

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[7590-01-P]

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chair
Dr. Richard E. Wardwell
Brian K. Hajek
Alan S. Rosenthal (Special Assistant to the Board)

In the Matter of

CROW BUTTE RESOURCES, INC.

(License Renewal for the
In Situ Leach Facility, Crawford, Nebraska)

Docket No. 40-8943

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

July 13, 2015

NOTICE OF HEARING

(Notice of Evidentiary Hearing and Opportunity
to Provide Written Limited Appearance Statements)

The Atomic Safety and Licensing Board (Board) hereby gives notice that it will convene an evidentiary hearing to receive testimony and exhibits regarding the contested application of Crow Butte Resources, Inc. (Crow Butte) before the U.S. Nuclear Regulatory Commission (NRC) seeking a renewal of its license to operate an in-situ uranium leach recovery (ISL) facility near Crawford, Nebraska.¹ The Board also hereby gives notice that it will accept written limited appearance statements from members of the public regarding the License Renewal Application.

¹ Application for 2007 License Renewal USNRC Source Materials License SUA-1534 Crow Butte License Area (Nov. 2007) (ADAMS Accession No. ML073480264) [hereinafter License Renewal Application]. "ADAMS" refers to the NRC's public document management system, and is discussed more below.

I. BACKGROUND OF PROCEEDING

On May 27, 2008, notice of the Crow Butte License Renewal Application was published in the Federal Register.² Three groups petitioned to intervene as parties in the proceeding and requested that an evidentiary hearing be held on the application.³ After oral argument, on November 21, 2008, the Board granted two of the petitions,⁴ admitting the Oglala Sioux Tribe and Consolidated Intervenors⁵ as parties.⁶ At that time, the Board admitted nine contentions proposed by the intervenors.⁷ Shortly thereafter, on December 10, 2008, the Board admitted a tenth contention.⁸

² Notice of Opportunity for Hearing, Crow Butte Resources, Inc., Crawford, NE, In Situ Leach Recovery Facility, 73 Fed. Reg. 30,426 (May 27, 2008).

³ Oglala Delegation of the Great Sioux Nation Treaty Council Request for Hearing and Petition for Leave to Intervene (July 30, 2008) (ADAMS Accession No. ML082170263); Oglala Sioux Tribe Request for Hearing and/or Petition to Intervene (July 29, 2008) (ADAMS Accession No. ML082170264); Consolidated Request for Hearing and Petition for Leave to Intervene (July 28, 2008) (ADAMS Accession No. ML082170525).

⁴ See LBP-08-24, 68 NRC 691, 760 (2008).

⁵ Id. Although originally named “Consolidated Petitioners,” the Board now refers to Beatrice Long Visitor Holy Dance, Debra White Plume, Thomas Kanatakeniate Cook, Loretta Afraid of Bear Cook, Afraid of Bear/Cook Tiwahe, Joe American Horse, Sr., American Horse Tiospaye, Owe Aku/Bring Back the Way, and the Western Nebraska Resources Council as “Consolidated Intervenors.”

⁶ The Board denied a request to intervene by the Oglala Delegation of the Great Sioux Nation Treaty Council, but admitted the delegation as an interested local government body. Id.

⁷ Id. at 760–61.

⁸ See LBP-08-27, 68 NRC 951, 957 (2008).

The NRC Staff and Crow Butte appealed the Board's admission of the contentions.⁹ On appeal, the Commission affirmed the intervenors' standing,¹⁰ and affirmed the admissibility of four of the ten contentions.¹¹ The Oglala Sioux Tribe and Consolidated Intervenors sought review of the Commission's determination by the Court of Appeals for the Eighth Circuit, but their petition for review was dismissed.¹²

On October 27, 2014, approximately six and a half years after the License Renewal Application was made available to the public, the NRC Staff notified the Board of the public availability of its Environmental Assessment.¹³ Ten days later, the Staff notified the Board that it had issued a renewed license to Crow Butte with an expiration date of November 5, 2024.¹⁴

⁹ NRC Staff's Notice of Appeal of LBP-08-24, Licensing Board's Order of November 21, 2008, and Accompanying Brief (Dec. 10, 2008) (ADAMS Accession No. ML083450781); Crow Butte Resources' Notice of Appeal of LBP-08-24 (Dec. 10, 2008) (ADAMS Accession No. ML083450359).

