

UNITED STATES COURT OF APPEALS FOR THE 8<sup>th</sup> CIRCUIT

Western Nebraska Resources Council, )  
Beatrice Long Visitor Holy Dance, Debra White Plume )  
Joe American Horse, Sr., The American Horse )  
Tiospaye, Owe Aku – Bring Back the Way, )  
Thomas Kanatakeniate Cook, Loretta Afraid of Bear )  
Cook, and The Afraid of Bear/Cook Tiwahe, )

Petitioners, )

v. )

United States Nuclear Regulatory Commission and )  
the United States, )

Respondents. )

Case File  
No. \_\_\_\_\_

PETITION FOR REVIEW

Pursuant to Federal Rule of Appellate Procedure 15 and 28 U.S.C. §§ 2342 - 2344, Petitioners Western Nebraska Resources Council (“WNRC”), Beatrice Long Visitor Holy Dance, Debra White Plume, Joe American Horse, Sr., The American Horse Tiospaye, Owe Aku – Bring Back the Way, Thomas Kanatakeniate Cook, Loretta Afraid of Bear Cook, and The Afraid of Bear/Cook Tiwahe hereby petition this Court to review final orders of the United States Nuclear Regulatory Commission (“NRC”) in the proceeding for the issuance of a renewal source materials license (SUA-1534) to applicant Cameco Resources, a Nebraska corporation d/b/a/ Crow Butte Resources, Inc. (“CBR”).<sup>1</sup>

The final agency action of which the Petitioners seek review denies the admissibility of certain contentions having to do with: (1) the economic value of

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wetlands<sup>2</sup>; (2) failure to disclose foreign ownership in CBR's source materials license application and lack of authority of the NRC to issue a source materials license to a an applicant that is 100% owned, controlled and dominated by foreign interests<sup>3</sup>, and (3) safety concerns related to Arsenic being released to drinking water aquifers, to The White River and to Pine Ridge Indian Reservation as a result of geochemical reactions from the intensive oxygenation that is part of Applicant CBR's In-Situ Leach (ISL) uranium mining activities in the mined aquifer and those connected to it by fractures and faults, including the Brule Aquifer, the Arikaree Aquifer, and the Oglalla Aquifer (High Plains Aquifer).

Petitioners seek review of the following order issued by the Nuclear Regulatory Commission: CLI-09-09 (May 18, 2009), Commission Order granting interlocutory appeal of NRC and CBR, reversing the prior admission by the NRC's Atomic Safety Licensing Board Panel ("ASLBP"), of Consolidated Petitioners' Environmental Contention E, Miscellaneous Contention K, Safety Contention A, and ordering the summary disposition of Consolidated Petitioners' Miscellaneous Contention G.<sup>4</sup>

This final decision was issued by the Nuclear Regulatory Commission on May 18, 2009. This petition is timely filed pursuant to 28 U.S.C. § 2344 as it is filed within 60 days of the final agency action. To date, no court has upheld the validity of these orders.

This Court has jurisdiction pursuant to the Hobbs Act, 28 U.S.C. § 2342(4); the

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<sup>1</sup> Petitioners understand from counsel for the Oglala Sioux Tribe that the Oglala Sioux Tribe intends to submit its own appeal in this matter which should be suitable for consolidation.

<sup>2</sup> Consolidated Petitioners Environmental Contention B.

<sup>3</sup> Consolidated Petitioners Miscellaneous Contention G and Miscellaneous Contention K.

<sup>4</sup> This NRC final ruling was implemented by the ASLBP Order dated May 27, 2009, ordering summary disposition of Miscellaneous Contention G and canceling the oral argument that had been scheduled for June 11, 2009 on the merits of Miscellaneous Contention K and on the

Atomic Energy Act of 1954, 42 U.S.C. § 2239(b); and the Administrative Procedure Act, 5 U.S.C. §§ 702.

Venue is asserted pursuant to 28 U.S.C. § 2343. Petitioners all reside in either Nebraska, South Dakota or at Pine Ridge Indian Reservation. The uranium mine which is the subject of the licensing action at issue in this proceeding is located in Crawford, Nebraska.

Petitioners seek relief on the grounds that the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 with respect to Consolidated Petitioners' Environmental Contention E, Miscellaneous Contention G, Miscellaneous Contention K and Safety Contention A, violate the Atomic Energy Act of 1946, P.L. 79-585 (the "1946 Act"), the Atomic Energy Act of 1954, 42 U.S.C. § 2011, *et. seq.* (the "1954 Act"), and NRC implementing regulations in 10 C.F.R. Parts 40 and 51. The NRC's orders also violate the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332 *et. seq.* and its implementing regulations and the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 *et. seq.*, particularly Section 106 thereof, and its implementing regulations including 36 CFR Section 800 *et. seq.* The Nuclear Regulatory Commission's orders and rulings in CLI-09-09 also violate the Administrative Procedures Act, 5 U.S.C. § 706, because they are arbitrary, capricious, contrary to law and/or unsupported by substantial evidence.

Finally, the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 violate the trust responsibility owed by the United States to the indigenous petitioners, including the Canons of Construction, and violate the Ft. Laramie Treaty of 1851, and the

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summary disposition motion of CBR concerning Miscellaneous Contention G, and limiting mandatory disclosure obligations to the remaining contentions not affected by CLI-09-09.

Ft. Laramie Treaty of 1868, and the rights thereunder owed to the Oglala Lakota petitioners, and the rights retained and reserved to the indigenous petitioners under the Reserved Rights Doctrine.

Petitioners request that the Court reverse the Nuclear Regulatory Commission's orders and rulings in CLI-09-09 and reinstate the admissibility of Consolidated Petitioners Environmental Contention E, Miscellaneous Contention G, Miscellaneous Contention K, and Safety Contention A as ruled by the ASLBP. In the alternative, Petitioners request that the Court remand to the NRC for further proceedings consistent with the 1946 Act, 1954 Act, NEPA, NHPA, the Ft. Laramie Treaties of 1851 and 1868, the trust responsibility, the Canons of Construction and the Reserved Rights Doctrine.

Two copies of this Petition are included for service on respondents and Petitioners are serving or are having served (through the NRC's Electronic Information Exchange (EIE) System) on all other parties to the administrative proceeding as indicated on the Certificate of Service filed herewith, which contains a list of those so served pursuant to FRAP 15(c).

Dated: May 29, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies “PETITION FOR REVIEW OF NRC RULING IN CLI-09-09” in the above captioned proceeding has been served on the following persons by first-class regular mail (except that those identified with a “\*” are receiving service only through the NRC’s EIE system have been served by electronic mail in accordance with NRC e-filing regulations and orders); on this 29<sup>th</sup> day of May, 2009:

Parties Admitted to Participate in the Agency Proceeding (per FRAP 15(c)(1)(2)):

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