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Title: Crowe Butte Resources
Marshland Expansion Area

Docket Number: 40-8943-MLA-2

ASLBP Number: 13-926-01-MLA-BD01

Location: teleconference

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: : Docket No.

CROW BUTTE RESOURCES : 40-8943-MLA-2

: ASLBP No.

(Marsland Expansion : 13-926-01-MLA-BD01

Area) :

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Wednesday, May 16, 2018

Teleconference

BEFORE:

G. PAUL BOLLWERK, III, Chair

DR. RICHARD E. WARDWELL, Administrative Judge

DR. THOMAS J. HIRONS, Administrative Judge

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On Behalf of the Oglala Sioux Tribe

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P R O C E E D I N G S

2:00 p.m.

CHAIR BOLLWERK: Good afternoon. Today we're here to conduct a pre-hearing conference in this proceeding under Part 40 of Title 10 of the Code of Federal Regulations, in which Amendment Applicant, Crow Butte Resources, Incorporated, requests authorization to operate a satellite in situ uranium recovery facility, the Marsland Expansion Area, which is located in Dawes County, Nebraska, some 11 miles to the southeast of Crow Butte Crawford Central Processing Facility.

This telephone conference has been convened following publication of the NRC staff's final Safety Evaluation report, or SER, and final Environmental Assessment, or EA, the latter and last of which was issued at the end of April 2018. Our last pre-hearing conference was January 26, 2016, and our last update to the hearing schedule was issued on April 20, 2017.

Given all this, we felt it was a good time to have a telephone conference with the party regarding upcoming procedural matters and to review the remaining litigation schedule.

Before turning to those matters, however,

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1 I'd like to introduce the Board members.
2 Administrative Judge Richard Wardwell, an Atomic
3 Safety and Licensing Board Panel Technical Member, is
4 a civil engineer who specializes in environmental
5 geoscience engineering and is a full-time member of
6 the licensing Board Panel. He's participating here in
7 the Nuclear Regulatory Commission's Rockville
8 Headquarters.

9 Also participating from his home in New
10 Mexico is Dr. Thomas Hirons. Dr. Hirons, a nuclear
11 engineer, is a part-time member of the Panel. My name
12 is Paul Bollwerk, I'm an attorney and the Chairman of
13 this licensing board, and I'm participating from
14 Rockville as well. Also with Judge Wardwell and me
15 here in Rockville are our law clerks, Sarah Ladin and
16 Joe McManus.

17 I'd now like to have Counsel identify
18 themselves for the record. Why don't we start with
19 the license applicant, Crow Butte Resources, Inc.

20 MR. SMITH: Good afternoon, Judge
21 Bollwerk, this is Tyson Smith for Crow Butte. Joining
22 me is my colleague from Winston & Strawn, Louise
23 Dyble. And then also on the line for Crow Butte are
24 Robert Canswall (phonetic) and Walt Nelson from the
25 Crow Butte site, and Bob Lewis, who is one of our

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1 consultants on groundwater hydrology issues.

2 CHAIR BOLLWERK: Thank you very much. How
3 about the NRC staff?

4 MS. SIMON: Good afternoon, Judge
5 Bollwerk, this is Marcia Simon for the NRC staff.
6 With me are Co-Counsel David Cylkowksi and Rob
7 Carpenter. Emily Monteith is also Co-Counsel, and I
8 believe she's calling in remotely.

9 Also have Tom Lancaster, who is a Safety
10 Project Manager for Marsland, and Gene Kasevens, who
11 is the Environmental Project Manager for Marsland here
12 in the room with me. Thank you.

13 CHAIR BOLLWERK: Thank you. And then for
14 the intervenor, Oglala Sioux Tribe.

15 MR. REID: Good afternoon, this is Andrew
16 Reid of Springer & Steinberg. Actually I'm here
17 through the Ved Nanda Center for International
18 Comparative law for the Tribe. I'm not sure if David
19 Frankel and Tom Ballanco were able to call in.
20 They're supposed to be calling in as co-counsel today.

21 MR. FRANKEL: David Frankel's here. Andy,
22 do you want to introduce us?

23 MR. BALLANCO: Tom Ballanco's here.

24 MR. REID: Okay, we've had some difficulty
25 with the communications with the Tribe. They no

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1 longer have a Historic Preservation Officer, who was
2 my main conduit for communications with the Tribe.
3 They haven't had one for some time, they were going
4 through some major administrative changes.

5 There's a new person on who's the Director
6 of Natural Resources for the Tribe that I have to go
7 through now, and I haven't been able to -- we need to
8 bring on Mr. Frankel and Mr. Ballanco, and perhaps
9 Jeff Parsons as well. One or more of the three of
10 them will be litigating the contention that's, the
11 current contention that's at issue in this matter.

12 But I haven't been able to get the final
13 confirmation from the Tribe. But I wanted to make
14 sure that they were in on this phone call, since they
15 would be the ones that would be handling those
16 contentions.

17 CHAIR BOLLWERK: All right. So just so I
18 understand, Mr. Reid, it appears at some point in the
19 near future, you may be withdrawing your appearance?