¹⁰ The Commission provided an opportunity for Owe Aku/Bring Back the Way, and the Western Nebraska Resources Council to correct technical deficiencies with their standing affidavits. See CLI-09-9, 69 NRC 331, 366 (2009); Intervenors' Submission of Anders Affidavit (June 17, 2009) (ADAMS Accession No. ML091690486); Affidavit of David Alan House in Support of Owe Aku (July 17, 2009) (ADAMS Accession No. ML092300005).

¹¹ CLI-09-9, 69 NRC at 366; see also Licensing Board Order (Canceling Oral Argument, Ruling on Summary Disposition of Consolidated Petitioners' Miscellaneous Contention G, Requiring Filing of Affidavits) (May 27, 2009) (unpublished) (ADAMS Accession No. ML091470499).

¹² Oglala Sioux Tribe v. NRC, No. 09-2262 & 09-2285, slip op. (8th Cir. July 22, 2009).

¹³ Environmental Assessment Availability Notification, Letter from Marcia Simon, NRC Staff Counsel, to Administrative Judges and Parties (Oct. 27, 2014) (ADAMS Accession No. ML14300A228). The Environmental Assessment was prepared pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and the agency's implementing regulations, located in 10 C.F.R. Part 51.

¹⁴ License Renewal Notification, Letter from Marcia Simon, NRC Staff Counsel, to Administrative Judges and Parties (Nov. 6, 2014) (ADAMS Accession No. ML14310A434). The renewed license was issued pursuant to 10 C.F.R. § 2.1202(a), which allows certain NRC license applications to be granted despite the pendency of a hearing.

The Oglala Sioux Tribe and Consolidated Intervenors requested a stay of the license, but the Board denied to issue a stay.¹⁵

On January 5, 2015, the Oglala Sioux Tribe and Consolidated Intervenors moved to admit several new contentions that were based on the Environmental Assessment.¹⁶ After oral argument, the Board admitted five new contentions, and supplemented one of the four previously-admitted contentions.¹⁷ On March 16, 2015, Consolidated Intervenors moved to admit additional contentions based on the United States Environmental Protection Agency's proposed rulemaking on uranium ISL,¹⁸ but the Board denied admission of these contentions.¹⁹

Starting on August 24, 2015, the Board will hold an evidentiary hearing under 10 C.F.R. Part 2, Subpart L procedures to receive testimony and exhibits on the admitted contentions in this proceeding. The parties to this proceeding (Crow Butte, the NRC Staff, the Oglala Sioux Tribe, and Consolidated Intervenors) have previously filed written narrative testimony and exhibits they intend to offer on the merits of the nine admitted contentions.

¹⁵ See LBP-15-2, 81 NRC 48 (2015).

¹⁶ The Oglala Sioux Tribe's Renewed and New Contentions Based on the Final Environmental Assessment (October 2014) (Jan. 5, 2015) (ADAMS Accession No. ML15005A541); Consolidated Intervenors' New Contentions Based on the Final Environmental Assessment (October 2014) (Jan. 5, 2015) (ADAMS Accession No. ML15006A274).

¹⁷ LBP-15-11, 81 NRC __, __ (slip op. at 59–61) (Mar. 16, 2015).

¹⁸ Consolidated Intervenors' Motion For Additional Contentions Based On [Environmental Protection Agency] Proposed Rules (Mar. 16, 2015) (ADAMS Accession No. ML15076A305).

¹⁹ See LBP-15-15, 81 NRC __, __ (slip op. at 24) (Apr. 28, 2015). The NRC Staff also made available its Safety Evaluation Report of the License Renewal Application on January 2, 2013. See Safety Evaluation Report Availability Notification, Letter from Brett Michael Patrick Klukan, NRC Staff Counsel, to Administrative Judges and Parties (Jan. 2, 2013) (ADAMS Accession No. ML13002A279). A revised Safety Evaluation Report was made available on August 24, 2014. See Revised Safety Evaluation Report Availability Notification, Letter from David M. Cylkowski, NRC Staff Counsel, to Administrative Judges and Parties (Aug. 24, 2014) (ADAMS Accession No. ML14232A141). No new contentions were proposed based on the publication of these documents.

