

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))	May 8, 2015

Declaration of Dennis Yellow Thunder

1. My name is Dennis Yellow Thunder.
2. I am a member of the Oglala Sioux Tribe which is located on the Pine Ridge Reservation where I also live, within the 50 mile radius of the Crow Butte Resources, Inc. (“CBR”) in situ uranium mining facility south of Crawford, Nebraska.
3. I was chosen by the Thunder Beings to be a Heyoka, a traditional medicine man, and a Bear Man of the Oglala Lakota people and practice the seven sacred ceremonies of the Tribe. I am a leader of the sun dance ceremony and Sundance Chief. I am the great, great, grandson of Lakota Chief American Horse. I am also a well-know traditional Lakota artist.
4. Currently I am the Tribal Historic Preservation Officer (“THPO”) for the Tribe and the Director of the OST Office of Cultural Affairs and Historic Preservation. In my activities as the THPO, I regularly review cultural resource reports and surveys, including the survey and reporting methods. Prior to being appointed OST THPO I served as a Cultural Resource Specialist and with the OST Tribal Historic Preservation Office in 2013-2014 and worked closely with my predecessors, Wilmer Mesteth and Michael Catches Enemy. I was also a Natural Resources Technician with the OST Natural Resources Department in 2011-2013 and on the Tribal Mining Working Group. I have served for several years as a representative of the OST on the Tribal Interest Working Group of the Missouri River Recovery and Implementation Committee. In 2007 I was the honored guest at the meeting of the Swiss Association 4WINDS in Ornas, France. Over the last 15 years I have made numerous presentations and testified on Lakota culture and spiritual beliefs and on the impacts of natural resource development upon them. I am also the founder of the Raymond Yellow Thunder Memorial Cultural Art Center in honor of my relative Raymond Yellow Thunder.

5. The Oglala Sioux Tribe is a sovereign indigenous nation and body politic comprised of approximately 41,000 citizens with territory of over 4,700 square miles in the southwestern portion of South Dakota. The Tribe also claims the territory and lands within the 1851 and 1868 Ft. Laramie treaties, including the lands upon which the CBR facility is located and operates. The United States of American acknowledges a nation-to-nation relationship with the Tribe.

6. The Oglala Sioux Tribe is the elected government of the Oglala Lakota people, with a governing body recognized by the United States of through the Secretary of the Interior. The federally recognized Oglala Sioux Tribe is the successor in interest to the Oglala Band of the Teton Division of the Sioux Nation. The Oglala Band reorganized in 1936 as the "Oglala Sioux Tribe of the Pine Ridge Indian Reservation" 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.

7. The United States has imposed protectorate relationship upon the Tribe by which the United States has assumed trust responsibilities with the Tribe and its people as the beneficiaries, including the protection of the Tribe, its water and other natural resources, its historic, cultural, and spiritual interests, and the health and well-being of the Oglala Lakota people.

8. In 1992, the United States Congress adopted amendments to the National Historic Preservation Act ("NHPA") (P.L. 102-575) that allow federally 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 for the purposes of the Act. Through that provision of the NHPA, the United States has recognized the responsibility and authority of the designated THPOs of the Oglala Sioux Tribe in enforcing the obligations of the United States and its agencies under the NHPA and other federal laws enacted to protect and preserve Native American interests in water, other natural resources, historic and cultural sites and items, and the practice of indigenous culture, religion and spirituality. The Oglala Sioux Tribe's THPO further exercises the inherent sovereign authority of the Tribe recognized by the United States in treaties with the Tribe and in its continuing nation-to-nation relationship with the Tribe.

9. I am familiar with the license renewal application submitted to the US Nuclear Regulatory Commission ("NRC") by CBR for the continuation of its activities at its in situ uranium mining facility south of Crawford, Nebraska.

10. As previously stated, the lands encompassed by the application are within the Territory and Ancestral lands of the Great Sioux Nation (the Seven Council Fires), which

includes the band of the Oglala Lakota (the Oglala Sioux Tribe) as acknowledged by the United States in the Ft. Laramie treaties of 1851 and 1868. As a result and despite being physically and illegally dispossessed of current possession of the Treaty lands lying outside the existing Reservation border, the Tribe continues to possess ancestral, historic, cultural, religious, and spiritual interests and relationship with those lands and the historic and cultural resources, artifacts, sites, etc., found thereon belong to the Tribe and, collectively, the other Sioux bands. The Tribe concedes neither title to nor sovereignty to the United States over these treaty lands. In addition to interests protected by treaties with indigenous nations, the United States by enacting the National Environmental Policy Act (“NEPA”) (42 U.S.C. §§ 4330 et seq.), the Native American Graves Protection and Repatriation Act (“NAGPRA”) (25 U.S.C. §§ 3001 et seq.), the NHPA (16 U.S.C. §§ 470 et seq.), the American Indian Religious Freedom Act (“AIFRA”) (42 U.S.C. § 1996), the Religious Freedom Restoration Act (“RFRA”) (42 U.S.C. §§ 2000bb et seq.), and other statutes, has assured that the historic and cultural resources and cultural, religious, and spiritual interests of a tribe will be protected, even when they are not within reservation boundaries. Any harm done to these resources and interests of the Oglala Lakota peoples by the activities of CBR will be an injury to the Tribe caused by the Applicant and condoned by the NRC, the Tribe’s trustee under the United States’ assumed trust relationship.

