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
	)	ASLBP No. 08-867-02-OLA-BD01
(License Renewal for the	)	
In Situ Leach Facility, Crawford, Nebraska)	)	February 6, 2015

CONSOLIDATED INTERVENORS' COMBINED REPLY TO NRC STAFF AND APPLICANT'S RESPONSES TO NEWLY FILED EA CONTENTIONS

Consolidated Intervenors[1] hereby timely submit the following combined reply to NRC Staff and to Applicant's Responses filed in this proceeding on January 30, 2015.

I. LEGAL STANDARDS

The legal standards for admissibility of the newly filed EA Contentions are found in 10 CFR Sect. 2.309. This Board stated the applicable standards in its ruling in LBP-08-24:

> The requirements for an admissible contention include a specific statement of the issue of law or fact to be raised or controverted, a brief explanation of the basis of the contention, and a concise statement of the alleged facts that support the contention, together with references to those specific sources, expert opinions and documents on which the petitioner intends to rely to prove the contention. Additionally, the petitioner must present sufficient information to show a genuine dispute with the applicant on a material issue of law or fact. Proffered contentions generally must fall within the scope of the issues set forth in the notice of the

[1] Western Nebraska Resources Council ("WNRC"), Owe Aku/Bring Back the Way, Debra White Plume, Beatrice Long Visitor Holy Dance, Joe American Horse & Tiospaye, Thomas Cook, Loretta Afraid-of-Bear Cook & Tiwahe. Debra White Plume, Beatrice Long Visitor Holy Dance, Joe American Horse and Loretta Afraid-of Bear Cook are members of the Oglala Sioux Tribe (the "Tribe") at Pine Ridge Indian Reservation.

> proposed licensing action. Failure of a contention to meet any of the requirements of section 2.309(f)(1) renders it inadmissible. (Footnotes omitted.)

In addition, Sections 2.309(c) and 2.309(f)(2) apply, which sections when read together contemplate the situation presented by this case where we have newly filed contentions based on an environmental document issued by the NRC Staff after its environmental review. Section 2.309(f)(2) is directly applicable to the instant case:

> On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report. Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section.

Section 2.309(c) states, in pertinent part, that:

> …motions for leave to file new or amended contentions filed after the deadline in paragraph (b) of this section will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause by showing that:
>
> (i) The information upon which the filing is based was not previously available;
>
> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

Accordingly, 'good cause' is demonstrated where, as here, there has been compliance with Section 2.309(c)(i), (c)(ii) and (c)(iii). The 'information upon which the filing is based' for purposes of Section 2.309(c)(i) and (ii) is the Final Environmental Assessment (October 2014) ("Final EA" or "EA"). As the Board noted in LBP 15-2, the nature and extent of the NRC Staff's environmental review as well as the timing of the issuance of the Final EA are entirely within the control of the NRC Staff. LBP-15-2 at 15 et seq.

There has been no suggestion that the Final EA was available to the public before it was issued. Therefore, in this proceeding, there has been compliance with Section 2.309(c)(i).

The Final EA is a document generated by the NRC Staff and it contains analyses, data and conclusions that are 'materially different' as well as 'differ significantly' (which Consolidated Intervenors maintain are a single standard).[2] The Final EA is inherently a document that is materially different than the LRA because of such additional analyses and conclusions.

As noted in Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2), CLI- 02-28, 56 NRC 373, 385 (2002):

> NRC Staff's analyses in the SEISs, while taking into account Duke's responses, are not identical to Duke's analyses. The SEISs often go a step further, providing additional information, analysis, and reaching some conclusions different from Duke's."

Here, the NRC Staff's analyses in the Final EA, while taking into account Crow Butte's ER, are not identical to Crow Butte's analyses. The NRC Staff's Final EA provides additional information, analysis and reaches some conclusions that are different than those of Crow Butte.

This is inherently the nature of a final environmental document compared to an initial environmental report submitted with an application. This is compounded in this case where so much time has elapsed between the 2007 LRA and the present. We also note that the majority of the 2007 LRA is itself a cut-and-paste job from Applicant's 1997

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[2] Compare, 2.309(c)(ii)('materially different') and Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2), CLI- 02-28, 56 NRC 373, 385 (2002) ("Intervenors' amended contention must rest on data or conclusions that ''differ significantly'' from what was submitted in the Environmental Report.")

