UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 40-8943
CROW BUTTE RESOURCES INC.	)	ASLBP No. 08-867-02-OLA-BD01
	)	
(License Renewal for the	)	January 23, 2017
In Situ Leach Facility, Crawford, Nebraska)	)	

CONSOLIDATED INTERVENORS ANSWER OPPOSING CROW BUTTE'S PETITION FOR REVIEW

Pursuant to 10 CFR 2.341(b)(3), Consolidated Intervenors[1] ("CI") hereby timely file this Answer opposing the Petition for Review of LBP 15-11 and LBP 16-13 ("CBR Petition for Review"), filed by licensee Crow Butte Resources, Inc. ("CBR") on December 29, 2016. NRC Staff have not filed a Petition for Review of LBP 16-13.

Until recently, NRC Staff had commenced curative efforts with respect to Contention 1 and Contention 12B but have since ceased such efforts due to complaints by CBR that it want's to save money pending the resolution of the appeal it filed. For the reasons stated below, CBR's Petition for Review should be rejected and the NRC Staff should be ordered to immediately re-commence curative efforts with respect to Contention 1 and Contention 12B despite CBR's objections.

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

I. Summary. CI hereby submit:

(i) The ASLBP ("Board") did not make errors of law and clearly erroneous findings of fact, and did not abuse its discretion, by allowing and admitting the environmental contentions based on the Final Environmental Assessment ("Final EA") within thirty days after the Final EA was published.

(ii) It was not an abuse of discretion for the Board to allow Intervenors to file environmental contentions based on asserted violations of the National Environmental Policy Act ("NEPA") within a short time after the Final EA, the NEPA document in this case, was finalized and published. Such was clearly within the Board's plenary authority to administer the proceeding most efficiently and fairly and to set forth such filing in its scheduling order. 10 CFR 2.319 ("[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"); 10 CFR 2.332(a)(3) ("The presiding officer shall…enter a scheduling order that …and take other actions in the proceeding [which] may also include: [a]ny other matters appropriate in the circumstances of the proceeding."

The Board was also buttressed by the Commission's ruling in CLI-09-09 in which it rejected certain NEPA based contentions as being pre-mature and suggested that the contentions would be ripe after the issuance of the NEPA document. See, 09-09 at 24, footnote 104. In light of the Commission's specific suggestion that NEPA based contentions were pre-mature but would be ripe when the NEPA document was issued, in

this case the Final EA, it was within the Board's discretion under 2.332(a)(3) to find it appropriate in the circumstances of the proceeding to allow Intervenors to file contentions based on the Final EA within a short time after the Final EA was published.

(iii) CBR's Petition for Review should not be granted because there are no substantial questions of law raised in this proceeding as provided in 10 CFR 2.341(b)(4)(i)-(iv).

(iv) Furthermore, CBR, as a wholly-owned, indirect subsidiary of foreign corporation, Cameco Corporation, seeks and has received special treatment from the NRC to the detriment of American competitors and the Nebraskans who live near the mine by virtue of the NRC Staff's granting of CBR's request to delay curative efforts ordered by the Board on Contentions 1 and 12B in order to 'save money' pending the appeal. See NRC Staff Letters to the Board dated January 11, 2017 (ADAMS ML17011A370) and January 13, 2017 (ADAMS ML17013A482), and January 17, 2017 (NO ADAMS ML) (NRC suspending all work pending resolution of appeals despite fact that NRC Staff did not appeal the decisions). The Hearing Transcript for the short hearing on January 18, 2017 during which the Board addressed this issue is not yet available.

CI find this effort to 'save money' wryly ironic in light of the fact that CBR's parent corporation, Canada's Cameco, owes the US Treasury over $122 million (plus interest plus $8 million in penalties, all as yet unpaid) for 2009-2012, plus amounts from 2012-current (plus interest and penalties) all due to a failed aggressive tax 'saving'

structure involving a Swiss affiliate. The following excerpt from pages 9-10 of Cameco's February 5, 2016 release, 'Cameco Reports Fourth Quarter and 2015 Financial Results' (available at: http://www.marketwired.com/press-release/cameco-reports-fourth-quarter-and-2015-financial-results-tsx-cco-2094481.htm) describes Cameco's continued denial of its obligation to pay these taxes in the United States:

