UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	Docket No. 40-8943
CROW BUTTE RESOURCES, INC.	)	
	)	ASLBP No. 08-867-02-OLA-BD01
(License Renewal)	)	

PETITION FOR REVIEW OF LBP-15-11 AND LBP-16-13

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RESOURCES, INC.

December 29, 2016

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INTRODUCTION

Under 10 C.F.R. §§ 2.341(b)(1) and (4), Crow Butte Resources, Inc. ("Crow Butte") requests that the Commission grant review of the Licensing Board Memorandum and Order (LBP-15-11), dated March 16, 2015, insofar as it admitted Contention 12B, and the Partial Initial Decision (LBP-16-13), which resolved Contention 12B in favor of the Oglala Sioux Tribe and Consolidated Intervenors (collectively, "Intervenors"). Contention 12B, which alleges that the NRC Staff's Environmental Assessment ("EA") "inadequately discusses the potential impacts from land application of [in situ] mining wastewater," was untimely. Because the proposed contention did not even acknowledge the information in the EA on land application, much less establish a basis for a dispute, it was also inadmissible. Compounding its initial error in admitting Contention 12B, the Licensing Board misapplied Commission precedent and ignored the National Environmental Policy Act's "rule of reason" in resolving Contention 12B in favor of the Intervenors. As discussed below, this is the wrong outcome, and an unnecessary one given that the contention never should have been admitted in the first place.

BACKGROUND

Crow Butte filed its license renewal application ("LRA) in November 2007. Nearly seven years later, in October 2014, the NRC Staff issued its final EA.[1] Following issuance of the EA, the Intervenors proposed several new contentions.[2] Proposed Contention 12 alleged that "[t]he EA omits a discussion of the impact of tornadoes on the license renewal area, and inadequately discusses the potential impacts from land application of [in situ] mining wastewater."[3] Contention 12 therefore involves two distinct issues: tornados (Contention 12A) and land application of wastewater (Contention 12B). Crow Butte and the NRC Staff opposed proposed Contention 12 on both timeliness and admissibility grounds. In LBP-15-11, the Board found Contention 12 timely and admitted it for hearing.

The parties filed initial written testimony in May 2015, and the Board held an evidentiary hearing in August 2015 and again in October 2015. The Board issued its first partial initial decision on May 26, 2016.[4] The Licensing Board issued its second partial initial decision (LBP-16-13) on December 6, 2016. In LBP-16-13, the Board found in favor of the NRC Staff and Crow Butte on Contention 12A, but found in favor of the Intervenors on Contention 12B.

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1 *Final Environmental Assessment for the License Renewal of U.S. Nuclear Regulatory Commission License No SUA-1534*, dated November 2014.

2 "The Oglala Sioux Tribe's Renewed and New Contentions Based on the Final Environmental Assessment (October 2014)" ("New OST Contentions) and "Consolidated Intervenors' New Contentions Based on the Final Environmental Assessment (October 2014)" ("New CI Contentions"), both dated January 5, 2015.

3 New CI Contentions at 94.

4 Crow Butte appealed the Board decision admitting Contention 1 as well as the first partial initial decision to the extent that it found in favor of OST on Contention 1. "Petition for Review of LBP-15-11 and LBP-16-07," dated June 20, 2016. That appeal remains pending.

As a result, the excessive and costly process for the renewal of Crow Butte's existing license continues with no end in sight.

STANDARD FOR REVIEW

Under 10 C.F.R. § 2.341(b)(4), the Commission may, in its discretion, grant a petition for review of a full or partial initial decision, giving due weight to the existence of a "substantial question" with respect to a necessary legal conclusion that is without governing precedent or is a departure from or contrary to established law. As discussed below, this petition for review meets this standard for both the initial decision to admit Contention 12B in LBP-15-11 and the subsequent decision on the merits in LBP-16-13. Both decisions rest on legal conclusions that are contrary to established law and Commission precedent.

