

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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

September 25, 2015

NOTICE OF SUPPLEMENTAL HEARING

The Atomic Safety and Licensing Board (Board) hereby gives notice that it will convene a supplemental evidentiary hearing to receive testimony regarding Crow Butte Resources' (Crow Butte) contested application to renew its U.S. Nuclear Regulatory Commission (NRC) license to operate an in-situ uranium leach recovery facility near Crawford, Nebraska.¹

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 an evidentiary hearing be held on the application.³ On November 21, 2008, the

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.

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

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 The NRC Staff and Crow Butte appealed the Board's admission of the contentions.⁹ On appeal, the Commission affirmed the intervenors' standing, and affirmed the admissibility of four of the ten contentions.¹⁰ On January 5, 2015, the Oglala Sioux Tribe and Consolidated Intervenors moved to admit new contentions based on the Environmental Assessment,¹¹ which the NRC

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).

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 See CLI-09-9, 69 NRC 331, 366 (2009).

¹¹ 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).

Staff made available on October 27, 2014.¹² The Board admitted five new contentions, and supplemented one of the four previously admitted contentions.¹³

From August 24 through August 28, 2015, the Board held an evidentiary hearing under 10 C.F.R. Part 2, Subpart L procedures. During this evidentiary hearing the parties submitted new exhibits in response to witness testimony and questions from the Board. These exhibits have been admitted,¹⁴ and the Board has determined that some of the new exhibits raise questions regarding admitted contentions that need to be addressed through additional testimony. As a result, the parties are submitting additional pre-filed testimony to the Board, and a supplemental hearing limited to these new matters will be held on October 23, 2015.

II. MATTERS TO BE CONSIDERED

At the supplemental evidentiary hearing the Board will receive testimony on the following topics:

- Whether the water levels in the Brule aquifer have lowered due to mining activities;
- What is the available head in the Basal Chadron/Chamberlain Pass formation and the maximum anticipated drawdown during Crow Butte's operation and restoration of its mining facility;
- Whether the results from the four pump tests¹⁵ demonstrate a hydraulic connection between the Brule and Basal Chadron/Chamberlain Pass formations;

¹² 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.

¹³ LBP-15-11, 81 NRC __, __ (slip op. at 59–61) (Mar. 16, 2015).

¹⁴ Licensing Board Order (Admitting Remaining Exhibits; Scheduling Transcript Corrections) (Sept. 10, 2015) (unpublished); Licensing Board Order (Admitting Exhibits; Scheduling Supplemental Testimony and October Hearing Day) (Sept. 4, 2015) (unpublished).

¹⁵ Crow Butte conducted four pump tests to estimate the hydraulic properties of the Basal Chadron and Brule aquifer as a result of pumping water from the uranium-bearing ore zone of the Basal Chadron.

- Whether the Basal Chadron/Chamberlain Pass formation exists beneath the Pine Ridge reservation and its connection (if any) to the Basal Chadron/Chamberlain Pass formation beneath the license renewal area;
- To what degree (if any) do the additional exhibits that were admitted after the hearing commenced affect the conclusions regarding the structure of the White River feature and the NRC Staff's maximum likelihood modeling; and
- To what degree (if any) do the additional exhibits that were admitted after the hearing commenced illustrate the groundwater flow directions in the Arikaree and Brule aquifers underlying the Pine Ridge reservation and the license renewal area.

III. DATE, TIME, AND LOCATION OF THE SUPPLEMENTAL EVIDENTIARY HEARING

The supplemental hearing will commence on Friday, October 23, 2015, at 10:00 AM Eastern Time, 8:00 AM, Mountain Time, and will continue until complete.¹⁶ The parties have the opportunity to participate in this supplemental hearing either in person, through video conference, or by telephone. The judges will be present in the Atomic Safety and Licensing Board Panel's Rockville Hearing Room, with a video conference link set up to the Scottsbluff Room of the student center of Chadron State College, 1000 Main Street, Chadron, Nebraska 69337. An Information Technology specialist from the Atomic Safety and Licensing Board Panel will be present in the Scottsbluff Room to assist with the video conference link. Any parties or witnesses unable to attend the hearing either in Rockville or in Chadron will be provided with a call in number and may participate in the hearing by telephone.

Members of the public and media are welcome to attend and observe the evidentiary hearing either in the Rockville Hearing Room or in Chadron State College's Scottsbluff Room. The Scottsbluff Room will open at 7:30 AM Mountain Time on the day of the hearing. A telephone bridge line will also be provided for members of the public who are unable to travel to

¹⁶ Funding for the U.S. government for fiscal year 2016 has not yet been appropriated by Congress. The NRC may be able to operate for a limited period of time even without funding appropriated. The parties to this proceeding will be made aware if ASLBP activities must be suspended because the NRC has to shut down. Once funding for ASLBP activities becomes available, the Board will contact the parties either to reaffirm the October 23 supplemental hearing date, or to reschedule the hearing if that proves necessary.

either location, but nevertheless wish to listen to the proceeding. The dial in number for this bridge line is (888) 603-7019, and the passcode for listen-only access to the hearing is 7856326. Participation in the hearing, however, will be limited to the parties' lawyers and witnesses. Please be aware that security measures will be employed at the entrance to both facilities, including searches of hand-carried items such as briefcases or backpacks. No signs, banners, posters, or other displays will be permitted.¹⁷ No firearms or other weapons will be allowed in either facility, and the Board's Notice regarding weapons, dated July 14, 2015, remains in effect.¹⁸ Moreover, Chadron State College places additional restrictions on the presence of weapons on campus.¹⁹

IV. 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 (PDR), 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 management system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.²⁰ Persons who do not have access to ADAMS or who encounter problems in accessing the

¹⁷ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

¹⁸ Licensing Board Notice (Regarding Weapons at Atomic Safety and Licensing Board Proceeding) (July 14, 2015) at 1 (prohibiting the possession of weapons at "all proceedings conducted in Nebraska by the Atomic Safety and Licensing Board of the U.S. Nuclear Regulatory Commission").

¹⁹ See Chadron State College Student Handbook 36–37 (2015 rev.), available at http://www.csc.edu/documents/publications/csc_student_handbook.pdf.

²⁰ 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.

documents located in ADAMS should contact the NRC PDR 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
September 25, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF SUPPLEMENTAL HEARING** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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

Dated at Rockville, Maryland
this 25th day of September, 2015