20 MR. REID: Well, what we've done, and we
21 did this in the re-licensing matter, is I generally
22 handle the cultural resources contentions and the
23 environmental justice and treaty issues. Mr. Ballanco
24 and Mr. Frankel have been handling the water and air
25 and land contamination issues. And we intend to

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1 continue with that division of responsibilities.

2 The contention in fact is one that
3 involves potential contamination of groundwater
4 resources, so that would be one that one of the other
5 counsel would handle when they come on. And we expect
6 to have a decision within a day or so from the Tribe,
7 and then we'll follow on with a formal Notice of
8 Appearance.

9 CHAIR BOLLWERK: Right. And so then,
10 maybe I -- should have said that they will be entering
11 an appearance at some point.

12 MR. REID: That's correct, yeah.

13 CHAIR BOLLWERK: All right, thank you.
14 All right, very good now, I approve. We appreciate
15 the explanation, just as for the record I would note
16 that when Mr. Reid responded to the request from our,
17 Sarah Ladin for information about his availability for
18 this conference, he mentioned to her in the email that
19 there may be a change in counsel for the Tribe.

20 So I just want to make note of that for
21 the record. I don't think there's an issue with that,
22 but it's probably best to put it on the record at this
23 point in any event.

24 All right, thank you very much, sir. All
25 right, so as we proceed today, if you could identify

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1 yourself for the record before you speak, that will
2 help the Court Reporter considerably in making sure
3 that the names of the transcript correspond with the
4 person actually speaking.

5 Additionally, I would note that we hope
6 that all members of the public or any others who wish
7 to listen to this conference have been able to access
8 the bridge line this afternoon. I would note as well
9 that a transcript of this conference will be prepared
10 and should be available in the NRC website hearing
11 docket by next week.

12 At the beginning of the last pre-hearing
13 conference in January 2016, I took a minute to recap
14 where the proceeding was up to that point, including
15 the admission of the Tribe's Contention 2, regarding
16 hydrogeological issues that remain pending for
17 resolution. At that time, the NRC staff still needed
18 to complete its draft and final EA and to issue a
19 final SER.

20 In the interim, both documents have been
21 issued, in December of 2017 and April 2018 for the
22 draft and final EA, and January 2018 for the SER.

23 Also in late January 2018, the NRC staff
24 filed a motion to deny allowing the environmental
25 portion of Contention 2 to migrate from a challenge to

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1 the Crow Butte Environmental Report to a contention
2 contesting the staff's draft EA, which the Board
3 granted in part and denied in part in LBP-18-02,
4 issued on March 16 of this year.

5 Relative to the matters that bring us
6 together today, our previous scheduling orders have
7 been based on the premise that the evidentiary hearing
8 would be held in the Crawford-Chadron Nebraska area,
9 along with a oral limited appearance session and a
10 facility site visit.

11 And in the regard, as our order scheduling
12 this pre-hearing conference suggested, given the
13 current status of this proceeding, one of the things
14 the Board's interested in exploring, both the make
15 more efficient use of the time available and to
16 mitigate to the extent possible the prospect of
17 inclement weather affecting the hearing, is moving the
18 evidentiary forward one or two weeks from its
19 currently scheduled date of Tuesday October 30 through
20 Thursday, November 1, 2018.

21 To that end, the Board would like to begin
22 by inquiring about the next potential major activity
23 for which time is set aside in the general schedule
24 for this proceeding and ask whether at this time any
25 of the parties intend to file either new or amended

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1 contentions relating to the draft, I'm sorry, relating
2 to the final SER and/or EA, which currently would be
3 due May 30, as provided in the revised Scheduling
4 Order of April 20, 2017, or a motion related to
5 migration of the Tribe's already admitted Contention
6 2 as a challenge to the staff's final Environmental
7 Assessment.

8 Let's start by hearing from the Oglala
9 Sioux Tribe regarding any new or amended contentions.
10 Mr. Reid.

11 MR. REID: Thank you. We, on behalf of
12 the Tribe, we submitted the responses to the draft EA.
13 They were addressed to a certain extent in the final
14 Environmental Assessment, and the Tribe does intend to
15 file a number of contentions based on the comments
16 that we made in response to the draft EA.

17 CHAIR BOLLWERK: So if I understand it,
18 your intention that is to file, you did not file any
19 contentions relative to the draft EA with the Board.

20 MR. REID: That's correct.

21 CHAIR BOLLWERK: But you do intend to file
22 contentions relative to the final EA with the Board.

23 MR. REID: That's correct.

24 CHAIR BOLLWERK: All right. All right, so
25 let me then turn to the staff and the applicant and

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1 see whether you intend to do anything in terms of a
2 migration-related motion relative to Contention 2.

3 MS. SIMON: Your honor, this is Marcia
4 Simon for the staff. Given that we already filed a
5 migration motion -- a motion to deny migration with
6 respect to Contention 2, we probably would not file
7 one for the final EA.

8 CHAIR BOLLWERK: All right, and does Crow
9 Butte want to say anything about that?

10 MR. SMITH: This is Tyson Smith for Crow
11 Butte. We didn't intend to file any motions related
12 to that in light of the staff's prior motion and your
13 decision.