LRA which went unchallenged by any petitioners. That 1997 application was itself largely a redo of the original 1987 license application. Accordingly, the Final EA must be presumed to contain new information except to the extent that Crow Butte or the NRC Staff are able to cite to specific parts of the LRA that are found unchanged in the Final EA.

The Commission anticipated in CLI-09-09 that there would be material differences between the LRA and the EA, especially having to do with certain government-to-government consultations activities that were required under NHPA and NRC Regulations but which were beyond the legal ability of the Applicant to fulfill. See CLI-09-09 at 23-24:

> We agree with the Board that consultation with the Tribe is material and within the scope of this license renewal proceeding, but we find that the matter is not ripe. As to the Board's concerns that a contention would be subject to the late-filing standards if the Tribe must defer its contention until the NEPA review is complete, our rules of procedure explicitly allow the filing of new contentions on the basis of the draft or final environmental impact statement where that document contains information that differs "significantly" from the information that was previously available. In this case, whether and how the Staff fulfills its NHPA obligations are issues that could form the basis for a new contention pursuant to that provision. In addition, official agency records relating to the Staff's NHPA review that are essential to the decision-making process will be made available on the agency's public records system (ADAMS). (Footnotes omitted.)

As stated above by the Commission, NRC regulations contemplate the filing of new contentions where the environmental document contains information that differs 'significantly' from the information that was previously available and also that the question of whether or how the NRC Staff has fulfilled its NHPA obligations could form the basis for new contentions - as has been asserted by Consolidated Intervenors in this

proceeding. As further evidence of there being in existence material differences between the 2007 LRA and the 2014 EA, it is presumed that if there were no materially differences between the EA and Applicant's Environmental Report in the LRA (the "ER"), it would not have taken seven (7) years for the NRC Staff to complete the EA. However, Consolidated Intervenors shall point out material differences between the ER and the EA where possible in its specific replies herein.

Based on the foregoing, there has been compliance with Section 2.309(c)(ii).

There is no dispute that Consolidated Intervenors filed the EA Contentions on time in accordance with the Board's Scheduling Orders in this proceeding. As a result, Consolidated Intervenors have complied with Section 2.309(c)(iii).

As required by 10 C.F.R. § 2.309(f)(1), the Consolidated Intervenors have set forth specific new contentions based on the Final EA. Each contention raises issues with respect to the sufficiency of the Final EA under applicable law, namely: the National Environmental Policy Act ("NEPA"), National Historic Preservation Act ("NHPA"), and applicable regulations, including those of NRC, the federal Advisory Council on Historic Preservation ("ACHP"), and the Council on Environmental Quality ("CEQ"), 10 C.F.R. §§ 51.10, 51.70, and 51.71, and any other applicable federal, state, and local requirements. Each contention states a specific section of the Final EA that constitutes the dispute raised in the contention and where possible, Consolidated Intervenors have supported the new contentions with expert opinions. Accordingly, Consolidated Intervenors have surpassed mere 'notice pleading' and have complied with the 'strict by design' pleading requirements for contention admissibility in Section 2.309.

Consolidated Intervenors acknowledge that both Crow Butte and the NRC Staff would prefer to not litigate these new EA Contentions and they have attempted to mis-characterize the new EA Contentions as 'late-filed contentions'. In response, Consolidated Intervenors note that the Board has stated that it is aware of the Procrustean[3] bed that would result from adopting the highly restrictive interpretations that are perennially proffered by the NRC Staff and Crow Butte to squelch intervenors.

Further, this Board has the power and authority under 10 CFR 2.319, and specifically including subsection (s) thereof, to take necessary and appropriate actions consistent with the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act, as well as applicable NRC Regulations to conduct a fair hearing:

> A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order. The presiding officer has all the powers necessary to those ends, including the powers to: ….(s) Take any other action consistent with the Act, this chapter, and 5 U.S.C. 551–558. 10 CFR 2.319(s).

Therefore, unlike the situations about which the Board was powerless (described in LBP 15-2 at pages 15 et seq.), here this Board has the power and authority, and in fact the duty, to take all lawful actions necessary to the ends of conducting a fair and impartial hearing. Consolidated Intervenors encourage the Board to exercise such power and authority in a way that provides Consolidated Intervenors and the Tribe with an opportunity to be heard on the issues presented in this case as described in the previously filed and newly filed contentions.

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[3] See LBP 08-24 at 32 ("Procrustes could not have devised a more odious method of frustrating petitioners than NRC proposes here.")

