directors will be provided as soon as they are known.

4) There will be no changes to the organization, location, facilities, equipment, or procedures.

5) There will be no changes in use, possession, location or storage of licensed material.

6) As the facility will continue to operate as it is now, all records (i.e., surveillance, decommissioning, etc:) will continue to be collected and maintained in accordance with the license and NRC regulations.

7) As the facility will continue to be operated in accordance with its permit, no decontamination or decommissioning is required.

8) The restoration and decommissioning commitments will be maintained per the existing permit. The financial surety arrangement will remain unaffected by the transfer of ownership in Uranerz U.S.A. The letters of credit issued in the name of CBR will remain in effect, and CBR will maintain responsibility for decommissioning and restoration in accordance with the existing plan.

9) There is no action regarding this purchase which would generate a license amendment or a revision to the Operations Plan.

10) Cameco Resources U.S., Inc. has indicated that it will provide any assurances necessary, in writing, should they be required.

In short, the purchase will not affect the day to day management and operation of CBR or impair CBR's ability to comply with the requirements of the Source Material license and NRC regulations. The shareholders will remain the same, and CBR will continue to have its own officers, directors, employees and other corporate attributes.

CBR requests confirmation from the NRC that this notification meets the NRC's notification requirements under 10 CFR §40.46. As time is of the essence, CBR would appreciate the above confirmation as soon as possible. We will be contacting you in the near future to discuss the timetable for the confirmation.

If you have any questions, or you require further information, please call me.

Sincerely,

Stephen P. Collings

Stephen P. Collings
President, Crow Butte Resources, Inc.

cc: Ross Scarano, USNRC

EXHIBIT B

June 5, 1998

Crow Butte Resources, Inc.
ATTN: Mr. Stephen P. Collings, President
216 Sixteenth Street Mall, Suite 810
Denver, Colorado 80202

SUBJECT: CHANGE IN CORPORATE OWNERSHIP

Dear Mr. Collings:

By letter dated May 13, 1998, Crow Butte Resources, Inc. (CBR) notified the U.S. Nuclear Regulatory Commission (NRC) of an upcoming change in the ownership of one of the shareholders of CBR. In addition, CBR provided the information identified under NRC Information Notice (IN) 89-25, Revision 1 (December 7, 1994).

Based on its review, the NRC staff finds the proposed change in shareholder ownership to be acceptable, and this letter is evidence of NRC's consent to the change. The details of CBR's notification and the NRC staff's evaluation of the proposed change are discussed in the enclosed Technical Evaluation Report. No amendment to Source Material License No. SUA-1534 is necessary as a result of this licensing action.

If you have any questions regarding this letter or the enclosure, please contact Mr. James Park of my staff, at (301) 415-6699.

Sincerely,

[D. Gillen for]
Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-8943
License No. SUA-1534
Case Closed: L51660

Enclosure: As stated

cc: H. Borchert, RCPD, NE
NDEQ
PDR, NE

DISTRIBUTION (w/ Encl.): PUBLIC [redacted] NMSS r/f URB r/f
ARamirez BSpitzberg/RIV ACNW PMackin, CNWRA
MRogers, PMDA

w/o Encl.: MFederline CAbrams MLayton

DOCUMENT NAME: S:\DWM\URB\JRP\URANERZ.LTR

OFC	URB	C	URB		URB			
NAME	JPark		DGillen		JHolonich			
DATE	6/4/98		6/5/98		6/5/98			

OFFICIAL RECORD COPY

9806120319 980605
PDR ADOCK 04008943
C PDR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 5, 1998

Crow Butte Resources, Inc.
ATTN: Mr. Stephen P. Collings, President
216 Sixteenth Street Mall, Suite 810
Denver, Colorado 80202

SUBJECT: CHANGE IN CORPORATE OWNERSHIP

Dear Mr. Collings:

By letter dated May 13, 1998, Crow Butte Resources, Inc. (CBR) notified the U.S. Nuclear Regulatory Commission (NRC) of an upcoming change in the ownership of one of the shareholders of CBR. In addition, CBR provided the information identified under NRC Information Notice (IN) 89-25, Revision 1 (December 7, 1994).