> **IRS dispute**
>
> In the fourth quarter of 2015, we received a Revenue Agents Report (RAR) from the IRS for the tax years 2010 to 2012. Similar to the 2009 RAR received in the first quarter of 2015, the IRS is challenging the transfer pricing used under certain intercompany transactions pertaining to the 2010 to 2012 tax years for certain of our US subsidiaries. The 2009 and 2010 to 2012 RARs list the adjustments proposed by the IRS and calculate the tax and any penalties owing based on the proposed adjustments.
>
> The current position of the IRS is that a portion of the non-US income reported under our corporate structure and taxed in non-US jurisdictions should be recognized and taxed in the US on the basis that:
>
> the prices received by our US mining subsidiaries for the sale of uranium to CEL are too low the compensation earned by Cameco Inc., one of our US subsidiaries, is inadequate
>
> The proposed adjustments result in an increase in taxable income in the US of approximately $419 million (US) and a corresponding increased income tax expense of approximately $122 million (US) for the 2009 through 2012 taxation years, with interest being charged thereon. In addition, the IRS proposed cumulative penalties of approximately $8 million (US) in respect of the adjustment.
>
> **We believe that the conclusions of the IRS in the RARs are incorrect and we are contesting them in an administrative appeal, during which we are not required to make any cash payments.** Until this matter progresses further, we cannot provide an estimation of the likely timeline for a resolution of the dispute.
>
> We believe that the ultimate resolution of this matter will not be material to our financial position, results of operations and cash flows in the year(s) of resolution.

Based on the foregoing, CI respectfully suggest that the NRC Staff be ordered to commence the curative actions required under the Board's guidance with respect to

Contention 1 and Contention 12B despite CBR's preference to 'save money' by waiting until the resolutions of the appeals.

II. Detailed Explanation of Issues.

A. Timeliness. CBR has previously raised the question of timeliness regarding CI's environmental contentions based on the adequacy of NRC Staff's Final EA. On October 28, 2014 the Board issued an unpublished Order Scheduling Filing of New/Amended Contentions and Requesting Proposed Evidentiary Hearing Dates, that ordered, "Following public availability of the Final EA, new/amended contentions are due from the Intervenors within 30 days of issuance of the final NEPA document." See, LBP 15-11, 27 fn 131. CI complied with this Order and a subsequent Board Order granting an unopposed motion for extension of time and filed its proposed new and amended contentions on January 5, 2015. Id., at 4. After briefing by the parties and oral argument, Contention 12B was admitted by the Board. Id. at 44-52. CBR's question of timeliness was addressed, with specificity, in the same ruling at pages 51-52 and CIs agree with the Board's reasoning. Id.

CIs are at a loss to understand how CBR proposes any Intervenor ought to propose a contention challenging the adequacy of NRC Staff's analysis under NEPA prior to the release of any NEPA document. Contention 12B is a contention of inadequacy and omission that concerns the sufficiency of NRC Staff's "hard look" at the land application of mining waste water and selenium concentration. Such a contention is impossible to propose until the NRC Staff publishes its NEPA document.

B. Specific Rebuttals to Allegations of Errors. In LBP 16-13, the Board properly ruled that the Final EA did not provide adequate discussion of the environmental impacts of land application of ISL mining wastewater on wildlife at the CBR facility. LBP 16-13 at 219. Despite CBR's protests to the contrary, land application of mining wastewater remains a potential, permitted course of action at the Crow Butte mine. Id. Likewise, in reaching its conclusion, the Board properly reasoned why the Final EA did not sufficiently incorporate nor "tier" to either the ISL Mining GEIS or to the state issued NPDES permit. Id. at 213-18.

Specifically, the Board addressed the allowable selenium concentration limit contemplated by CBR's Nebraska Department of Environmental Quality (NDEQ) permit as only considering potential impact to humans. Id. at 217. Thus even if the Final EA properly incorporated CBR's state issued NPDES permit, the selenium concentration limits would still be more than 20 times greater than those found to be potentially deleterious to wildlife as reported by the FWS and submitted by CIs.