II. SPECIFIC REPLIES.

EA Contention 1&2:

A. Reply to Crow Butte re: no site specific survey; no meaningful consultation. Understanding the nature and extent of meaningful consultations has been challenging for Crow Butte and the NRC Staff in connection with the Crawford facility. As noted in LBP 08-24, at 35:

> "there appear to have been no consultations between the NRC Staff and the Tribe for at least thirteen years after the NRC Staff was alerted to these Native American cultural resources."

Now, in 2015, Crow Butte asserts that despite decades of non-consultation, it is not required to even have one meeting with the Oglala Sioux Tribe and its members that is devoted to Crow Butte's operations. See Applicant Response at 9. It has been deaf to the Tribe's assertions of the NRC Staff's trust responsibility and consultation obligations and its own obligations with respect thereto as the proponent of the agency action (i.e., issuance of the license).

Crow Butte also denies any legal obligation for the Tribe or tribal members to be involved in a TCP or for Crow Butte or the NRC Staff to be liable for the expenses of such a TCP. See Applicant Response at 9. Consolidated Intervenors assert that the trust responsibility imposes such obligations on the NRC Staff to pay the expenses of such TCPs inside the proposed project areas of the license renewal.

B. Reply to NRC Staff Re: Right to Adequate Legal Representation in Consultations. At pages 17-18, the NRC Staff requests an explanation as to why a failure to ensure that the Tribe and its tribal members are represented by an attorney in

connection with formal government-to-government consultations fails to comply with the trust responsibility. The trust responsibility requires the United States government and its agencies to act in the highest good faith and fair dealing with the Oglala Sioux Tribe. This has not been disputed in this proceeding and is correct as a matter of law (the applicable law was cited by the Tribe in its contention filing). These consultations and the legalities and regulations associated with NEPA, NHPA and the Section 106 process are highly technical. As these proceedings demonstrate, there is often no precedent in this area of the law and multiple sets of lawyers are often at odds over the proper interpretation of the meaning of one or more aspects of the Section 106 process. It is too much too expect of any non-lawyer tribal representative that he or she would be capable of representing the Tribe's interests on both a cultural/historical and on a legal level without being a trained attorney. Accordingly, Consolidated Intervenors have demonstrated that the trust responsibility requires the NRC Staff to ensure that the Tribe is adequately represented by counsel during consultations in much the same way that the US Attorneys are required to ensure that defendants are adequately represented by a criminal defense attorney during plea bargain negotiations. As a result, any consultations that occurred during the time when the Tribe was unrepresented must be considered 'not meaningful' as a matter of law.

C. Examples of Material Differences.

1. The LRA makes no mention of the cultural resources within the Marsland Expansion Area but the Final EA includes discussion of the cultural resources within the Marsland Expansion Area.

2. The LRA is silent concerning consultation meetings with the Oglala Sioux Tribe. The EA contains summaries of such consultations, which Consolidated Intervenors contend have been inadequate to comply with applicable law.

3. The Final EA failed to obtain updated information except in the areas where Crow Butte was already required to provide additional information (Marsland Expansion Area - MEA, Two Crows Expansion Area - TCEA).

4. Sections 2.4 and 7.8 of the LRA describe cultural resources and impacts, and neither section mentions the Oglala Sioux Tribe or the nature and extent of tribal consultations. Sections 3.9.7 and 3.9.8 of the Final EA provide details about such consultations which constitute significant differences between the ER and the EA. Section 3.9.7 of the Final EA states that there was an 'Information Gathering Meeting' in June 2011 and that the Tribe attended that meeting (which was not exclusively devoted to Crow Butte's facilities). Section 3.9.7 of the Final EA states that in February 2012 a meeting took place and that representatives of 19 tribes attended that meeting. None of this information is in the LRA, and accordingly all of it is 'materially different' from what was in the LRA and therefore the new contentions comply with Section 2.309(c)(ii).

Sections 4.8 and 4.13.8 of the EA are other examples of analyses that are in the EA but not in the LRA. Section 4.13.8 of the EA states that:

> For the purpose of the present comparative analysis, archaeological and historic inventories of resources as well as a TCP survey by the Santee Sioux Nation have been completed at the CBR facility, the MEA, and the TCEA (SSN 2013).

The foregoing reference to the 'archaeological' 'inventories of resources…at…the MEA….' refers to the same snow-covered survey of Marsland that is mentioned in the Consolidated Intervenors contention filing and Dr. Redmond's Opinion.