Based on its review, the NRC staff finds the proposed change in shareholder ownership to be acceptable, and this letter is evidence of NRC's consent to the change. The details of CBR's notification and the NRC staff's evaluation of the proposed change are discussed in the enclosed Technical Evaluation Report. No amendment to Source Material License No. SUA-1534 is necessary as a result of this licensing action.

If you have any questions regarding this letter or the enclosure, please contact Mr. James Park of my staff, at (301) 415-6699.

Sincerely,

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-8943
License No. SUA-1534

Enclosure: As stated

cc: H. Borchert, RCPD, NE
NDEQ
PDR, NE

TECHNICAL EVALUATION REPORT
FOR REQUEST FOR LICENSE TRANSFER

DOCKET NO. 40-8943 LICENSE NO. SUA-1534

LICENSEE: Crow Butte Resources, Inc.

FACILITY: Crow Butte Uranium Project

PROJECT MANAGER: James Park

SUMMARY AND CONCLUSIONS:

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed Crow Butte Resources, Inc.'s (CBR's) notification of a change in shareholder ownership, submitted by letter dated May 13, 1998. Based on its review, the NRC staff has no objection to the change in ownership. No amendment to Source Material License No. SUA-1534 is necessary as a result of this licensing action.

DESCRIPTION OF LICENSEE'S AMENDMENT REQUEST:

By letter dated May 13, 1998, CBR notified NRC of an upcoming change in ownership of one of the shareholders of CBR. Currently, the shareholders of CBR are Geomex Minerals, Inc. (16 shares), Kepco Resources America, Ltd. (5 shares), and Uranerz U.S.A., Inc. (79 shares). Cameco Corporation has entered into an agreement to purchase all of the shares of Uranerz U.S.A., Inc, with the likely closing to occur in the late summer or early fall of 1998. The remaining shareholders and their shares will be unaffected by this purchase.

As part of its submittal, CBR provided the information identified in Information Notice (IN) 89-25, Rev. 1. As a result of this change in ownership, CBR does not anticipate any effect on the day-to-day management and operation of the company, or any impairment to its ability to comply with NRC regulations or the requirements in SUA-1534.

TECHNICAL EVALUATION:

The NRC staff has reviewed CBR's license transfer request against the requirements in 10 CFR Part 40, using staff guidance that addresses licensee applications involving changes in company ownership.

With the change in shareholder ownership, CBR has stated that it will maintain the same functional organization structure, responsibilities, and qualifications, as those currently in place at the Crow Butte facility. In addition, there are no planned changes in organization, facility location, equipment, current operating and emergency procedures, or personnel, as a result of this change in ownership. Records will continue to be maintained as required under NRC regulations and in SUA-1534. Also, there will be no change in the use or storage of any

licensed material on site. Finally, no modification to the existing surety arrangement is necessary.

Therefore, based on its review, the NRC staff has no objection to the change in shareholder ownership of CBR.

ENVIRONMENTAL IMPACT EVALUATION:

An environmental review was not performed, since this action is an administrative action which is categorically excluded under 10 CFR 51.22(c)(11).

EXHIBIT C

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

March 7, 1989

NRC INFORMATION NOTICE NO. 89-25: UNAUTHORIZED TRANSFER OF OWNERSHIP OR CONTROL OF LICENSED ACTIVITIES

Addressees:

All U.S. Nuclear Regulatory Commission (NRC) source, byproduct, and special nuclear material licensees.

Purpose:

This notice is to inform licensees of their responsibility to provide timely notification to NRC before the planned transfer of ownership or control of licensed activities, and to obtain prior written consent to such action from NRC, as specified in 10 CFR Sections 30.34(b), 40.46, and 70.36. In addition, this notice provides guidance on the type of information that should be submitted to NRC, before a change of ownership or control. It is expected that recipients will: review this notice for applicability to their licensed activities; distribute it to responsible licensee management and corporate staff, radiation protection staff, and authorized users, as appropriate; and maintain procedures to preclude problems from occurring as the result of the transfer of control of licensed activities. However, suggestions contained in this notice do not constitute any new NRC requirements, and no written response is required.

Discussion:

Sections 81 and 184 of the Atomic Energy Act of 1954, as amended, require that a license be possessed to conduct licensed activities, and 10 CFR Section 30.34(b) states that no NRC license nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Similar wording is found in Sections 40.46 and 70.36 of the regulations for source and special nuclear material.