II. MATTERS TO BE CONSIDERED

The evidentiary hearing will concern the admitted contentions in this proceeding, Contentions A, C, D, F, 1, 6, 9, 12, and 14. These contentions generally challenge the adequacy of 1) the evaluation and protection of historical and cultural resources on the site, and 2) the agency's analysis of the project's impacts on surface water, groundwater, and the ecosystem of the surrounding area. Appendix A, which follows this Notice, contains the statements of the contentions.

III. DATE, TIME, AND LOCATION OF EVIDENTIARY HEARING

The hearing will commence on Monday, August 24, 2015, at 9:30 AM, MDT and continue daily through Friday, August 28, 2014 at 6:00 PM, MDT, unless the parties conclude their cases earlier. The evidentiary hearing will take place at the:

Crawford Community Center
1005 1st Street
Crawford, Nebraska 69339

The Board anticipates addressing the admitted contentions in the following order:

Panel 1: Contentions A, C, D, F, 14
Panel 2: Contentions 6, 9, 12
Panel 3: Contention 1

Members of the public and media are welcome to attend and observe the evidentiary hearing, which will involve technical, scientific, and legal questions and testimony. Participation in the hearing will be limited to the parties, their lawyers, and witnesses. Please be aware that security measures will be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks. No signs, banners, posters, or other displays will be permitted in the facility.²⁰ No firearms or other weapons will be allowed in the facility.²¹

²⁰ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

²¹ A Notice prohibiting the use of weapons at Atomic Safety and Licensing Board proceedings in Nebraska will be issued shortly.

IV. SUBMITTING WRITTEN LIMITED APPEARANCE STATEMENTS

As provided in 10 C.F.R. § 2.315(a), any person (other than a party or the representative of a party to this proceeding) may submit a written statement setting forth his or her position on matters of concern related to this proceeding, known as a limited appearance statement. Although these statements do not constitute testimony or evidence, and are not treated as statements made under oath, they nonetheless may assist the Board or the parties in their consideration of the issues in this proceeding. Anyone who is considering submitting a limited appearance statement, however, should be aware that the jurisdiction of this Board and the scope of this proceeding are limited to the Crow Butte License Renewal Application, and, more particularly, to the nine admitted contentions in Appendix A.

Written limited appearance statements may be submitted by August 28, 2015, and should be sent by mail, fax, or email both to the Office of the Secretary and the Chairman of this Licensing Board:

Office of the Secretary

Mail: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: (301) 415-1101 (verification (301) 415-1966)
E-mail: hearingdocket@nrc.gov

Chairman of the Licensing Board

Mail: Administrative Judge Michael M. Gibson, Chairman
c/o Nicholas Sciretta & Sachin Desai, Law Clerks
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: (301) 415-5599 (verification (301) 415-4128)
Email: Nicholas.Sciretta@nrc.gov & Sachin.Desai@nrc.gov

V. AVAILABILITY OF DOCUMENTARY INFORMATION REGARDING THE PROCEEDING

Documents relating to Crow Butte's License Renewal Application are available on the NRC website at <http://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/crow->

butte.html. These and other documents related to this proceeding are available for public inspection at the Commission's Public Document Room, located in One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or electronically from the publicly available records component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.²² Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone between 8:00 AM and 4:00 PM Eastern Time, Monday through Friday except federal holidays at (800) 397-4209 or (301) 415-4737, or by sending an email to pdr.resource@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 13, 2015

²² Documents which are determined to contain sensitive or proprietary information may only be available in redacted form. All non-sensitive documents are available in their complete form.

APPENDIX A
Contentions to be Heard at the Evidentiary Hearing

Contention A: There is no evidence based science for the NRC Staff's conclusion that ISL mining has "no non radiological health impacts," or that non radiological impacts for possible excursions or spills are "small."

Contention C: The NRC Staff's characterization that the impact of surface waters from an accident is "minimal since there are no nearby surface water features," does not accurately address the potential for environmental harm to the White River.

Contention D (merged with EA Contention 3 & 10): The NRC Staff incorrectly states there is no communication among the aquifers, when in fact, the Basal Chadron aquifer, where mining occurs, and the aquifer, which provides drinking water to the Pine Ridge Indian Reservation, communicate with each other, resulting in the possibility of contamination of the potable water. Based on this potential communication between the aquifers, the EA's environmental justice analysis, including analysis of cumulative effects, should be expanded to consider potential impacts on the aquifer which provides drinking water to the Pine Ridge Indian Reservation.