DISCUSSION

A. Contention 12B Was Untimely

Contention 12B never should have been admitted.[5] In finding Contention 12B to be timely, the Board incorrectly applied the timeliness criteria in 10 C.F.R. §§ 2.309(f)(2) and (c). The Board's decision is contrary to the plain language of NRC regulations and to longstanding Commission precedent.

1. Contentions Must Be Filed When Information First Becomes Available

The timeliness and admissibility of proposed contentions must be evaluated in accordance with the Commission's standards in 10 C.F.R. Part 2. In general, a contention must be based on the application or other documents available at the time the hearing request and

[5] In CLI-15-17, the Commission denied Crow Butte's petition for interlocutory review of the Board decision admitting Contention 12B after noting that other admitted contentions were already pending. Because the Board now has resolved Contention 12B, Crow Butte's petition for review of the decision to admit Contention 12B is ripe.

petition to intervene is filed.[6] Section 2.309(f)(2) provides that intervenors may file a new or amended environmental contention after the initial deadline — for example, based on an EA — but only if the contention complies with 10 C.F.R. § 2.309(c)(1). Under 10 C.F.R. § 2.309(c)(1), new or amended contentions may not be filed after the initial deadline unless the intervenor demonstrates 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.

These criteria are consistent with the Commission's longstanding policy that a petitioner has an "iron-clad obligation to examine the publicly available documentary material … with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention."[7] The finding of good cause for late-filing of contentions is related to the total previous unavailability of information.[8] New or amended contentions must be based on

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[6] 10 C.F.R. § 2.309(f)(2); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 223 (2000) (time to submit contentions tolls when the information on which the contention is based first becomes available, not publication of an NRC Staff NEPA review document).

[7] *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 147 (1993); *see also Shaw Areva MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65 n.47 (2009); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Station, Units 3 & 4), CLI-01-17, 54 NRC 3, 24-25 (2001).

[8] *Philadelphia Elec. Co.* (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983).

new facts not previously available.[9] New or amended contentions, including those based on the EA, also must meet the admissibility standards that apply to all contentions, which the Commission has said are "strict by design."[10]

2. The Board Applied the Incorrect Standard In Assessing the Timeliness of Proposed Contention 12

At the outset, the Board in LBP-15-11 incorrectly summarized the applicable regulatory requirements. The Board began by stating that a timely filing of an intervenor's challenge to the adequacy of the NRC Staff's NEPA review process "is generally triggered by the release of a NEPA document."[11] The Board also claimed that the NRC Staff's first attempt to analyze a NEPA issue gives rise to an intervenor's "first opportunity to raise contentions on the adequacy of this assessment."[12] According to the Board, the Commission explained that intervenors "were to wait until the publication of the EA before proffering any NEPA-related new contentions, as long as the new contentions were based on data or conclusions not available at the time of the LRA."[13] The Board also stated that:

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9 *Entergy Nuclear Generation Co. and Entergy Nuclear* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 493 n.70 (2012) (emphasis in original).

10 *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002).

11 LBP-15-11 at 7.

12 *Id*. at 8, citing *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008). The Commission recently rejected similar reasoning by a Board, finding it to be an "incorrect" application of NRC regulations. *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, __ NRC __ (slip. op. December 23, 2016 at 15).

13 LBP-15-11 at 26. As discussed below, the Board never addressed whether the proposed Contention 12B was based on data or conclusions not available at the time of the LRA. Had it done so, it would have been apparent that the contention should have been raised earlier.

> Intervenors had no obligation to proffer new or amended environmental contentions to challenge information in the SER, which concerns safety findings. Instead, Intervenors were constrained to await the issuance of the EA, which came out shortly thereafter, as the triggering event for filing new or amended environmental contentions.[14]

The Board reasoned that the intervenors could (indeed, must) wait until the EA to raise new environmental contentions.

The Board's formulation of the timeliness requirements is not supported by the language of the regulation or Commission precedent.[15] The Board completely ignored the Intervenors' "iron clad obligation" to examine the information available at the time of the application, such as the status and assessment of Crow Butte's plans for land application of wastewater in its 2007 application and U.S. Fish and Wildlife Service materials. The Board also ignored the fact that the NRC Staff discussed land application in the NRC's 2012 SER. The Board therefore applied an incorrect standard when assessing the timeliness of Contention 12B.

