

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
CROW BUTTE RESOURCES, INC.)	Docket No. 40-8943
MARSLAND EXPANSION)	License SUA-1534
(In Situ Leach Facility, Crawford, NE))	

Declaration of Wilmer Mesteth

1. My name is Wilmer Mesteth. I am the Tribal Historic Preservation Officer (“THPO”) for the Oglala Sioux Tribe of the Pine Ridge Indian Reservation. In my activities as the THPO, I regularly review cultural resource reports and surveys, including the survey and reporting methods.
2. The Oglala Sioux Tribe is a body politic comprised of approximately 41, 000 citizens with territory of over 4,700 square miles in the southwestern portion of South Dakota. The Oglala Sioux Tribe is a freely and democratically-elected government of the Oglala Sioux people, with a governing body duly recognized by the Secretary of Interior. The Oglala Sioux Tribe is the successor in interest to the Oglala Band of the Teton Division of the Sioux Nation, and is a protectorate nation of the United States of America. The Oglala Band reorganized in 1936 as the “Oglala Sioux Tribe of the Pine Ridge Indian Reservation” (“Oglala Sioux Tribe” or “Tribe”) under section 16 of the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 987, 25 U.S.C. § 476, and enjoys all of the rights and privileges guaranteed under its existing treaties with the United States in accordance with 25 U.S.C. § 478b. Its address is P.O. Box 2070, Pine Ridge, South Dakota 57770-2070.
3. In 1992 the U.S. Congress adopted amendments to the National Historic Preservation Act (P.L. 102-575) that allow recognized Indian Tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. Specifically, Section 101(d)(2) allows tribes to assume any or all of the functions of a State Historic Preservation Officer (“SHPO”) with respect to tribal land.
4. I am familiar with the license application recently submitted to the Nuclear Regulatory Commission (NRC) by the Nebraska corporation Crow Butte Land Company which is owned by Crow Butte Resources (CBR) doing business as Cameco Resources (Crow Butte” or “Applicant), another Nebraska corporation for the proposed Crow Butte Marsland Expansion an In Situ Leach Facility in Crawford, NE. CBR is owned by Cameco U.S. Holdings, Inc., which is a U.S. corporation registered in Nevada. Cameco U.S. Holdings is held by Cameco Corporation, a Canadian corporation publicly traded on both Toronto and New York Stock Exchanges.

5. The lands encompassed by the expansion are within the Territory of the Great Sioux Nation, which includes the band of the Oglala Lakota (Oglala Sioux Tribe) aboriginal lands. As a result the cultural resources, artifacts, sites, etc., belong to the Tribe. By enacting NEPA (42 U.S.C. § 4330 et seq.), NAGPRA, (25 U.S.C. 3001 et seq.), NHPA (16 U.S.C.S. § 470 et seq.) and other statutes, the United States Government assured that the cultural resources of a tribe will be protected, even when they are not within reservation boundaries. Since there are cultural resources identified in the license application, and there may well be more that only the Tribe can identify and ensure that they are properly protected, the Tribe has a protected interest here. Any harm done to these artifacts, perhaps because the Applicant did not properly judge the significance of certain artifacts or other resources will be an injury to the Tribe caused by the actions of the Applicant, and condoned by the NRC, the Tribe's trustee. While only the federal government can actually consult with the Tribe, the Tribe maintains that the application's determination of cultural resources in the area may not be fully comprehensive.
6. In any case, the discovery of an Indian camp and prehistoric artifacts in the Tribe's treaty and aboriginal territory at issue in this application implicates important tribal interests such that the Tribe's rights are threatened by the Applicant's mining activity in its aboriginal territory.
7. The Oglala Sioux Tribe is taking the necessary course of action to participate fully as a party in this proceeding in part in order to safeguard its interests in the protection of cultural and historic resources at and in the vicinity of the mine expansion site.
8. Included within the territory the expansion application contemplates are current or extinct water resources. Such resources are known to be cultural resources itself and been known as favored camping sites of indigenous peoples, both historically and prehistorically, and the likelihood that cultural artifacts and evidence of burial grounds exist in these areas is strong.
9. While the expansion application includes some evidence of a cultural resource study, the Tribe cannot verify that a comprehensive study identifying all such resources has been adequately conducted. No such study has been conducted by the Tribe.
10. The proposed expansion site Environmental Report accompanying the license application states the following:

“That there have been few cultural resource investigations on private land in southern Dawes County. Cultural Resource investigations have been more numerous around the White River and the Cities of Chadron and Crawford about 10 miles to 15 miles to the north, and the results of those surveys can serve as a cultural context for comparison to the MEA.” ER 3-76

To my knowledge, the Tribe was not involved any previous investigations, and has not made a similar study of the proposed mining area.

11. As stated in the MEA Environmental Report, at 3-76, the unspecified cultural resource investigation states the following:

"Known resources in that area include indigenous people, artifact scatters, faunal kill and processing sites and camps; fur trade and other contact period sites; the Sidney-Deadwood Trail; historic railroads; historic farming sites, Fort Robinson; and the Cities of Chadron and Crawford. In the mid-1800's, this region was occupied predominantly by bands of Lakota Sioux and Cheyenne. In the 1870's, the Red Cloud Indian Agency was located at Fort Robinson west of Crawford. By 1878, the tribes had officially been relocated to reservations, but sporadic Lakota and Cheyenne resistance continued through the 1880's.

Based upon this unspecified cultural resource in the environmental report this indicates that use of the area by indigenous and camp populations was, and has been, extensive.

12. The MEA Environmental Report states at 3-76, ARCADIS completed an intensive pedestrian block cultural resources inventory of approximately 4,500 acres for the MEA during the period from November 2010 to February 2011 (Winter Months). The MEA was inventoried for the presence of euroamerican and indigenous peoples' properties (cultural resource that are listed or eligible for listing on the NRHP) and may be impacted by proposed mine development. Graves et al (2011) recorded 15 newly discovered euroamerican historic sites and five euroamerican historic isolated finds and updated documentation on two of the previously recorded historic farmstead sites (DWOO-242 and DWOO-243).
13. The MEA Environmental Report states at 3-76 that if ARCADIS recommendations were followed the proposed project will have no adverse effect on historic properties and no further cultural resource investigations are recommended. SHPO concurrence was granted by the Deputy State Historic Preservation Officer on May 19, 2011. However, the Nebraska SHPO concurrence letter concedes that the SHPO review does not constitute the opinions of any Native American Tribes that may have an interest in Traditional Cultural Properties potentially affected by this project. ER 3-77
14. CBR asserts in its Environmental Report at page 2-11, Table 2.6-1, that impacts to cultural resources will be "None". However, the applicant's did use comparison results of unidentified surveys to serve as a cultural context of known resources of indigenous peoples with the MEA of which have not been identified by the Tribe. ER 3-76 Also, ARCADIS (Graves et al.) recommended avoidance of at least two sites. ER4-23.
15. This discrepancy and the failure of a full evaluation with tribal consultation to conduct a cultural resource inventory within the proposed mining area evidence a potentially serious failure to conduct a proper cultural resources study.
16. Overall, the unidentified numbers and density of potential cultural resources at the site proposed for mining demonstrate that the mining activity is likely to adversely impact the cultural resources of the Oglala Sioux Tribe. The failure to involve the Tribe in the

analysis of these sites, or to conduct any ethnographic studies in concert with a field study further exacerbate the impacts on the Tribe's interests as a procedural matter in negatively affecting the Tribe's ability to protect its cultural resources. If the project were to not go forward as planned, the interests of the Oglala Sioux Tribe would be protected as the potential for impact to the Tribe's cultural resources would be diminished or outright eliminated.

This Affidavit is submitted in accordance with 10 C.F.R Section 2.304(d) and 28 U.S.C. Section 1746. I declare under penalty of perjury the foregoing is true and correct.

Executed January 29, 2013 on the Pine Ridge Indian Reservation.


Wilmer Mesteth, OST THPO