EA CONTENTION 3 -

A. Reply to Crow Butte. The dispute involves Consolidated Intervenors allegation that the proper environmental justice review should have encompassed the people living at Pine Ridge Indian Reservation who are drinking and bathing in water that is connected hydrologically to the mined aquifer. Specifically, in light of the plausibility of a connection between the mined aquifer and the Arikaree, on the one hand, as well as of a connection between the mining activities and the alluvium of The White River, on the other hand, the analysis of environmental justice impacts should have included Pine Ridge Indian Reservation and not just the few miles around Crawford, NE. This is especially true when most of the people living in the few miles around Crawford, NE have a financial interest in the mine's continued operation from mineral lease payments or other forms of compensation.

B. Examples of Differing Information. The LRA makes no reference to Pine Ridge Indian Reservation and Section 4.9 of the EA does. Section 4.9 of the Final EA states that

> As noted in Section 3.6.2, Shannon County, South Dakota, the location of the Pine Ridge Indian Reservation is located approximately 50 miles (80 km) from the CBR facility. About 54 percent of the Shannon County population is below the poverty level, compared with about 14 percent for the State of South Dakota (USCB, 2011). Also, Shannon County's population is approximately 96 percent minority (Native American).
>
> **However, because of the distance between the Pine Ridge Indian Reservation and the CBR facility, the NRC staff concludes that there would not be**

disproportionately high or adverse impacts on minority or low-income residents on the Pine Ridge reservation from the relicensing of the CBR facility. (Emphasis added.)

EA Contentions 4 & 5:

A. Reply to Crow Butte and NRC Staff. Consolidated Intervenors assert that it is necessary to take new baselines before each licensing action - in this case, renewal. If baselines had been taken in 1997 and 2007, such information could be used to see how the mine's activities have impacted the affected environment over ten-year periods of licensing. Neither Crow Butte nor the NRC Staff has cited to any regulation or applicable law that would preclude the taking of such baselines in connection with each renewal licensing action.

B. Example of Differing Information. None of the following information is found in the LRA and neither Crow Butte nor the NRC Staff have cited to any sections of the LRA that contains the following information. This is because such information is comprised of NRC Staff actions, reports, analyses and activities that are not described in the LRA.

Final EA at 3.5.2.3.3, as follows:

> To evaluate this issue, the NRC staff performed an independent ground water modeling exercise to assess the nature of the White River structural feature in the Basal Chadron and Brule formations. As described in Section 2.4.3.3.1 of the SER, the NRC staff developed a base ground water flow model using Ground water Modeling System (GMS) Version 6.0. Field data used to construct the model included boring log data, hydraulic properties of the geologic units, and water level data. Because this model was developed for analysis of the North Trend Expansion Area, data used for model development came from North Trend geologic and hydrogeologic information. After model development, the staff calibrated the model using PEST (parameter estimation and automated calibration software included in GMS). Calibration results indicated to the staff that the ground water model calibration to observed data was acceptable (NRC 2014).

Consolidated Intervenors note that although NRC Staff states in the Final EA (Section 1.4 and Section 5 of the Final EA) that it 'consulted' with US FWS, its failure to follow the written advice of US FWS concerning Selenium indicates that any such consultations with US FWS were ineffective and in violation of NEPA. None of this is in the LRA.

EA Contention 6:

Examples of Differing Information. The Final EA says that the piezometric surface of the Basal Chadron is being lowered year after year in comparison to the prior renewal period and that it will likely be lowered even more by the restoration and decommissioning activities, concluding that the impacts are MODERATE and that for a variety of reasons, NRC Staff doesn't think it is of more significance. None of the foregoing information is contained in the LRA.

Specifically, Section 4.6.2.2.1 of the Final EA states:

> **To accelerate ground water restoration, CBR has increased the flow capacity through the RO circuit from 200 to 1,150 gpm [757 to 4352 lpm], and the flow through the IX circuit has been increased from 200 to 1,200 gpm [757 to 4542 lpm] (CBR, 2012). I**n addition to the upgrades to the IX and RO circuits, CBR has installed new restoration pipelines and manifolds to allow for the increased flows and to improve wellfield isolations. In 2011, CBR began operating a second deep disposal well to help accommodate the disposal of additional waste water generated by the increased RO and IX flow. **(Emphasis added.)**
>
> ***
>
> The NRC performed a water-balance analysis in Section 5.7.9.4 of the SER and based on the restoration analogues in the most recently approved license