3. Proposed Contention 12B Was Untimely

The Board's interpretation of the timeliness provisions ignores the plain language of the regulation. Conspicuously absent from the proposed contention or the Board's decision

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[14] LBP-15-11 at 27 (emphasis in original) (internal citations omitted). The SER was not published "shortly" before the EA. The SER was first published in December 2012 and revised in August 2014. The revisions in the 2014 SER did not implicate the subject matter of any admitted contention. *See* NRC Staff Notice to ASLB and Parties, dated August 20, 2014 (ADAMS Accession No. ML14232A141). The EA was not published until October 2014.

[15] Crow Butte specifically highlighted the Commission's timeliness criteria during oral argument on the proposed contentions. *See* Tr. at 752-756; *but see id*. at 754 (JUDGE ROSENTHAL: "And, moreover, it seems to me that the regulations do not contemplate that over the lengthy period that staff took in completing its environmental review addressed to environmental issues that the intervenors had to take into account a safety report."); *id*. at 752-753 (JUDGE ROSENTHAL: "I mean, that's what I thought the scheme was, but you're saying, no, that they've got to keep track of whatever the staff issues. And if they have a problem with that, they've got to move then. They can't wait until the end of the process."). The NRC's rule contemplate exactly that obligation.

was any recognition of the regulatory language expressly requiring that a new or amended contention — even one based on a NEPA document — "compl[y] with the requirements in paragraph (c) of this section."[16] The Intervenors never acknowledged the application of this requirement to the proposed contentions, and they provided no basis for the Board or the parties to evaluate the timeliness of proposed Contention 12B.[17] The Board in LBP-15-11, however, claimed that there were differences between the LRA and the EA that made the contention timely. As discussed below, the supposed differences between the LRA and the EA are illusory and do not change the manner or the extent to which the issue had been addressed previously in the LRA and in the SER. The Board also failed to consider whether the contention was based on new and materially different information and whether it had been filed promptly once the new information became available.

Had the Board considered the timeliness of the proposed contention under the proper standard, it would not have been admitted. The entirety of the Intervenors basis for proposed Contention 12B states:

> Further, the Final EA fails to properly account for impacts to wildlife resulting from land application of ISL wastes. The U.S. Fish and Wildlife Service has expressly stated that the agency "do[es] not recommend land application using center pivot irrigation for the disposal of in-situ mining wastewater." U.S. Fish and Wildlife Service letter to NRC 9/5/07, attached as Exhibit N hereto and filed herewith.
>
> This expert wildlife agency has published detailed information on the risks of selenium contamination resulting from ISL. See U.S. Fish and Wildlife Service Contaminant Report Number R6/715C/00, attached as Exhibit O hereto and filed herewith. Selenium is a very toxic substance to humans

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16 10 C.F.R. § 2.309(f)(2).

17 The Intervenors did not address the timeliness of proposed Contention 12B. They never cited 10 C.F.R. § 2.309(f)(2) or 10 C.F.R. § 2.309(c)(1), nor did they assert that their contentions were based on new or different information than that available previously, or that their contentions were timely filed based on the availability of that information.

> and wildlife. Failure to describe the Selenium conditions is evidence of a failure to take the required 'hard look' and as a result, the Final EA violates NEPA.
>
> The Final EA fails to account for these impacts and present credible evidence and scientific evaluation addressing why these concerns do not apply in this instance.

The proposed contention therefore presents only two documents in support of the contention — a September 5, 2007 letter to the NRC (Exh. N) and a September 2000 report (Exh. O) from the U.S. Fish and Wildlife Service. Both documents relied on for the proposed contention predate Crow Butte's LRA, which was dated November 27, 2007. Intervenors provided no explanation as to why they did not present this information at the outset of the proceeding, as required by 10 C.F.R. § 2.309. This should have ended the timeliness inquiry.