14 CHAIR BOLLWERK: All right. So at this
15 point, then, the anticipation is that on or about May
16 30, we will see some additional contentions, new or
17 amended, from the Tribe. That's correct, Mr. Reid?

18 MR. REID: Yes, that's correct.

19 CHAIR BOLLWERK: All right. All right,
20 thank you, sir. All right, let me raise a separate
21 issue then in terms of in limine motions. There seems
22 to be the possibility of achieving some efficiency in
23 the treatment of in limine motions.

24 Previously we've raised the question of
25 the utility of such motion, given that in a Subpart L

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1 proceeding, the Board has a responsibility both for
2 deciding what questions will be asked of the witnesses
3 relative to the pretrial testimony and exhibits that
4 are submitted, as well as for determining what record
5 evidence is relevant in reaching its initial decision.

6 Nonetheless, when this subject was last
7 discussed back in 2016, the Board preserved the
8 parties' opportunity to file such motions relative to
9 both direct and rebuttal pretrial testimony and
10 supporting exhibits, with the understanding that the
11 Board might, as was done by the Crow Butte License
12 Renewal Board, defer ruling on the substance of the
13 motion until the time of the Board's initial decision
14 on the merits.

15 On further reflection, however, it now
16 seems to the Board that having two opportunities to
17 file such motions, once with respect to the direct
18 pre-filed testimony and exhibits and once for the
19 rebuttal testimony, is unnecessary.

20 Accordingly, the Board is now inclined to
21 provide only one such opportunity, which would come
22 after both the direct and rebuttal testimony are
23 filed, with the understanding that the Board could
24 thereafter either rule on or defer ruling on all or
25 parts of the motion.

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1 Such an approach, in addition to being
2 consistent with the principal expressed concern of the
3 parties to preserve their evidentiary objections for
4 appellate purposes, would be a more efficient and
5 potentially provide the opportunity to convene the
6 evidentiary hearing at an earlier date.

7 I want to check, do the parties have any
8 comments on this revised approach to the submission of
9 in limine motions? And in this instance, let's start
10 with the amendment applicant, Crow Butte.

11 MR. SMITH: This is Tyson Smith for Crow
12 Butte. Judge Bollwerk, I certainly don't object to
13 the notion of moving up the hearing by a few weeks or
14 accelerating that process.

15 I think, you know, the concerns that
16 strikes me about eliminating the in limine motion for
17 the direct testimony is, is if that direct testimony
18 raises a number of issues that are well outside the
19 scope of the admitted contention, that's going to
20 force the applicant to, and the other parties, to
21 address those issues in their rebuttal testimony even,
22 you know, even if those shouldn't be part of the
23 contention at issue.

24 And so I'm a little concerned about that
25 leading to a lot of unnecessary and additional work

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1 that I think we could benefit from, you know,
2 clarifying and ensuring that contentions -- ensuring
3 the testimony is as focused on the relevant admitted
4 issues as possible.

5 CHAIR BOLLWERK: Let me see if the staff
6 has anything to say on the subject, thanks.

7 MS. SIMON: Judge Bollwerk, thank you,
8 this is Marcia Simon for the staff. I think the staff
9 would prefer to keep both opportunities in place also.
10 I think given the simultaneous testimony and the fact
11 that we all have to wait until the, as of now it's a
12 very broad contention, as Mr. Smith suggested.

13 We would like to be able to file a motion
14 in limine after we receive the direct testimony of all
15 parties, because we think that would be the most
16 convenient time to indicate what we think is out of
17 scope. Thank you.

18 CHAIR BOLLWERK: Okay, and does the Tribe
19 have any comments from Mr. Reid or the other counsel?

20 MR. REID: This is Andrew Reid for the
21 Tribe. I like the suggestion from the Board on how to
22 deal with in limine motions. It seems to me that if
23 there is a concern of Crow Butte or the NRC staff or
24 any party -- hello, your honor?

25 CHAIR BOLLWERK: I'm still there.

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1 MR. REID: Oh, okay, my light went off on
2 my phone here, so I wasn't sure I was still on. But
3 it seems to me that perhaps a motion, it's kind of
4 hard to predict what's going to happen without having
5 anything in front of us. So it seems to me that we
6 could follow the procedure that was suggested.

7 And then if one of the parties felt like
8 there was something that needed to be brought to the
9 attention of the Board because it was going to be
10 unduly burdensome or it was going to cause a party to
11 have to deal with evidence that they felt that they
12 shouldn't have to, that perhaps a motion could be made
13 to have the court go ahead and consider a specific in
14 limine concern, rather than having it as a broad rule
15 of the proceeding.

16 CHAIR BOLLWERK: Well, let me make one
17 comment, then I'll go back to the parties again. I
18 guess I'm little confused, because I thought the idea
19 was just that we really were just going to put these
20 on hold in any event, that these were going to be
21 filed and the Board would be ruling on it as part of
22 the initial decision.

23 So I didn't see these necessarily as an
24 opportunity to sort of reduce the burden that might
25 come from filing rebuttal testimony, but more to get

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1 your objections on the record, which I thought was
2 your principal concern.