Recently, NRC has noticed an increasing trend to transfer ownership of businesses that control the use of licensed materials. Such changes in ownership are usually the results of mergers, buy-outs, or majority stock transfers. These actions appear to be occurring at a greater frequency because of the present economic environment. Although it is not the intent

IDTR-11C

of NRC to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to NRC whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials. The purpose of such notification is to allow NRC to assure that: radioactive materials are possessed, used, owned, or controlled only by persons who have valid NRC licenses; materials are properly handled and secured; persons using such materials are capable, competent, and committed to implement appropriate radiological controls; and public health and safety are not compromised by the use of such materials.

In 1988, NRC identified several instances of businesses authorized to possess and use licensed materials that were transferred to other owners, with a consequent change in control, without any notification to the NRC. In such cases, NRC has usually become aware of the change either when conducting a routine inspection or when notified by the new controlling organization (transferee).

Transfer of company ownership often results in the assumption of licensed activities by a corporation not authorized to use or possess licensed materials, and whose competence and ability to establish, implement, and maintain radiological controls have not been previously evaluated by NRC. In such cases, NRC usually determines that the transferee violated NRC requirements on use and possession of radioactive materials (because of its unauthorized use and possession), and that the predecessor entity (transferor) failed to inform NRC of the planned transfer of ownership.

In specific cases, licensees have failed to inform NRC of changes in ownership and changes in locations of licensed material from those specified on the transferor's licenses. In one particular case, failure to notify NRC of a change in ownership may have contributed to the inadvertent loss of two nuclear weighing scales, containing several hundred millicuries of cesium-137. This type of situation could result in the exposure or contamination of individuals or the environment.

NRC licensees planning to transfer ownership, a change in corporate status, or control of licensed activities are required by 10 CFR to provide sufficient prior notice and full information about the change to NRC, in order to obtain written consent from the Commission before the transfer. Although the burden of adhering to this requirement is on the existing licensee, it will be necessary for the transferee to provide supporting information or to independently coordinate the change in ownership or control with the appropriate NRC Regional Office. Failure to comply with this requirement may adversely affect the public health and safety and interfere with NRC's ability to inspect activities. Therefore, NRC may consider that a violation of this requirement warrants escalated enforcement action, including civil penalties and orders, if indicated by the circumstances against one or both of the parties involved. Willful failure to obtain prior NRC approval of the transfer may result in referrals to the Department of Justice for consideration of criminal prosecution.

The following guidance is provided concerning notification of NRC of ownership or control changes:

1. Full information on change in ownership or control of licensed activities should be submitted to the appropriate NRC Regional Office as early as possible, preferably at least 90 days before the proposed action.

2. NRC approvals for change in ownership or control may be delayed or denied if the following information, where relevant, is not included in the submittal:

   a. The name of the organization, if changed. Provide the new name of the licensed organization and if there is no change, so state.

   b. Identification of any changes in personnel named in the license, including any required information on personnel qualifications.

   c. An indication of whether the seller will remain in business without the license.

   d. A complete, clear description of the transaction. The description should include any transfer of stocks or assets.

   e. An indication of any planned changes in organization, location, facilities, equipment, procedures, or personnel. If such changes are to be made, they should be fully described.

   f. An indication of any changes in the use, possession, or storage of the licensed materials. If such changes are to be made, they should be described.

   g. An indication of whether all surveillance items and records, including radioactive material inventory and accountability requirements, will be current at the time of transfer. A description of the status of all surveillance requirements and records, e.g., calibrations, leak tests, surveys, etc. should be provided.

   h. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur before transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?

   i. A description of any decontamination plans, including financial assurance arrangements of the transferee, should be provided,

as specified in 10 CFR Sections 30.35, 40.36, and 70.25. This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.

j. An indication of whether the transferor and transferee agree to the change in ownership or control of the licensed material and activity. If so, documentation stating this should be provided.

k. A commitment by the transferee to abide by all constraints, conditions, requirements, representations, and commitments identified in the existing license. If not, the transferee must provide a description of its program to assure compliance with the license and regulations.