There also was no new or different information in the EA that justified a new contention. The same information presented in the EA was included in both the LRA and the SER. For example, all three documents note that Crow Butte is permitted to, but does not, use land application as a wastewater disposal method. *Compare* LRA at 8-4 ("Liquid wastes generated from production and restoration activities are handled by one of three methods: solar evaporation ponds, deep disposal well injection, or land application. All three methods are permitted at the current operation; however, only solar evaporation ponds and deep disposal have been implemented."); 2012 SER at 41 ("The waste water disposal system consists of land irrigation (land application), evaporation ponds and a deep disposal well. The land application is currently not used by the applicant."); and EA at 72-73 (noting that land application of wastewater is one of three permitted disposal options, but recognizing that the Crow Butte has not used land application and no intent to do so in the future). To the extent that Intervenors alleged in Contention 12B that the EA inadequately considered impacts from land application, that same argument could have been raised — indeed, should have been raised — based on the

LRA, which includes the same information regarding the status of permits for land application of wastewater and its use as a disposal method at the site.

The Board in LBP-15-11 attempts to portray the EA as differing from the LRA by highlighting, in isolation, a single statement in the LRA to suggest that land application is one of three disposal options currently used by Crow Butte.[18] But, this sentence is best read as suggesting that three disposal options are permitted and theoretically available to Crow Butte.[19] Indeed, the LRA explicitly states that land application is permitted but not currently being pursued.[20] And, if anything, a supposed discrepancy regarding the status of land application in the LRA should have formed a basis for a contention at the time the application was filed, not seven years later.[21] Regardless, the Intervenors did not identify any difference between the LRA and the EA as its basis for timeliness. Instead, this timeliness argument was identified for the first time by the Board in LBP-15-11.[22] Even assuming that the Board identified an actual

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18 LBP-15-11 at 51, citing LRA § 7.13 ("Liquid wastes generated from production and restoration activities are handled by one of three methods: solar evaporation ponds, deep well injection, or land application. All three methods are currently being employed at Crow Butte.").

19 *See also* Tr. at 991.

20 LRA at § 8.3.1.3.

21 The proposed contention does not indicate that Intervenors even examined the public record or NRC docket regarding land application of wastewater at Crow Butte. Had they done so, they would have seen the regulatory correspondence on land application dating back to the 1990s indicating that Crow Butte had no plans to use land application as a disposal method.

22 Neither Crow Butte nor the NRC Staff had any way of knowing that this was the supposed basis for the timeliness of Contention 12B. Had the Board asked about this at prehearing conference, it easily could have been resolved at that time. These circumstances therefore highlight the importance of intervenors, not the Board, providing the basis for a timely contention so that the parties are on notice as to the basis for intervenors' position and can respond accordingly.

difference between the LRA and the EA that could form the basis for a timely contention (and it did not), the Board ignored the fact that the 2012 SER, like the EA, clearly stated that land application had not been not used by the applicant.[23] Therefore the only basis for timeliness given by the Board — a supposed, but non-existent, discrepancy in the current status of land application — had been resolved two years prior to publication of the EA. There was simply no basis for a timely contention on land application following publication of the EA.

As the above discussion shows, the documentary and factual basis for proposed Contention 12B was available to Intervenors at the time Crow Butte filed its LRA in 2007 and then again upon publication of the SER in 2012. The Intervenors provided no justification for their tardiness in raising Contention 12B more than seven years after the LRA. Moreover, the Board's sole focus on the final EA as the trigger for new NEPA contentions — rather than the availability of new and materially different information — is contrary to longstanding Commission assessments of timeliness. New contentions must be based on new facts not previously available.[24] It is irrelevant that the information was first presented in an application or in a safety report rather than a NEPA document. The Board therefore erred in finding

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[23] 2012 SER at 41; EA at 72-73.

[24] *Pilgrim*, CLI-12-10, 75 NRC at 493 n.70. Indeed, the Commission has emphasized that "an intervenor in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material" and explained that even the "institutional unavailability of a licensing-related document [(*e.g.*, an EA)] does not establish good cause for filing a contention late if information was available early enough to provide the basis for the timely filing of that contention." *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1048 (1983). It therefore is not the availability of an EA that is the trigger for a timely contention, but rather the availability of the information upon which the contention is based. *See Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573, 579-80 (2006) (rejecting petitioner's attempt to "stretch the timeliness clock" because its new contentions were based on information that was previously available and it failed to identify precisely what information was "new" and "different").