3 And if that was, as I understood it, was
4 your principal concern, it seemed to me that filing
5 once and having that on the record once is all you
6 need to do. And if that comes most efficiently at the
7 end of the process, that's a good place to do it if we
8 can gain some efficiency.

9 But I'll go back Mr. Smith and see what he
10 has to say.

11 MR. SMITH: Well, your honor, I was going
12 off of the original schedule, which I'm still looking
13 here, which, you know, has in it a line item for the
14 Board ruling on limine motions. And certainly, you
15 know, I think if we filed the motions and you, it
16 wasn't particularly egregious and you thought that was
17 something that could be deferred, well, that would of
18 course be the Board's prerogative, and that I think
19 would be fine.

20 I think my concern is that if we just
21 eliminate that opportunity, that we're opening up the
22 proceeding to become, you know, unnecessarily broad
23 and perhaps unfocused. And I think having the option
24 for the Board to rule on the in limine motions if they
25 thought it necessary to constrain or appropriately

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1 manage the scope of the proceeding, I think that would
2 be helpful. And so that's why I'm a little hesitant
3 to just eliminate it outright.

4 CHAIR BOLLWERK: Although if the motions
5 were filed at the end and they're relative to both the
6 direct and rebuttal testimony, and the Board found
7 both the direct and rebuttal testimony on certain
8 subject unnecessary, then in theory we can eliminate
9 the testimony then and not ask any questions about it.

10 MR. SMITH: Correct. I was more thinking
11 of the circumstance where the direct testimony brings
12 in a number of issues that are well outside the scope
13 of the proceeding, that Crow Butte wouldn't have
14 addressed in our initial direct testimony.

15 We would file an in limine motion, and if
16 the judges agreed, would issue a ruling saying, yes,
17 those topics are outside the scope. And accordingly,
18 we would be able to limit our rebuttal testimony to
19 those issues that were in scope.

20 So I mean, I'm not that worried about, you
21 know, minor issues that are sort of at the edge of
22 what is within or without the contention. I'm more
23 concerned about having to respond to a much broader
24 set of issues that we hadn't previously prepared for
25 or we didn't believe were contemplated by the original

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1 contention, and we'd want to have some relief for that
2 before we spend considerable resources preparing
3 rebuttal testimony on something that was well afield,
4 far afield from the admitted contention and was
5 ultimately likely to be found outside the scope by the
6 Board in ruling on the in limine motion.

7 CHAIR BOLLWERK: All right, thank you,
8 sir. Does the staff want to say anything further?

9 MS. SIMON: Your honor, this is Marcia
10 Simon for the staff. I don't have a lot to add to
11 what Mr. Smith said. I think if the Board ultimately
12 ends up deferring on ruling on a first set of motions,
13 then the time spent is really on the people who are
14 filing the motions and not on the Board.

15 And we certainly could live with one
16 single opportunity to file if that's what the Board
17 ultimately decides, but our preference would be to
18 keep the -- so thank you.

19 CHAIR BOLLWERK: Thank you. And Mr. Reid,
20 you want to add anything further on this subject?

21 MR. REID: Just I don't really see the
22 concern from Crow Butte on this issue. I didn't feel
23 like the, at least from my experience in the renewal
24 proceeding, it wasn't a major problem. So I don't see
25 any real issue with how the Board proposes to proceed

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1 on this. So the Tribe I think doesn't really have any
2 objection to the proposal.

3 CHAIR BOLLWERK: All right, well then
4 thank you very much, all of you, for your input on the
5 new and amended contentions and migration-related and
6 in limine motions. We'll give careful consideration
7 to your responses relative to any revisions that we
8 might make in the current hearing schedule.

9 Let's talk for a second about the
10 evidentiary hearing schedule. What we'd like to do is
11 to explore the parties' availability for an
12 evidentiary hearing and talk about planning for
13 related activities, including an oral limited
14 appearance session and a site visit.

15 As was noted previously, the evidentiary
16 hearing currently is scheduled for Tuesday, October 30
17 through Thursday, November 1. However, our May 9 pre-
18 hearing conference scheduling order and followup email
19 from yesterday requested Counsel to prepare talk about
20 dates that would permit the hearing to be held during
21 the weeks either October 14 or October 21, as well as
22 the week of October 28, which is the week currently
23 scheduled for an evidentiary hearing.

24 These earlier dates would put the initial
25 submission of position statement and pre-filed direct

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1 testimony in early August, with the balance of the
2 dates in the general schedule revised accordingly.

3 And I would note that during our January
4 2016 teleconference, all the parties indicated the
5 possibility of three or four witnesses relative to
6 Admitted Contention 2.

7 All that being said, would Amendment
8 Applicant Crow Butte Resources be able to support a
9 hearing held either the weeks of October 14 or 21?
10 Likely that would be on October 16-18 or October 23-
11 24, as well as the week of October 28, which in that
12 case, the hearing would be on October 30 and November
13 1. Go ahead, sir.

14 MR. SMITH: This is Tyson Smith for Crow
15 Butte. Any of those weeks and dates are fine and
16 accessible for Crow Butte and its witnesses.