No specific action or written response is required by this information notice. Questions on this matter should be directed to the appropriate NRC Regional Office or to this office.

Richard E. Cunningham

Richard E. Cunningham, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material
Safety and Safeguards

Technical Contact: Scott Moore, NMSS
(301) 492-0514

Attachments: 1. List of Recently Issued NMSS Information Notices
2. List of Recently Issued NRC Information Notices

EXHIBIT D

Wellhead pressure is restricted to less than 0.63 psi per foot of well depth. Injection rates are adjusted to maintain wellhead pressure below that level.

Each new production well (extraction and injection) will continue to be pressure tested to confirm the integrity of the casing prior to being used for mining operations. Wells that fail pressure testing will be repaired or cemented and replaced as necessary.

Water level measurements will continue to be routinely performed in the production zone and overlying aquifer. Sudden changes in water levels within the production zone may indicate that the wellfield flow system is out of balance. Flow rates would be adjusted to correct this situation. Increases in water levels in the overlying aquifer may be an indication of fluid migration from the production zone. Adjustments to well flow rates or complete shut down of individual wells may be required to correct this situation. Increases in water levels in the overlying aquifer may also be an indication of casing failure in a production, injection or monitor well. Isolation and shut down of individual wells can be used to determine the well causing the water level increases.

To ensure the leach solutions are contained within the designated area of the aquifer being mined, the production zone and overlying aquifer monitor wells will continue to be sampled once every two weeks as discussed in **Section 5.8.8**.

3.1.4 Process Description

Uranium solution mining is a process that takes place underground, or in-situ, by injecting lixiviant (leach) solutions into the ore body and then recovering these solutions when they are rich in uranium. The chemistry of solution mining involves an oxidation step to convert the uranium in the solid state to a form that is easily dissolved by the leach solution. Hydrogen peroxide (H_2O_2) or gaseous oxygen (O_2) is typically used as the oxidant because both revert to naturally occurring substances. Carbonate species are also added to the lixiviant solution in the injection stream to promote the dissolution of uranium as a uranyl carbonate complex.

The reactions representing these steps at a neutral or slightly alkaline pH are:

Oxidation: $UO_{2\ (solid)} + H_2O_{2\ (in\ solution)} \rightarrow UO_{3\ (at\ solid\ surface)} + H_2O$

$UO_{2\ (solid)} + \frac{1}{2}\ O_{2\ (in\ solution)} \rightarrow UO_{3\ (at\ solid\ surface)}$

Dissolution: $UO_3 + 2\ HCO_3^{-1} \rightarrow UO_2(CO_3)_2^{-2} + H_2O$

$UO_3 + CO_3^{-2} + 2HCO_3^{-1} \rightarrow UO_2(CO_3)_3^{-4} + H_2O$

The principal uranyl carbonate complex ions formed as shown above are uranyl dicarbonate, $(UO_2)\ (CO_3)_2^{-2}$, (UDC), and uranyl tricarbonate $(UO_2)\ (CO_3)_3^{-4}$, (UTC). The relative abundance of each is a function of pH and total carbonate strength.

EXHIBIT E

STATE OF NEBRASKA
Department of Justice

COPY

LINCOLN, NEBRASKA 68509 • TEL. (402) 471-2682
ROBERT M. SPIRE
Attorney General

January 29, 1990

Contact: A. Eugene Crump or
Steven J. Moeller

PRESS RELEASE

The Nebraska Attorney General's Office has concluded that Ferret Exploration Company of Nebraska, Inc. (FEN), and Crow Butte Land Company, Inc., are no longer in violation of Neb.Rev.Stat. §§ 76-400 through 76-415 (Reissue 1986) because of recent changes in the Board of Directors and stockholders of the corporations.

Currently, FEN has a majority of the Board of Directors who are American citizens, and a majority of stock is owned by Ferret Exploration Company, Inc, an American corporation.

With FEN currently in compliance with Nebraska law, the Nebraska Attorney General's Office believes that forfeiture proceedings concerning the leases, forfeiture of the charter, and dissolution of the corporations and delay in the permitting process for uranium mining in the Chadron area are no longer necessary. The Attorney General will contact and inform the Dawes County Attorney, Secretary of State, and Department of Environmental Control of this decision.