Contention 12B timely. The Commission should reverse LBP-15-11 to the extent that it admitted Contention 12B.

B. Contention 12B Was Inadmissible

Even if Contention 12B were timely, it was still inadmissible. Most glaringly, the proposed contention did not include a single citation to the EA discussion of land application or environmental impacts (or for that matter to the same discussion in the LRA). A contention that fails directly to controvert the license application at issue (or, in this case, the EA) is subject to dismissal.[25] The Board therefore erred in finding that Contention 12B satisfied the Commission's strict admissibility criteria.

In addition, the proposed contention fails to acknowledge, much less dispute, the NRC Staff's discussion of land application. For example, the NRC Staff notes that, while Crow Butte has a permit to use land application, it has no intent to use this option in the future.[26] Hearing opportunities cannot be founded on speculation regarding inchoate plans of a licensee.[27] The EA also references the NRC's evaluation of a license amendment permitting land application, dated November 16, 1993, and notes that the site has a permit from the Nebraska Department of Environmental Quality that imposes stringent limitations and monitoring requirements should Crow Butte decide in the future to conduct land application.[28] Intervenors'

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25 10 C.F.R. § 2.309(f)(1)(vi); *Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

26 EA at 72.

27 *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002).

28 *Id*. at 72-73.

proposed Contention 12B, however, nowhere mentions the requirements of the NDEQ permit or addresses the potential impacts from land application in accordance with the NDEQ permit.

And, while the proposed contention is based, at least in part, on an alleged failure to describe selenium conditions at the site (New CI Contentions at 96), the LRA itself describes the selenium concentrations in baseline water quality samples for each mine unit and during mining activities, as well as in pre-operational soil samples.[29] The values are far below those encountered in the two U.S. Fish and Wildlife documents relied upon by Intervenors. In this regard, the proposed contention was vague at best and failed to show any link between the materials provided as support and the information in the LRA or the EA.[30] In other words, the proposed contention failed to demonstrate a genuine dispute with either the application or the EA. Proposed Contention 12B falls woefully short of the Commission's strict admissibility standards.

C. The Final EA Satisfies NEPA

Should the Commission find that Contention 12B was timely and admissible, the Commission nevertheless should reverse the portion of LBP-16-13 resolving Contention 12B in favor of Intervenors. The Board states that "the EA excludes any discussion of the environmental impacts of land application of ISL wastewater on the grounds that Crow Butte has not used land application as a means for wastewater control in the past and 'has not indicated [it]

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29 *See, e.g.*, LRA at Tables 6.1-2 to 6.1-11; Table 2.7-18, "Changes in Water Quality during Mining," and Table 2.9-12, "Soils Analysis Results License Area and Section 19."

30 A bare reference to supposedly supporting document does not provide a sufficient basis for a contention. An intervenor must clearly identify and summarize the information and data being relied upon and describe its relevance to the proposed contention. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

will in the future.'"[31] The NRC Staff also noted in the 2012 SER that the facilities needed to perform land application "have never been constructed."[32] This should have been the end of the inquiry.[33]

NEPA's "hard look" obligation is subject to a "rule of reason."[34] This means that an "agency's environmental review, rather than addressing every impact that could possibly result, need only account for those that have some likelihood of occurring or are reasonably foreseeable."[35] In this case, Crow Butte has no plans to perform land application and has never even constructed the facilities that would be needed to do so.[36] An EA is not intended to be a "research document," reflecting the frontiers of scientific methodology, studies, and data.[37] Nor

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31 LBP-16-13 at 206, citing EA § 4.6.1.3 at 85-86.

32 2012 SER at 59.

33 Of course, had Intervenors raised this contention at the outset of the proceeding, as they were required to do under 10 C.F.R. § 2.309, the NRC Staff could have readily incorporated an impact assessment into the EA. This only highlights the importance of the rationale for requiring contentions to be timely in order to efficiently resolve NEPA issues during the licensing process.