17 CHAIR BOLLWERK: All right. And are you
18 still contemplating three or four witnesses?

19 MR. SMITH: Yes, as -- yes, that's
20 correct, for Contention 2, we would expect three to
21 four witnesses.

22 CHAIR BOLLWERK: All right, what about the
23 NRC staff?

24 MS. SIMON: This is Marcia Simon for the
25 staff. Your honor, the staff is available the week of

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1 October 14 and the week of October 28. However, the
2 week of October 21 would be problematic.

3 CHAIR BOLLWERK: All right. And do you
4 still contemplate, I believe you said three or four
5 witnesses as well.

6 MS. SIMON: This is Marcia Simon, yes,
7 that's correct.

8 CHAIR BOLLWERK: All right, and then Mr.
9 Reid or your counsel, what do you have to say about
10 your availability on those dates?

11 MR. REID: I'll let David Frankel or Tom
12 Ballanco respond to that.

13 MR. FRANKEL: Thank you, David Frankel
14 speaking. Our witnesses are available and counsels
15 are available the week of October 21 and through the
16 28th, but not previous to that. And I would have to
17 confirm, but I think we can also support the original
18 hearing date, October 30 through November 1.

19 Sorry that we have a conflict with the NRC
20 staff, but our hydrogeologists, Dr. Kraemer and Mr.
21 Wireman, are committed during those other times. So
22 October 21 and 28 and the original hearing schedule
23 are what we are able to support.

24 CHAIR BOLLWERK: All right, so you'd be
25 able the week of the 14th or the week of the 28th of

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1 October. Hello?

2 MR. BALLANCO: Your honor, this is Tom
3 Ballanco. I think Mr. Frankel might have dropped off.

4 CHAIR BOLLWERK: Okay.

5 MR. FRANKEL: I'm back, sorry. David
6 Frankel here. We're available October 21 through
7 October 28, but not the week of October 14.

8 CHAIR BOLLWERK: Thank you for clarifying
9 that, I appreciate it. All right, well, again, we'll
10 take that information into account when setting any
11 final schedules.

12 In terms of the site visit, let's talk for
13 a second. In past pre-hearing conferences, we
14 discussed the -- oh, and let me ask you, I'm sorry,
15 one other question back on the hearing date. You are
16 still contemplating I think at the time, I guess your
17 witnesses are a little bit unclear.

18 I know Dr. LaGarry had filed the affidavit
19 in support of the initial intervention petition, but
20 I guess it wasn't clear to us at the time, or you
21 weren't clear about, who was going to be your
22 witnesses or how many you were going to have. Have
23 you made any more decisions about that, at least in
24 terms of a number?

25 MR. FRANKEL: Thank your honor, David

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1 Frankel here. Yeah, we'll have three to four
2 witnesses.

3 CHAIR BOLLWERK: Right, so it sounds like
4 we're hearing three to four witnesses for each of the
5 parties. Anything you want to add, Judge Wardwell, in
6 terms of witnesses? All right.

7 Let me also just take a second, Judge
8 Hirons, anything you have to say up to this point
9 about anything we've raised?

10 ADMIN. JUDGE HIRONS: No, but the only
11 thing is good for any of those dates.

12 CHAIR BOLLWERK: All right, thank you.

13 ADMIN. JUDGE WARDWELL: And just for the
14 record, I should, no, I had nothing to add. And this
15 is Judge Wardwell.

16 CHAIR BOLLWERK: Okay, all right. I'm
17 sure those nods are on the record, so. Let's talk for
18 a second about a potential site visit then. In past
19 pre-hearing conferences, we discussed the possibility
20 of a site visit and an oral limited appearance
21 session. All the parties were amenable to both
22 events, with Crow Butte stating we would be willing to
23 support a site visit for the Board and the parties.

24 If possible, the Board would like to do
25 the site visit on the Monday before the evidentiary

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1 hearing starting on Tuesday, depending on which week
2 we actually are scheduled for. Mr. Smith, is Crow
3 Butte still willing to support a site visit?

4 MR. SMITH: This is Tyson Smith for Crow
5 Butte. What I would say is we're certainly willing to
6 attempt to support a site visit. I think a couple of
7 things I wanted to point is, you know, one, I'm not
8 sure what a site visit, what real benefit would come
9 from a site visit. It's a pretty wide open site, a
10 nondescript area of land.

11 The issues involved of course all, or at
12 least the admitted issues so far, involve underground
13 hydrogeology and hydrology. There's really nothing to
14 see at the site except a couple of, you know,
15 canisters that over baseline well heads. And then,
16 you know, of course to access the sites, we would have
17 to work with the landowner to do so.

18 And this hearing is going to fall during
19 deer, turkey, and elk hunting season, then the land
20 owner, you know, people pay good money to hunt on the
21 landowner's land, and so we'd have to work with them.
22 And I'm not sure about the limitations on that during
23 that time of year, so we'd have to check with them.

24 And then lastly, you know, the site's not
25 really accessible except via four-wheel drive

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1 vehicles, and then it's not accessible if it's been
2 raining or it's muddy. And so it would really depend
3 on the weather cooperating, access from the landowner,
4 and of course the determination that there actually is
5 anything to be gained from having a site visit, given
6 the admitted contentions.