ROBERT M. SPIRE
Attorney General

19-02-14.15

EXHIBIT F

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. WESTERN NEBRASKA RESOURCES COUNCIL, INC., Petitioner, v. ALLEN J. BEERMANN, SECRETARY OF STATE TO THE STATE OF NEBRASKA, Respondent.	Docket 451	Page 098
	ORDER	

This is a mandamus action which comes before the court on the petitioner's "Amended Petition for Writ of Mandamus" and the "Third Alternative Writ of Mandamus" served on the respondent on December 10, 1990. The respondent's Amended Answer was filed on March 19, 1991.

As set forth in State ex rel. FirstTier Bank v. Buckley, 244 Neb. 36, 41, _____N.W.2d_____ (1993),

> [m]andamus is a law action. It is defined as an extraordinary remedy, not a writ of right, issued to complete the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where (1) the relator has a clear legal right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act in question, and (3) there is no other plain and adequate remedy available in the ordinary course of the law [Citations omitted.]
>
> To warrant the issuance of a peremptory writ of mandamus to compel the performance of a legal duty to act, (1) the duty must be imposed by law, (2) the duty must still exist at the time the writ is applied for, and (3) the duty to act must be clear. Mandamus lies only to enforce performance of a mandatory ministerial

> act or duty and is not available to control judicial discretion. The general rule is that an act is ministerial if there is an absolute duty to perform in a specified manner upon the existence of certain facts. [Citation omitted.]

Since the initial petition was filed on April 9, 1990, the relevant facts are those that existed on April 9, 1990, relevant to whether the respondent failed to perform a ministerial act or duty imposed by law.

On September 18, 1989, the Nebraska Attorney General determined that Ferrett Exploration Company of Nebraska, Inc., [FEN] was in violation of the Nebraska Alien Ownership of Land Act, Neb. Rev. Stat. §§ 76-402 to -415 (Reissue 1986) and stated, in a press release, that his office would be contacting the respondent to begin an action to forfeit the charter of and dissolve FEN and its wholly owned subsidiary Crow Butte Land Company [CBL]. Pursuant to Neb. Rev. Stat. § 21-2093 (Reissue 1987), a corporation could be dissolved, if it ". . . continued to exceed or abuse the authority conferred upon it by law."

After September 18, 1989, FEN restructured its Board of Directors and ownership of shares. This resulted in the Attorney General concluding, on January 29, 1990, that FEN and CBL had come into compliance with the Nebraska Alien Ownership of Land Act and that no dissolution proceedings should be commenced. This conclusion was based, in part, on information received from counsel for FEN and CBL. This information included, inter alia, the following:

(a) CBL was a Nebraska corporation, having five directors, three of whom were U.S. citizens and two who were non-U.S.

citizens. It had no managers or executive officers who were aliens. One hundred percent of the stock of CBL was owned by FEN.

(b) FEN was a Nebraska corporation. It had nine directors, five of whom were U.S. citizens and four who were non-U.S. citizens. Its stock was owned in the following configuration:

(1) Ferret Exploration Company, Inc. a Delaware Corporation	96 Shares
(2) Geomex Minerals, Inc., a Delaware Corporation	1 Share
(3) First Holding Company, a Colorado Corporation	1 Share
(4) Uranerz USA, Inc., a Colorado Corporation	1 Share
(5) Korea Electric Power Corporation, a Republic of Korea Corporation	1 Share
TOTAL SHARES ISSUED AND OUTSTANDING	100 Shares

(c) Ferret Exploration Company, Inc., [FEC] the majority stock owner of FEN, was a Delaware corporation, with three directors, two of whom were U.S. citizens and one who was a Canadian Citizen. One hundred percent of the stock of FEC was owned by First Holding Company, a Colorado corporation. The officers of FEC were all U.S. citizens and it had no persons acting in a managerial capacity who were not officers.

There is nothing in the evidence before the court which suggests that the foregoing described ownership and directorships of FEN and CBL was different on April 9, 1990.

Neb. Rev. Stat: § 76-406 (Reissue 1986) provided as follows:

> No corporation organized under the laws of this state

> and no corporation organized under the laws of any other state or country, doing business in this state, which was organized to hold or is holding real estate, except as provided in Sections 76-404 and 76-412 to 76-414, shall elect aliens as member of its board of directors or board of trustees in numbers sufficient to constitute a majority of such board, nor elect aliens as executive officers or managers nor have a majority of its capital stock owned by aliens.