11. The site of the Crow Butte activities is historically significant as it is within the area utilized by the Sioux as an encampment during period of forced removal by the United States of the Sioux from their ancestral lands and during the existence of Fort Robinson and the “sign or starve” treaty-making tactics of the United States in the mid to late 1800s. Given the large encampment, it can be reasonably presumed that many sites and artifacts of significant historic and cultural importance to the Tribe exist in the area that encompasses the existing Crow Butte facility and the surrounding Crow Butte and Crawford area.

12. Crow Butte itself is considered by the Lakota and other tribes to be a sacred peak used to this day by members of the Tribe for vision quests and spiritual awareness. Like all such indigenous sites of great spiritual value and importance, including Bear Butte and Devil’s Tower for example, the mere presence of industrial activity in the vicinity significantly infringes upon the spiritual experience. This is even more so when, like Crow Butte, the activity requires frequent traffic in the immediate area and is destructive of the earth, water, flora, fauna, and the environment. As their ancestral lands, the Lakota people also have a sacred relationship and responsibility as care-takers of these resources.

13. NHPA and these other federal laws require “consultation” with the Oglala Sioux Tribe, and other affected tribes, regarding the existence and protection of such cultural resources and interests. As the holders of lawful title and sovereignty over all of the Treaty lands, including the lands where the Crow Butte facility is located, the Tribe’s position is that “consultation” is for the purpose of the United States and its agencies obtaining the free, prior, and informed “consent” of the Tribe as to actions that may affect Tribal interests, as required by

the UN Declaration on the Rights of Indigenous Peoples, signed by the United States, and the International Convention on the Elimination of All Forms of Racial Discrimination, signed and ratified by the United States.

14. Without compromising the Tribe's position, I am aware that the United States and its agencies do not consider the term "consultation" as requiring the consent of the affected tribe. It is within the context of that understanding and the more limited consultation obligations acknowledged by the United States that the following comments are made. I am familiar with the "consultation" process used by the NRC Staff and the private contractor, SRI Foundation, employed by the Applicant in regards to this matter. That process largely consisted of various invitations beginning in early 2011 by the NRC Staff and SRI to engage in a predetermined consultation process, including meetings, telephone and written communications, and participation in archeological field surveys, that combined the review of the Crow Butte license renewal with the Crow Butte expansion, known as the North Trend, and the Dewy-Burdock project. I have read the description by Michael Catches Enemy of the meetings and communications between the NRC Staff and the tribes, including the Oglala Sioux Tribe, and the archaeological and field surveys, and the expressed positions taken by the Oglala Sioux Tribe, and believe his description to be accurate.

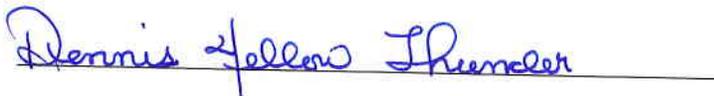
15. Despite the complete breakdown of the consultation process and without a historic, cultural, religious, or spiritual survey of the impacted areas that included the collective participation by the affected tribes, including the Oglala Sioux Tribe, the NRC Staff and the Applicant went ahead with the preparation and issuance in 2014 of the Safety Evaluation Report ("SER") and the Environmental Assessment ("EA") and approval of renewal of the Applicant's license. No draft EA was circulated that might have provided an additional opportunity to resolve these disputes between the tribes, including the Oglala Sioux Tribe, and the NRC Staff and the Applicant. Without the collaborative participation of the tribes, including the Oglala Sioux Tribe, no adequate comprehensive study identifying all such resources could be conducted by the NRC Staff or the Applicant.

16. According to the EA, archaeological surveys were conducted by state agencies in the 1980s. Those surveys identified "21 prehistoric and historic period archaeological sites," of which 15 were evaluated by the state agencies as "not eligible" for nomination and potential listing on the National Register of Historic Places. It was reported that between 2010 and 2012 the Applicant visited the 6 sites that are potentially eligible and "confirmed" that the sites did not incur any impacts from activities there through 1995. The EA does not describe any uniform or scientifically-verified methodology employed by these surveys, nor explain any methodology or scientific basis for the selection of certain cultural resources as significant or eligible for listing on the National Register, while others are not granted such protections. Further, the "confirmation" by the Applicant, not the NRC Staff, of no impacts on the 6 eligible sites only covered the period through 1995. These surveys also failed to identify the "sign or starve" Lakota encampments of the 1880s.

17. Archaeological surveys are not cultural resource surveys and are not sufficient to identify all sites and resources of historic, cultural, and spiritual significance to tribes. The EA acknowledges the historic interests of the Oglala Lakota in Crow Butte, a mere one-half mile east of the Crow Butte license area. It also acknowledges the spiritual and religious importance of Crow Butte as a place used by the Lakota for vision quests and of the area for the collection of herbs for medicinal and ceremonial uses. The EA acknowledges that only two tribes engaged in field reviews. Both of those tribes, the Santee and the Crow, were not among those tribes closed to the area and having the greatest historic contact with the area. These surveys were not sufficient to identify spiritual, cultural, and historic resources significant to the Oglala Sioux Tribe and the other tribes. The failures of the NRC Staff and the Applicant to resolve the disputes with the tribes over the surveys leaves the Tribe's historic, cultural, and spiritual resources at risk of harm, including permanent destruction. The failures of the NRC Staff to obtain the Tribe's participation deprives the EA of any mitigation measures or other plans to diminish impacts to the Tribe's historic, cultural, and historic resources at the Crow Butte site.

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 that the forgoing is true and correct to the best of my knowledge.

Executed on May 7, 2015 at Pine Ridge Reservation.



Dennis Yellow Thunder