> application and representations made by CBR, restoration of a mine unit will need at least extract eleven pore volumes of ground water for restoration (NRC 2014). **Given the historical flow rates, it is anticipated that CBR may need to extract more than eleven restoration pore volumes for all mine units; thus, the restoration schedule may extend beyond that proposed by CBR. The extension of the restoration periods, as well as the greater than expected consumptive use rates, could significantly increase the drawdown in the potentiometric surface of the Basal Chadron aquifer, but it should still remain saturated. Consequently, the short-term impact from consumptive ground water use during aquifer restoration may be MODERATE. However, water levels would eventually recover after aquifer restoration is complete resulting in an overall SMALL impact from consumptive ground water use. (Emphasis added.)**

The foregoing information concerning increased flow capacity and the NRC created water balance analysis are not set forth in the LRA.

EA Contention 7:

Reply to Crow Butte. Crow Butte has not cited to any sections of the LRA which describe the issues raised by Consolidated Intervenors in EA Contention 7. Crow Butte complains of a lack of expert support for EA Contention 7 but no expert support is required for the admission of this contention.

EA Contention 8:

Reply to Crow Butte. Crow Butte has not cited to any sections of the LRA which describe the issues raised by Consolidated Intervenors in EA Contention 8.

EA Contentions 9 & 10:

Reply to NRC Staff and Crow Butte. While meaningful discussion of mitigation measures and thorough analysis of cumulative impacts are missing on a host of subjects in the

EA, perhaps the most glaring omission revolves around the EA's failure to adequately address aquifer restoration.

At page 10 of the EA, Staff outlines four activities in CBR's ground water restoration plan. EA at 10. The Staff omits any acknowledgement, let alone analysis or discussion, of the fact that these restoration activities have utterly and completely failed to restore the aquifer to baseline characteristics. While this failure is absolutely the case at the Crow Butte facility, Consolidated Intervenors also point out that it is well know to all parties that no aquifer subjected to ISL mining has been effectively restored to baseline conditions. This glaring omission of uncompensated harmful impact and non-mitigated degradation of the natural resource cannot support a Finding of No Significant Impact. None of this is found in the LRA.

Both the federal courts and NRC agree that NEPA analysis requires a "reasonably complete discussion of possible mitigation measures" so that the agency and "other interested groups and individuals can properly evaluate the severity of the adverse effects." *Roberston v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989). ("Omission of a reasonably complete discussion of possible mitigation measures would undermine the 'action-forcing' function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects."). *See also*, *In re: Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 N.R.C. 445, 486 (2012) quoting *Robertson*, 490 U.S. 332, 351-52 (1989) ("Under NEPA, an EIS must discuss '**any adverse environmental effects which cannot be avoided** should the proposal be implemented[…],' and must provide 'a reasonably complete discussion of possible mitigation measures.")(emphasis added).

Not only does NEPA require a "reasonably complete discussion of possible mitigation measures," but those measures must be evaluated for their effectiveness. *Southfork Band Council v. Interior*, 588 F.3d 718, 727 (9th Cir. 2009)("An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective."). In this situation Staff barely mentions mitigation measures, let alone engages in discussion or analysis of the proposed measures that, contrary to NEPA's requirements, have proven to be wholly ineffective.

At page 5, the EA mentions that at Mine Unit 1, "Ground water restoration has been completed and received NRC approval." EA p. 5. **What the EA does not mention, neither on that page nor anywhere else, is that the NRC approval of "completed" restoration was for uranium contaminant levels 18 times greater than baseline.** CBR letter to NRC date 8/24/2001, at 7, ADAMS: ML010120424. (Emphasis added.)

And Mine Unit 1 is the smallest and, presumably, the easiest mining unit to 'restore' at the Crawford facility.

NRC approved the restoration of Mine Unit 1 based on CBR's achieving standards acceptable to its UIC permit issued by the State of Nebraska. It is noteworthy that the UIC standards allow a contaminant level for uranium that is 54 times greater than baseline. Id. Be that as it may, on its face, NEPA requires four conditions for a state document to qualify for NEPA tiering, none of which have been alleged here. 42 U.S.C. § 4332(2)D. *See also*, *South Fork Band Council v. BLM*, 588 F.3d 718, 726 (9th Cir. 2009)("A non-NEPA document—let alone one prepared and adopted by a state government—cannot satisfy a federal agency's

obligations under NEPA."). As such, the Nebraska UIC permit standards cannot relieve NRC of its responsibilities under NEPA.