34 *Louisiana Energy Servs.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006) (*citing Long Island Lighting Co.* (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836 (1973)); *see also Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767-69 (2004) (stating that the rule of reason is inherent in NEPA and its implementing regulations).

35 *LES*, LBP-06-8, 63 NRC at 258-59 (*citing Shoreham*, ALAB-156, 6 AEC at 836).

36 *See* Tr. at 1395 (explaining that, prior to starting land application, Crow Butte would have to send in its construction plans to the NRC and incorporate land application into its decommissioning cost estimate before using that method to dispose of wastewater); *id*. at 1923 (same); *id*. at 1929 (describing reasons why use of land application at Crow Butte is speculative and highly unlikely); *id*. at 1936 (noting that the NRC Staff would need to perform a license amendment review before Crow Butte could construct the equipment needed to engage in land application).

37 *LES*, LBP-06-8, 63 NRC at 258-59

must the discussion of impacts be encyclopedic in scope or detail. Given that there are no plans to conduct land application and the fact that the NDEQ permit and NRC license impose stringent limits of the concentration of selenium in wastewater, in addition to monitoring and reporting requirements,[38] the NRC Staff was well within its discretion to include minimal discussion of the impacts of land application in the EA. It is enough that the EA discusses the significant aspects of the environmental impacts of the likely waste disposal methods — the deep disposal well and evaporation ponds.[39]

In the end, the focus of the EA is on anticipated (not speculative) impacts.[40] And, while the NRC Staff could always gather additional data and perform additional analyses, the agency has discretion under NEPA to draw the line and move forward with decisionmaking — particularly where the impacts of the current and projected waste disposal options (deep disposal wells and evaporation ponds) are fully considered in the EA. Under the present circumstances, the NRC Staff's EA passes muster under NEPA. The Board's decision finding in favor of the

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[38] Any land application would be subject to water quality limits derived from NRC, EPA, and State of Nebraska rules. And, in practice, the pre-discharge processing and treatment would result in water quality that is well below those limits. Water must be tested before discharge to ensure compliance with water quality limits, and the land application area is also subject to periodic post-discharge monitoring and testing to ensure that long-term environmental impacts, if any, are small. The rate and manner by which water may be discharged is also designed to prevent both ground-water impacts and surface runoff. Areas of the site where land application of treated water has been used also would be included in decommissioning surveys to ensure soil concentration limits are not exceeded. Exh. CBR-054 at 2-7.

[39] *Shoreham*, ALAB-156, 6 AEC at 836.

[40] *Louisiana Energy Servs.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005).

Intervenors for Contention 12B should be reversed and the Commission should resolve the contention in favor of the NRC Staff and Crow Butte.[41]

CONCLUSION

For the reasons, the Commission should reverse LBP-15-11 to the extent that it admitted Contention 12B or, in the alternative, reverse the Board's decision in LBP-16-13 that resolved Contention 12B in favor of the Intervenors.

Respectfully submitted,

/s/ signed electronically by
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Dated at San Francisco, California
this 29th day of December 2016

[41] Crow Butte recognizes that the Board remanded this issue to the NRC Staff to resolve consistent with its decision. While the remedy may seem relatively straightforward to implement, it will impose additional an additional burden on the NRC Staff — and therefore additional costs on Crow Butte — at the very end of this already long and inefficient licensing process.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "PETITION FOR REVIEW OF LBP-15-11 AND LBP-16-13" in the captioned proceeding have been served this 29th day of December 2016 via electronic mail to Consolidated Intervenors at davidcoryfrankel@gmail.com, Arm.legal@gmail.com, and harmonicengineering@gmail.com and via the Electronic Information Exchange ("EIE"), which to the best of my knowledge resulted in transmittal of the foregoing to all those on the EIE Service List for the captioned proceeding other than Consolidated Intervenors.

/s/ signed electronically by
Tyson R. Smith
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COUNSEL FOR CROW BUTTE RESOURCES, INC.