C. The Final EA Does NOT Satisfy NEPA. The Board correctly ruled on Contention 12B that the Final EA does not satisfy NEPA. CBR has a permit and intends to renew its NDEQ permit for land application of ISL wastewater and that such land application of ISL wastewater was authorized by the license that was renewed in, and is the subject of, this proceeding. Here, the federal action includes everything that is authorized by the license renewal so a discussion and evaluation of the impacts from ISL wastewater land application must be included in the Final EA and the Board ruled correctly on that issue. The NRC Staff admitted at the hearing that the license renewal

covered ISL wastewater land application which was one of the three licensed methods even though it was not being used at this time. See HT at 1931 (NRC Witness Goodman - the NEPA project manager in this case).[2] Since no NEPA document was done when the land application was added to the license as a license amendment and no NEPA document would be done in a future license amendment regarding ISL wastewater land application because it is covered by this proceeding, this is the only opportunity for a NEPA analysis on this issue. See HT 1936-1937.

If CBR's argument were accepted, there would never be the right time for a NEPA analysis on the issues related to land application even if direct land application methods were put into use. See HT 1936-1937 (CHAIR GIBSON: In the event that did happen, what you're telling me is there would be no need for any environmental report because you will have already evaluated the impacts, is that correct, Mr. Goodman? MR. GOODMAN: Yes, I believe that is correct, Your Honor.")

Further, CI suggest that the arial mister/sprayers used by CBR purportedly to speed evaporation from the ponds are actually a form of ISL wastewater land application. This is because the pond wastewater droplets that are sprayed out into the wind, or against it, will always get smaller the longer they are suspended in the air - due to evaporation from increased surface area. When a droplet containing, for instance, 1

[2] CI note that CBR's Footnote 36 is misleading when it says a license amendment would be required to use land application methods because it fails to mention that no environmental assessment would be done with any such license amendment; NRC Staff Counsel Simon stated that no NEPA document was issued with respect to the license amendment approving land application, HT at 1934, and NRC Witness NEPA project manager Goodman testified that no further NEPA document would be done for such license amendment.

hazardous waste molecule completely evaporates in the air, the remaining waste solid is lighter weight than the droplet once holding it was, and the solid alone is more mobile in the wind, than the smallest droplet surrounding it could ever be. When these hazardous waste particles get into the air, they are invisible to the naked eye but they will eventually land. Accordingly, this constitutes current and active land application of ISL wastewater by CBR. Clearly, between this real world impact and the additional known impacts from the direct land application of ISL wastewater under the license renewal, and the absence of any discussion of impacts in the Final EA related to land application of ISL wastewater, the Board was correct in its ruling concerning Contention 12B.

CI dispute CBR's assertion in Footnote 33 of CBR's Petition for Review that intervenors bear the burden of suggesting which impacts the NRC Staff must consider under NEPA. See CBR Petition for Review at 13. Clearly, this is incorrect as NEPA requires the federal agency to prepare the NEPA document and only after that does the public have a chance to evaluate the agency's analysis and disclosure of impacts.

CBR further argues that the 'rule of reason' relieves the NRC Staff of having to include the appropriate NEPA discussions in the Final EA because, according to CBR, there is no likelihood and it is not reasonably foreseeable that CBR is or will be engaged in land application of ISL wastewater. See CBR Petition for Review at 13. First, in response CI submit that the land application of ISL wastewater is not only likely it seems to be occurring via the evaporation pond sprayer systems and also that since it is licensed, the NEPA impacts must be considered now, not in the future. This is especially true when there will be no NEPA document if and when land application methods are utilized.

Second, CI note that the 'rule of reason' is applied to impacts which are ''remote and speculative'' or ''inconsequentially small'' impacts. See *Louisiana Energy Servs.* (National Enrichment Facility), LBP-06-8, 63 NRC 241, 258-59 (2006) (*citing Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989). Here, as the Board found, the impacts are not remote because they are currently foreseeable and subject to this license renewal and the NDEQ permit currently in effect and/or being renewed by CBR; and the impacts related to selenium are not inconsequentially small as to be ignored under the law. These rulings were not clearly erroneous; they were correct and should be upheld.

Conclusion

The CBR's Petition for Review should not be granted for the reasons set forth above. The NRC Staff should be ordered to re-commence curative actions under the Board's guidance regarding Contention 1 and Contention 12B despite CBR's protestations about its effort to 'save money'.

Dated this 23rd day of January, 2017.

Respectfully submitted,

_____/s/_____ *Signed (electronically) by David C. Frankel*

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the foregoing were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Dated: January 23, 2017.

Signed (electronically) by David C. Frankel

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