

RAS X-6

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED
USNRC

Before Administrative Judges:
Michael M. Gibson, Chairman
Dr. Richard F. Cole
Mr. Brian K. Hajek

October 3, 2008 (12:31pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

Docket No. 40-8943
ASLBP No. 08-867-02-OLA-BD01

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

October 3, 2008

**PETITIONER OGLALA DELEGATION OF THE GREAT SIOUX NATION
TREATY COUNCIL'S MOTION TO JOIN CONSOLIDATED PETITIONERS
PETITION FOR LEAVE TO FILE NEW CONTENTION RE: ARSENIC**

Judge Gibson, Chair
Atomic Safety Licensing Board Panel
US Nuclear Regulatory Commission

Dear Judge Gibson,

Petitioner, the Oglala Delegation of the Great Sioux Nation Treaty Council ("Oglala Delegation") hereby joins in Consolidated Petitioners' REQUEST FOR LEAVE TO FILE NEW CONTENTION RE: ARSENIC ("REQUEST") as it regards 10 CFR Section 2.309(f)(2) and the study by Johns Hopkins University published in the Journal of the American Medical Association on August 20, 2008. The Oglala Delegation hereby incorporates by reference those portions of Consolidated Petitioners' REQUEST dealing with 10 CFR 2.309(f)(2) and the Johns Hopkins study itself, as if the same were set forth here in their entirety.

Template Secy-041

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The increasing levels of Arsenic in the drinking waters of the Pine Ridge Indian Reservation and the high incidence of diabetes are matters of great concern to the Oglala Delegation. In its initial filing, the Oglala Delegation refers to “detectable levels of...Arsenic” in water that is circulated through the aquifer at the Crow Butte Mine facility asserting that it is “likely the cause” of health problems among the Oglala Lakota. [REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE (“PETITION”) at 5] In his affidavit accompanying the PETITION, Chief Oliver Red Cloud states that the Oglala Lakota “are approaching epidemic proportions of the population afflicted with diabetes.” [Affidavit at 5] Until the publication of the Johns Hopkins article, the Oglala Delegation was unaware of the causal connection between Arsenic accumulation and diabetes.

The Oglala Delegation contends that in-situ leach mining operations at the Crow Butte Mine cause an increase in the natural level of Arsenic in the water of the target aquifer and that such Arsenic laden water leaks into the surface and underground water sources that supply drinking water to the Pine Ridge Reservation. The Oglala Delegation further contends that the increased level of Arsenic in the drinking water on the Reservation results in a corresponding increase in the incidence of diabetes among the Oglala Lakota, thereby evincing a detrimental effect on the public health and safety by the continued operation of the Crow Butte Mine.

Applicant’s baseline studies of the water in the various Mine Units indicate Arsenic levels averaging 20 times lower than the reclamation standard imposed by the NDEQ, which is also the EPA drinking water standard. [LRA at 6-8 to 6-16] No data is

provided to demonstrate the current Arsenic level in Mine Unit 1 which Applicant claims is “restored.”

According to the expert opinion of Dr. Richard Abitz submitted by the Consolidated Petitioner’s with their July 28, 2008 filing, Applicant acknowledges that Arsenic is produced by the oxidation of uranium ore that is the substance of in-situ leach mining, but does not address its eventual disposition nor any procedures to ensure that Arsenic is contained in the aquifer or elsewhere in the waste stream. [Abitz Opinion pp 11-12 ¶ 22, 27] Further, Abitz points out that Applicant’s claim of “restoration” of Mine Unit 1 assumes “secondary” standards that are not articulated and that do not address Arsenic levels. [Id at 12-13 ¶ 35, 43-44]

Arsenic laden water may travel from the Crow Butte Mine location to the Pine Ridge Reservation via the White River alluvium or underground faults as described in the Expert Opinion Regarding ISL Mining Activities in Dawes County, Nebraska by Hannon LaGarry that was also submitted by Consolidated Petitioners with their July 28, 2008 brief. [LaGarry Opinion p 3] Artesian water could also serve as a pathway. [Id.]


These factors, when combined with the Johns Hopkins Study linking low-level Arsenic contamination in drinking water with adult onset diabetes, demonstrate a causal connection between Applicant’s activities at the Crow Butte Mine and the increased incidence of diabetes among the Oglala Lakota living on the Pine Ridge Reservation.

CONCLUSION

For the foregoing reasons, the Oglala Delegation respectfully requests the Presiding Officer to grant leave to file this new contention and to accept it as an

admissible contention. The Oglala Delegation has no objection to the consolidation of this contention, if accepted, with any contentions of the other Petitioners in this case as they relate to Arsenic levels in the drinking water on the Pine Ridge Reservation and diabetes, if any are so accepted.

Respectfully Submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Thomas J. Ballanco
Attorney for Petitioner

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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Dr. Richard F. Cole

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ASLBP No. 08-867-02-OLA-BD01

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

October 3, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of **PETITIONER OGLALA DELEGATION OF THE GREAT SIOUX NATION TREATY COUNCIL'S MOTION TO JOIN CONSOLIDATED PETITIONERS PETITION FOR LEAVE TO FILE NEW CONTENTION RE: ARSENIC** in the above captioned proceeding has been served on the following persons by electronic mail on this 3rd day of October, 2008:

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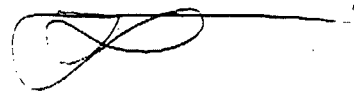
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Subject: Transmitting Document in Crow Butte (Renewal) - Docket 40-8943 - ASLBP No. 08-867-02-OLA-BD01
Attachments: Motion to Join-Arsenic.pdf; ATT00001.htm; Motion to Join-Arsenic COS.pdf; ATT00002.htm

Greetings,

Pursuant to the Board's ruling granting Consolidated Petitioner's motion to accept email filings on this issue, attached is PETITIONER OGLALA DELEGATION OF THE GREAT SIOUX NATION TREATY COUNCIL'S MOTION TO JOIN CONSOLIDATED PETITIONERS PETITION FOR LEAVE TO FILE NEW CONTENTION RE: ARSENIC and a CERTIFICATE OF SERVICE. Thank you.

Sincerely,

Thomas J. Ballanco
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Oglala Delegation

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(148.184.100.43) with Microsoft SMTP Server id 8.1.291.1; Fri, 3 Oct 2008
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No. 08-867-02-OLA-BD01

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