

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of)	Docket No. 40-8943-MLA-2
)	
CROW BUTTE RESOURCES INC.)	ASLBP No. 13-926-01-MLA-BD01
)	
(Marsland Expansion Project))	February 5, 2018

**OGLALA SIOUX TRIBE’S RESPONSE TO NRC STAFF’S
MOTION TO DENY MIGRATION OF CONTENTION 2**

Intervenor, the Oglala Sioux Tribe (“OST”), by and through counsel, hereby files this response in opposition to the Nuclear Regulatory Commission Staff’s Motion to Deny Migration of Contention 2 (“NRC Staff Motion”).

OST Counsel was surprised by the January 16, 2018 deadline for filing new contentions based on the Environmental Assessment (“EA”) and Motions for Migration due to the conflicting date for submitting public comments to the EA, as published in the Federal Register. The OST timely submitted extensive comments to the EA on that date, January 29, 2018, as well as joining in the comments of the Western Nebraska Resources Council, also submitted on that date.

The OST has suffered from shifting representation in this case and has had difficulty assigning responsibility among its counsel. This situation was exacerbated by the remote location, severe winter weather, and intervening holidays between the publication of the EA and the January 16, 2018 deadline. Conditions all too common on the various reservations that highlight many of the reasons behind the trust responsibility owed by the federal government and, by extension, its subordinate agencies, to federally recognized tribal nations such as the OST.

Even without an OST Motion to Migrate Contention 2, the NRC Staff's Motion must fail. NRC Staff argues that migration "only applies if the information in the Staff's EA is 'sufficiently similar to the information in the ER' with respect to the issues challenged as deficient in the ER-based contention." NRC Staff Motion at 4, citing *Strata 78* NRC 117, 133.

At best, the EA merely parrots CBR's data that it provided in the ER, especially regarding the discussion of whether area hydrogeology will result in confinement of mining fluids. Pump Tests are an essential indicator of an aquifer's confining characteristics. As described in the WNRC comments to the EA, joined by OST, the EA provides no discussion whatsoever regarding CBR's self-serving interpretation of the data collected during Pump Test 8, that appears, at best, inconclusive. There is no clearer picture of the area hydrogeology with the publication of the EA than there was in CBR's ER. Accordingly, Contention 2 should migrate, along with the uncertainty, to the EA.

For the foregoing reasons, Intervenor, the Oglala Sioux Tribe, hereby requests that the Board deny the NRC Staff's Motion and migrate Contention 2 to the draft EA.

Respectfully Submitted,

Signed (electronically) by Andrew B. Reid

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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 OGLALA SIOUX TRIBE'S RESPONSE TO NRC STAFF'S MOTION TO DENY MIGRATION OF CONTENTION 2 were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Dated: February 5, 2018.

Signed (electronically) by Andrew B. Reid

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