Contention F: Failure to include recent research.

Contention 1 (Merged Contentions 1 & 2): Whether the cultural surveys performed and incorporated into the EA formed a sufficient basis on which to renew Crow Butte's permit.

Contention 6: The Final EA violates the National Environmental Policy Act in concluding that the short-term impacts from consumptive ground water use during aquifer restoration are MODERATE.

Contention 9: The Final EA violates 10 C.F.R. §§ 51.10, 51.70 and 51.71, and the National Environmental Policy Act and implementing regulations by failing to include the required discussion of ground water restoration mitigation measures.

Contention 12: The Final EA omits a discussion of the impact of tornadoes on the license renewal area, and inadequately discusses the potential impacts from land application of ISL mining wastewater.

Contention 14: The Final EA violates the National Environmental Policy Act in its failure to provide an analysis of the impacts on the project from earthquakes; especially as it concerns secondary porosity and adequate confinement. These failings violate 10 C.F.R. §§ 51.10, 51.70 and 51.71, and the National Environmental Policy Act, and implementing regulations.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
CROW BUTTE RESOURCES, INC.) Docket No. 40-8943-OLA
)
In-Situ Leach Uranium Recovery Facility,)
Crawford, Nebraska)
)
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF HEARING (Notice of Evidentiary Hearing and Opportunity to Provide Written Limited Appearance Statements)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission.
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Marcia J. Simon, Esq.
David Cylkowski, Esq.
Emily Monteith, Esq.
Sabrina Allen, Law Clerk
E-mail:
marcia.simon@nrc.gov
david.cylkowski@nrc.gov
sabrina.allen@nrc.gov
emily.monteith@nrc.gov

Michael M. Gibson, Chairman
Administrative Judge
E-mail michael.gibson@nrc.gov

Richard E. Wardwell
Administrative Judge
E-mail: richard.wardwell@nrc.gov

Alan S. Rosenthal
Administrative Judge
E-mail: alan.rosenthal@nrc.gov

Brian K. Hajek
Administrative Judge
E-mail: brian.hajek@nrc.gov

Winston & Strawn, LLP
101 California Street
San Francisco, CA 94111
Tyson R. Smith, Esq.
Noelle R. Formosa, Esq.
Counsel for Crow Butte Resources, Inc.
E-mail:
trsmith@winston.com
nformosa@winston.com

DOCKET NO. 40-8943-OLA

NOTICE OF HEARING (Notice of Evidentiary Hearing and Opportunity to Provide Written Limited Appearance Statements)

Owe Oku, Debra White Plume,
and David House
P.O. Box 2508
Rapid City, South Dakota 57709
Bruce Ellison, Esq.
Roxanne Andre
E-mail: belli4law@aol.com
E-mail: roxanneandre@yahoo.com

Western Nebraska Resources Council
Chief Joseph American Horse
Thomas K. Cook, Francis E. Anders
David Cory Frankel, Esq.*
P.O. 3014
Pine Ridge, South Dakota 57770
E-mail: Arm.legal@gmail.com

Ved Nanda Center for International and
Comparative Law
1075 Waite Drive
Boulder, CO 80303
Andrew Reid, Esq.
Counsel for Oglala Sioux Tribe
E-mail: lawyerreid@gmail.com

McGuire Law Firm
625 South 14th Street, Suite C
Lincoln, Nebraska 68508
Mark D. McGuire
Counsel for Crow Butte Resources, Inc.
E-mail: mdmcguire46@gmail.com

Thomas J. Ballanco*
945 Taraval Avenue, # 186
San Francisco, CA 94116
Counsel for Joe American Horse, Thomas
Cook, Loretta Afraid-of-Bear Cook, Slim
Buttes Community, and Pine Ridge
Reservation, South Dakota 57770
E-mail: HarmonicEngineering@gmail.com

Winston & Strawn, LLP
1700 K Street
Washington, DC 20006
Noelle R. Formosa, Esq.
Carlos L. Sisco, Paralegal
Counsel for Crowe Butte Resources, Inc.
E-mail: nformosa@winston.com
csisco@winston.com

[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of July, 2015