7 CHAIR BOLLWERK: All right, thank you.
8 Let me just ask a second question, Mr. Smith. What
9 activities are currently going on, if any, at the
10 Marsland site? I think you indicated none, but I just
11 wanted to check. Anything going on?

12 MR. SMITH: There are no, this is Tyson
13 Smith for Crow Butte, there are no Crow Butte related
14 activities there. I mean, we drilled the baseline
15 wells, so those wells are still in place, but there's
16 a cap on them to prevent, you know, anyone from
17 running over them.

18 But there's no mining or exploration-
19 related activities. It's just, you know, the
20 landowner plants, you know, some of it's farmed and
21 the landowner uses it for hunting and other landowner
22 activities. So that's, there's no NRC-related
23 activities ongoing there.

24 CHAIR BOLLWERK: So you haven't done any
25 preconstruction work at all, other than what you just

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1 described.

2 MR. SMITH: No, no, sir.

3 CHAIR BOLLWERK: All right. Could you
4 also address the current status of the main recovery
5 facility, and whether Crow Butte could support an
6 associated visit to the main recovery facility?

7 MR. SMITH: Well, the main recovery
8 facility is, the central processing plant is still in
9 place, and I assume we could we support a visit. I
10 haven't spoken with Crow Butte about that.

11 I mean, I'm support a visit. I think most
12 everyone on the call, perhaps with the exception of
13 the judges, has done that site visit before. And I
14 guess I'm not sure what relevance that would really
15 have to the contentions in the Marsland proceeding,
16 but certainly we could support that if the judges
17 wanted to see the facility.

18 CHAIR BOLLWERK: And I know we've seen one
19 instance recently where there was a question about I
20 guess the decommissioning amendment that's been filed.
21 Is that, is the facility currently operating, or what
22 is the status?

23 MR. SMITH: The facility is still
24 operating. As to the status of whether they're
25 actively mining groundwater units, I defer to the site

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1 folks. But I think in general they are in either in
2 restoration or in the hold point until they can begin
3 restoration in each of the mine units at the site.

4 CHAIR BOLLWERK: And is that, say the
5 question's someone from the site is going to answer,
6 would the situation be any different come October when
7 we're actually talking about being out there?

8 MR. SMITH: This is Tyson Smith, the
9 answer is no. There will no difference in the
10 principal operation of the site in October.

11 CHAIR BOLLWERK: All right. Do any of the
12 folks out at the site want to say anything at this
13 point in terms of what we've been talking about?

14 MR. NELSON: This is Walt Nelson at the
15 Crow Butte facility. What Mr. Smith expressed is
16 correct, the site is fully in restoration at this
17 time, or mine units awaiting to undergo restoration
18 processes. And there will be no change in that status
19 that we know of that we would foresee at this time.

20 CHAIR BOLLWERK: All right, thank you very
21 much, sir. All right, and so Mr. Smith, one other
22 question. How would, it would be sort of I guess you
23 touched on this a little bit, how would you envision
24 the site visit occurring for the Marsland site and, if
25 feasible, the main recovery facility if we were to do

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1 that? I'm assuming we do it, obviously we'd do it on
2 the same day.

3 MR. SMITH: Well, the main, this is Tyson
4 Smith for Crow Butte, the main recovery facility we
5 will, you can drive to the site in a regular vehicle
6 unless there's, you know, horrendous weather.

7 So I would expect folks would meet up
8 somewhere in either Chadron or Crawford and caravan
9 together to the site, get you all checked in, and give
10 a demonstration of the facilities or a description of
11 what's happening at the site.

12 But that's for the main site. As for
13 Marsland, it's about an hour drive from Chadron, and
14 so I take it folks would presumably need to caravan to
15 get out there.

16 Like I said, I'm not sure there's ability
17 to access the site except through four-wheel drive
18 vehicles, and then only if the weather cooperates and
19 the landowner gives access, so it doesn't interfere
20 with their hunting rights or their hunting activities
21 or disturb the elk or deer on their property.

22 And so I guess, you know, as far as the
23 site visit there, there's really nothing to see. So
24 I don't know what we would really do there other than
25 pull over to the side of the road and say, yes, this

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1 is where the property is.

2 But that's the, I'm sort of -- if there
3 was something specific you wanted to look at at the
4 Marsland site, I think we could probably arrange it or
5 work towards that. But short of that, you know, it's
6 like I said, it's an hour drive each, and we don't
7 really have anything in mind to do.

8 There's nothing, there's no Crow Butte
9 activities to point out or discuss there that we would
10 have in mind as a, sort of a purpose or an agenda for
11 a site visit at the Marsland site.

12 CHAIR BOLLWERK: All right, thank you very
13 much for the information. Does the staff have any
14 comments on this, possible site visit?