Likewise, Staff's failure to adequately address and consider actual mitigation measures negates any meaningful analysis of cumulative impacts. As NRC has approved the restoration of the first of ten active mine units at Crow Butte, despite gross deviations from baseline conditions, it is only reasonable to assume that the other mine units will suffer the same fate.

Restoration of Mine Unit 1 began in 1991, and did not receive NRC approval until 12 years later, albeit at the aforementioned contamination levels more than 18 times greater than baseline for uranium and more than 8 times greater for arsenic. CBR letter to NRC date 8/24/2001, at 7. Further, this is the best result CBR was able to achieve after 36.47 pore volumes. Id.

Despite this actual real world experiential evidence, the EA still asserts that each Mine Unit will need to extract "at least 11 pore volumes of ground water for restoration." EA at 83. The EA further relies on the premise that CBR's operations result in "about 0.5 percent to 1.5 percent" bleed rate (consumptive use) of groundwater. This reliance also omits the real world data from the so-called restoration of Mine Unit 1 that registered a bleed rate of 4.4 percent over 36.47 pore volumes, resulting in the consumptive use of more than 27 million gallons of groundwater for the failed restoration of one mine unit. CBR letter to NRC date 8/24/2001, at 12-13.

CBR itself, candidly describes the limitations of the proposed restoration measures:

> Recognizing that the treatment processes employed are not 100 percent effective, a point will be reached during treatment when additional efforts will result in minimal improvement in the water quality. **Restoration efforts in Mine Unit 1 proceeded beyond the point where significant improvement was possible with continuing treatment.**

(emphasis added) Id. at 9. Staff cannot continue to assert the same aquifer restoration plan that has failed at this site, and everywhere else it was tried.

These practical failures cannot be the basis for a meaningful discussion and thorough consideration of mitigation measures to avoid, minimize, rectify or compensate for the impact of harmful action that would lead to *"effective*" reduction of damage to the environment. 10 CFR Section 1508.20. Nor is any discussion of cumulative impacts complete without in depth consideration of the actual, expected state of the groundwater after CBR's mining operations cease.

To brush away all these reasonably certain outcomes, without any meaningful discussion, under a finding of no significant impact is to ignore the face of reality.

EA Contention 11:

Crow Butte has not cited to any sections of the LRA which describe the issues raised by Consolidated Intervenors in EA Contention 11.

EA Contention 12:

Crow Butte complains of a lack of expert support for EA Contention 12 but no expert support is required for the admission of this contention.

EA Contention 13:

Consolidated Intervenors believe that NRC Staff was correct to concur in the admissibility of EA Contention 13 and will argue in its February 10, 2015 filing in response to the Board's Order of today's date that the NRC Staff should not be permitted to change its position concerning EA Contention 13. Consolidated Intervenors intend to argue that NRC Staff's Change of Position on EA Contention 13 should be stricken from the record because such a post-deadline change of position constitutes an abuse of process and is not supported by any applicable regulations.

EA Contention 14:

Crow Butte complains of a lack of expert support for EA Contention 14 but no expert support is required for the admission of this contention and suggests that it is mere speculation. However, this ignores that Consolidated Intervenors cited to Dr. LaGarry's 2015 Opinion which referred to secondary porosity impacts from small earthquakes. Dr. LaGarry's 2015 Opinion at pages 2-3:

> However, even small earthquakes represent shifting and flexing of the earth's crust, and are continuously creating, closing, and redistributing the secondary porosity of the region's rocks and changing the flow pathways of the region's groundwater.

III. CONCLUSION

For all the foregoing reasons, the Board should find that the new contentions are admissible.

Dated this 6th day of February, 2015.

Respectfully submitted,

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CROW BUTTE RESOURCES, INC. ,	)	Docket No. 40-8943
	)	ASLBP No. 08-867-02-OLA-BD01
(License Renewal for the	)	
In Situ Leach Facility, Crawford, Nebraska)	)	February 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing '**CONSOLIDATED INTERVENORS' COMBINED REPLY TO NRC STAFF AND APPLICANT'S RESPONSES TO NEWLY FILED EA CONTENTIONS**', together with the Exhibits attached thereto and filed therewith, in the captioned proceeding were served via email on the 6th day of February 2015, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

Respectfully submitted,

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