Only CBL "was organized to or is holding real estate" interest in Nebraska. CBL did not have aliens constituting a majority of its Board of Directors; did not have aliens serving as executive officers or managers; and did not have a majority of its capital stock owned by aliens. Therefore, CBL was not an "alien" corporation under § 76-406.

FEN owned 100% of the stock of CBL. FEN's directorships, stock ownership and managers and executive officers were, on April 9, 1990, as set forth previously. FEN, likewise, was not an "alien" corporation under § 76-406.

While it may not be necessary to analyze the corporate ownership of FEC, the principle shareholder of FEN, the facts show that 100% of the stock of FEC was owned by First Holding Company, a Colorado corporation. The officers of FEC were all U.S. citizens and it had no persons acting in a managerial capacity who were not officers. FEC was not an "alien" corporation under § 76-406.

On April 9, 1990, neither FEN nor CBL were in violation of § 76-406; therefore, the respondent was under no duty to certify said corporation for dissolution. In making this determination, the court has not addressed the question of whether FEN and CBL are exempt from the provisions of the Nebraska Alien

Ownership of Land Act under the "industrial exception" of § 76-413.

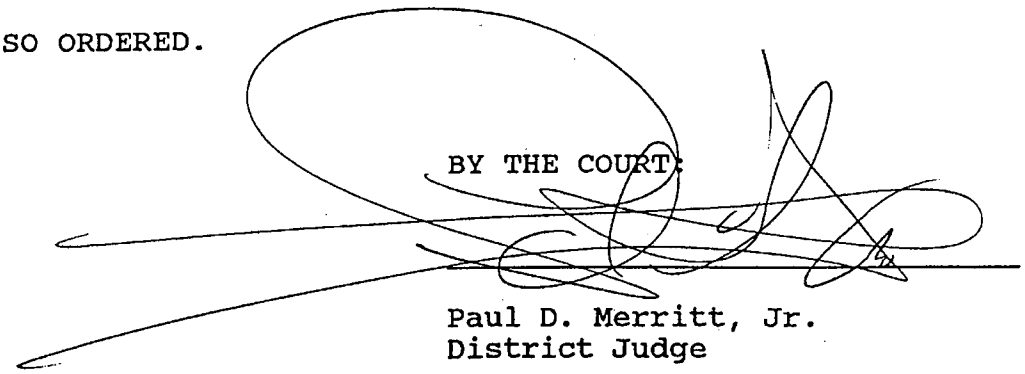
The petitioner's Amended Petition is dismissed, at the petitioner's costs.

A copy of this order is mailed to counsel.

Dated this 29th day of September, 1993.

SO ORDERED.

BY THE COURT:



Paul D. Merritt, Jr.
District Judge

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 40-8943
CROW BUTTE RESOURCES, INC.	)	
	)	ASLBP No. 08-867-02-OLA-BD01
(License Renewal)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S RESPONSE TO PETITION TO INTERVENE FILED BY CONSOLIDATED PETITIONERS" in the captioned proceeding have been served on the following persons via the Electronic Information Exchange this 22nd day of August 2008.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: ocaamail@nrc.gov

Michael M. Gibson, Chairman
Administrative Judge
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001
E-Mail: mmg3@nrc.gov

Dr. Richard F. Cole
Administrative Judge
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001
E-Mail: rfc1@nrc.gov

Dr. Brian K. Hajek
Administrative Judge
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
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Hearing Docket
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Office of the Secretary of Commission
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Washington, DC 20555-0001
E-Mail: hearingdocket@nrc.gov

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Office of the General Counsel
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The Oglala Delegation of the Great Sioux Nation Treaty Council
Thomas J. Ballanco, Esq.
Harmonic Engineering, Inc.
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San Francisco, CA 94116
E-Mail: HarmonicEngineering1@mac.com

/s/ signed electronically by

Tyson R. Smith
Winston & Strawn LLP
101 California St.
San Francisco, CA 94111-5894

COUNSEL FOR CROW BUTTE RESOURCES, INC.