15 MS. SIMON: Your honor, this is Marcia
16 Simon for the staff. No, we don't have any additional
17 comments.

18 CHAIR BOLLWERK: All right. And does the
19 Tribe have any comments?

20 MR. REID: This is Andrew Reid for the
21 Tribe. I don't have any. Maybe David or Tom, do you?

22 MR. FRANKEL: Thank you, David Frankel
23 here. I would just, I would like to see the site at
24 the main plant in October because I think that there
25 may be some changes since we saw it when it was

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1 operational, and now that's it in decommissioning, I
2 suspect that it's worth at least a visit.

3 As far as the Marsland site itself, I
4 think if any of the parties can articulate or any, you
5 know, if anybody wants to go out there, we're happy
6 to. Or if it relates to specific contentions. But at
7 the present time, we do acknowledge it's a large area
8 and it'd be inconvenient to get there.

9 Although perhaps there's portions of it,
10 as Mr. Smith articulated, that are relevant and of
11 interest, and we would want to reserve our right to
12 specify those and visit those if there were a site
13 visit.

14 CHAIR BOLLWERK: All right, thank you.
15 All right then, we'll -- another comment, go ahead.

16 MR. SMITH: Yeah, this is Tyson Smith for
17 Crow Butte, and I just wanted to add that nothing has
18 changed at the central processing plant. It's going
19 to look exactly the same, all the same mining units
20 are either under restoration, the same facilities are
21 in operation. There's simply nothing new or different
22 to see there.

23 So it's fine if we want to do a site
24 visit, I'm just, you know, from my perspective, most
25 everyone on this call has done that before. I don't

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1 think there's a lot of value to that. If Marsland's
2 license amendment has really nothing to do with the
3 central processing facility, it seems out of scope.

4 So I think, again, we're happy to support
5 it if that's what everyone decides, but I don't see a
6 lot of value for it or relevance to the issues in this
7 proceeding. And it's just a costly day for Crow Butte
8 and for everyone else to have to travel early in order
9 to support it.

10 CHAIR BOLLWERK: All right, thank you very
11 much. Anyone else have any comments on the
12 possibility of a site visit?

13 All right, then let me turn to the
14 question of limited appearances. And with respect to
15 limited appearances, the Board is contemplating
16 holding an oral limited appearance session on the
17 Sunday afternoon of the week of the evidentiary
18 hearing. Do the parties have any comments on such an
19 arrangement? And let's start with the Tribe this
20 time.

21 MR. REID: Mr. Frankel or Mr. Ballanco,
22 can you comment on that?

23 MR. FRANKEL: We would like a chance for
24 the public to provide limited appearance statements.
25 I think we appreciate the Board, this is David Frankel

1 speaking, we appreciate the Board leaving space for
2 that in the schedule. And I think, you know, the
3 public can work with the date that is somewhat related
4 to the hearing and, you know, that I have nothing
5 further to add about that.

6 CHAIR BOLLWERK: All right, thank you.
7 Crow Butte have anything they want to say?

8 MR. SMITH: This is Tyson Smith for Crow
9 Butte. Again, I don't think a limited appearance is
10 necessary, an oral limited appearance session is
11 necessary. That to hold, I think what the we'd used
12 previously in this proceeding was an opportunity to
13 submit written limited appearances. I think that
14 would work just as well and provide ample opportunity
15 for the public to weigh in.

16 If we wanted to have another limited
17 appearance session, Sunday afternoon is I guess fine,
18 but perhaps I'd suggest, you know, in the evening of
19 the day before the hearing, or taking an afternoon of
20 the hearing to hold it, rather than having a separate
21 day on a weekend would be more appropriate. But we
22 have no objection to holding such a limited appearance
23 session, just don't think it's necessary.

24 CHAIR BOLLWERK: All right, thank you,
25 sir. And does the NRC staff have any comment?

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1 MS. SIMON: Thank you, Judge Bollwerk,
2 this is Marcia Simon for the staff. The staff has no
3 objection to a limited appearance session, either
4 Sunday afternoon or the Monday evening preceding the
5 hearing. Thank you.

6 CHAIR BOLLWERK: All right.

7 MR. REID: Your honor, this is Andrew Reid
8 for the Tribe. I just wanted to respond in regards to
9 the submission of written statements. I think it's
10 well known that native peoples aren't, in large part
11 an oral. They make statements orally, they're more
12 comfortable, many of them are more comfortable,
13 particularly the traditional and elder people from the
14 Tribe, are more comfortable making statements orally.

15 So I would speak in favor of an
16 opportunity for the, to make oral presentations, oral
17 comments to the Board.

18 CHAIR BOLLWERK: All right, well, let me
19 raise a related issue to that. And if I misunderstood
20 Mr. Reid earlier, then you all can clarify this for
21 me. I'd gotten the impression back when we had the
22 last pre-hearing conference and Mr. Reid also thought
23 there might be some interest in members of the Tribe
24 submitting, rather than submitting written -- it
25 couldn't come for the oral limited appearance session,

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1 perhaps submitting some kind of oral statement that
2 they would record and submit as, sort of similar to a
3 written statement, except it would be oral.

4 Is that something there's still interest
5 in, or did I misunderstand it, Mr. Reid?

6 MR. REID: No, I think that's correct too,
7 yes.

8 ADMIN. JUDGE WARDWELL: And this is Judge
9 Wardwell. And Mr. Reid, am I correct you mean that
10 there's also you wish the opportunity to submit
11 recorded oral limited statements, is that correct?

