

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

Before Administrative Judges:

Michael M. Gibson, Chairman

Dr. Richard F. Cole

Mr. Brian K. Hajek

In the Matter of

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

Docket No. 40-8943

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

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE A BRIEF *AMICUS*
CURIAE

INTRODUCTION:

On January 17, 2009, the International Indian Treaty Council, by their Counsel, Alberto Saldamando, sent via email, its Motion for Leave to File a Brief *Amicus Curiae* in this matter. Accompanying this motion, in the same email, counsel sent the proposed *amicus curiae* brief, his Notice of Appearance, and a Proof of Service by email of the parties in this matter including counsel for Crowe Butte Resources Inc.

Subsequently, on January 22, Counsel received an email from the Adjudications and Rulemakings Staff, Office of the Secretary, US Nuclear Regulatory Commission (hereinafter "Staff"), informing him of the filing requirements, including the requirement of an EIE certificate to file electronically, or a request to an exception thereto. After several days of emails, research and telephone calls (and the kind assistance of Staff) Counsel finally obtained an EIE certificate and on January 27, 2009, five days after being so informed, filed the same above listed documents via EIE.

On January 28, 2009, Crowe Butte Resources (Petitioner) filed an Answer opposing to the Motion for Leave to File a Brief *Amicus Curiae* alleging various procedural deficiencies with the Motion.

DISCUSSION:

I. The Motion and Accompanying Papers were Filed Correctly:

Petitioner is correct in its Response that “the motion and accompanying documents were not **initially** filed in compliance with the NRC’s rules for electronic filing in agency adjudications.” (Emphasis Supplied) But the papers **were** filed correctly via the EIE System on January 27, 2009.

It is also true that the dates on the documents were somewhat confused. For this Counsel apologizes to the NRC, the Panel and the Parties. Counsel assumed that the date of the EIE filing would be the date given to the papers. In the interests of economy and in the desire to avoid any further confusion, Counsel filed the same papers as the original but inefficacious email service of January 17 in the belief that the initial filing would be ignored and only the EIE filing would be considered.

This later and procedurally correct EIE filing created no undue prejudice or delay in this proceeding. The dates given the documents themselves are not operative and need not reflect the actual date of the proper filing. Applicant has had ample opportunity to respond and has done so.

II. Alleged Procedural Deficiencies in the Failure to Consult are not relevant or applicable in this matter (Section 323)

As for the procedural deficiencies re: Section 323 and failure to consult with the Applicant, it is clear Applicant would have opposed and such consultations would have been a futile act. In addition, as a human rights attorney, Counsel is not familiar with the details of NRC procedural regulations¹ and with all due respect suggests that the *Amicus Brief* be considered as from “a friend of the court” as the name implies, and not of a Party in these proceedings.

III. The Panel has the Discretion to consider the Motion to file *Amicus*

Although NRC rules do not explicitly authorize amicus briefs at the licensing board level, such briefs might still be granted in appropriate circumstances.² Further, such briefs can be allowed where they present unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.³

IV. The Proposed Amicus Brief neither injects new issues into the proceeding nor alters the content of the record developed by the parties:

The issue to be addressed, as defined by this Panel, is the disclosure of the foreign ownership of the applicant, and whether it is in the national interest of the United States and the health and safety of the public that such disclosures be made. The proposed *Amicus Brief* addresses the national interest with regard to the human rights obligations

¹ See, *Wilson v. Westinghouse Elec. Corp.*, 838 F.2d 286, 289-90 (8th Cir. 1988), rejecting the “approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.”

² *Public Service Co. Of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150 (1987)).

³ *Community Ass’n for Restoration of Environment (CARE) v. DeRuyter Bros. Dairy*, 54 F.Supp.2d 974 (E.D. Wash. 1999)).

of the United States and the interest in identifying clearly the ownership of Petitioner in furthering its international obligations. It would address as well the public interest in the availability of remedies to the public, particularly Indigenous Peoples and individuals, against those who would violate international human rights law or national law or regulation. It squarely addresses the issue as defined. It does not address new issues nor does it alter the content of the record.

Such considerations are relevant to these proceedings. Attachment A herein, incorporated by reference as though fully set forth herein, as an example, is a newspaper article reporting on the provision of access to clean drinking water polluted by uranium mining, by Homestake Mining. Better technologies developed in the recent past established its liability. Had the identity of the mining company not been readily ascertainable it is doubtful that such an agreement could have been reached.

CONCLUSION

For the above stated reasons, Movant prays the Panel consider the IITC Motion to file a *Brief Amicus Curiae*.

For all my relations,

Dated: February 5, 2009



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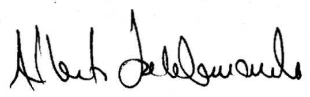
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CERTIFICATE OF SERVICE

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

I hereby certify that copies of "REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS BRIEF" in the above captioned proceeding have been served via the Electronic Information Exchange ("EIE") on February 5, 2009, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding

Dated: February 5, 2009

A handwritten signature in black ink, appearing to read "Alberto Saldamando", is written over a faint, rectangular stamp or watermark. The signature is cursive and somewhat stylized.

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Well concerns prompt agreement with mining company

By SUSAN MONTOYA BRYAN , Associated Press, 01.22.09, 09:51 AM EST

Concern about groundwater contamination around a Superfund site in western New Mexico's uranium belt has left a mining company to pick up the tab for connecting more than a dozen homes to a municipal water system that meets drinking water standards.

The state Environment Department announced Wednesday that it reached an agreement with Homestake Mining Co. of California to connect the residents - who have private wells - to the village of Milan's system.

"This agreement will ensure that residents have access to clean drinking water as soon as possible," Environment Secretary Ron Curry said.

The deal comes after the department warned residents in the San Mateo Creek basin earlier this month that their private wells may contain contaminants from naturally-occurring ore deposits and from previous uranium mining operations.

The possible contaminants range from uranium and selenium to radium and lead. The department said long-term exposure has been known to cause cancer and birth defects, among other health problems.

The basin, which spans parts of Cibola and McKinley counties, is rich in minerals. It also is dotted with old uranium mines, milling sites and huge piles of tailings.

State environment officials said they are beginning a long-term study to better understand the basin's watershed and to determine the extent of groundwater contamination and whether it could be due to natural sources or past mining activities.

"You're looking at something that's a large scale issue and something that has happened over a long period of time, a lot of it prior to any environmental regulations," said Bill Olson, chief of the department's Ground Water Quality Bureau.

Under the deal with Homestake, the company will notify certain property owners of their opportunity to be connected to the village's water system, which is regularly monitored to ensure compliance with drinking water standards.

Homestake also will reimburse property owners who paid to be connected to the system within the last four years.

The Homestake mill is a Superfund site. The U.S. Nuclear Regulatory Commission has required remediation of groundwater contamination there since the 1970s.

Residents close to the site first notified the Environment Department of well water problems at a public meeting in August 2005. The department and Homestake agreed to sample well water in the vicinity in response to the concerns.

Contaminants were found in elevated levels, but Olson said the department doesn't have any information about illnesses related to the well water.

Just to the north, recent sampling around abandoned uranium mine shafts also indicated the occurrence of groundwater contaminants in concentrations above drinking water standards.

The state asked basin residents to bring in samples of their well water for testing during a special fair Wednesday in Grants.

While the field tests reveal only basic data, Olson said the fair will help identify more wells that can be targeted for future, more detailed laboratory testing as part of the state's study of the basin.

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