12 MR. REID: Well, the Tribe, most of the
13 tribal members reside some distance from the area. I
14 believe it's over 50 miles or around 50 miles away,
15 the reservation, and on back roads. And particularly
16 if they're elderly sometimes it's difficult to get to
17 the hearing.

18 For those that have the desire to testify
19 in person, I think there will be some to provide
20 statements in person, I would request that
21 opportunity, and particularly to respect those who
22 have some comments to make regarding the importance of
23 the water routes.

24 For example, the condition that we're
25 dealing with here concerns potential groundwater

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1 contamination. As we know from the renewal
2 proceeding, there were a number of statements from
3 members of the Tribe that were very concerned about
4 that. And I think they need the opportunity to appear
5 in person and make those statements.

6 For those that cannot, and there are some
7 of the elders that cannot travel, then we would
8 request the opportunity to present either an oral or
9 a written statement for them.

10 CHAIR BOLLWERK: Thank you. Let me speak
11 first, if any of the parties, other parties, either
12 Crow Butte or the staff, have a reaction to allowing
13 oral recorded limited appearance submissions as an
14 adjunct to a in-person oral session to be held in
15 Nebraska. Crow Butte, do you all want, Mr. Smith, you
16 want to say anything about that first?

17 MR. SMITH: This is Tyson Smith for Crow
18 Butte. And again, I don't think limited appearance,
19 we don't think limited appearance sessions are
20 necessary to, for the judges to render an informed
21 decision on the admitted contentions. There are
22 already more than ample public processes available
23 through the NRC for individual members of the public
24 to weigh in on their concerns and participate in the
25 public process.

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1 Those have, for the most part, already
2 passed in terms of commenting on draft and draft
3 environmental documents and Safety Evaluation Reports.
4 So we don't see the benefit of allowing any of this
5 additional process, but if the judges are going to
6 have limited appearance sessions, and then we don't
7 really have any objection to the method by which
8 materials are provided.

9 They're not going to be admissible in the
10 proceeding and they're not going to really inform the
11 record of the main contention, so it's sort of beside
12 the point.

13 CHAIR BOLLWERK: All right, thank you,
14 sir. Does the NRC staff have anything they want to
15 say at this point?

16 MS. SIMON: This is Marcia Simons for the
17 staff. No, your honor, the staff doesn't have any
18 objection to recorded the oral statements.

19 CHAIR BOLLWERK: All right, so Mr. Reid,
20 let's talk about this one more second, because I want
21 to make sure we're all on the same page. If the Board
22 were to grant the request to submit oral recorded
23 limited appearance statements, in theory there would
24 need to be a time limit on when such oral statements
25 would have to be submitted if the individual wanted

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1 them to be considered by the Board prior to the
2 evidentiary hearing.

3 Also, there would likely be a time limit
4 on the length of the oral recorded sessions specific
5 instruction, for instance, for the format and size of
6 the audio file that would need to be employed for the
7 submission, especially if they're going to try to send
8 them via email.

9 Also, the Board would contemplate having
10 those oral submissions transcribed and placed into the
11 record, along with other written limited appearance
12 statements and the transcript of the oral limited
13 appearance session. So given those qualifications,
14 are we misunderstanding in some way what you're
15 thinking about, or do we need to qualify that in some
16 way?

17 MR. REID: Well, no, I think it's, I
18 understand that the only problem we would have would
19 be the transcription, because the Tribe I don't think
20 the financial resources to transcribe oral.

21 CHAIR BOLLWERK: I should clarify. The
22 Board would take care of the transcription, we would
23 simply take the oral recording and provide it to our
24 court reporting service and have them transcribe it.

25 MR. REID: Right, the same way they would

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1 if they appeared and testified orally.

2 CHAIR BOLLWERK: Yes, sir.

3 MR. REID: Yeah, and we understand, and
4 that would be fine.

5 CHAIR BOLLWERK: All right. Well then,
6 again, if we're going to allow this, you should expect
7 that there'll be an order or a notice with some
8 provisions in it that would govern how these would be,
9 were to be submitted, both to make sure they get into
10 our system, because we can't take huge files and
11 sometimes audio files, depending on how long they are
12 can be rather large. Also so that they can be
13 properly processed.

14 And again, if there, one of the values of
15 oral limited appearances is they may suggest things
16 that the Board or the parties might want to raise
17 questions about, and in order to do that, we have to
18 them before the hearing. So again, that would be
19 important in terms of timing.

20 We'll think about that, and if that's
21 going to happen, we'll take that up and we'll provide
22 some additional directions on that.

23 One thing I would mention is that the way
24 we normally, assuming we do the, we do the session, we
25 generally work with, have our Public Affairs Office

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1 work with the local newspaper to get the word out that
2 we're going to be doing the session. Having said
3 that, when we issue a notice, obviously having you all
4 spread the word is important for people that want to
5 participate.

6 We generally have preregistration. Those
7 that preregister generally speak first. And so again,
8 there's some, I won't say rules and regulations but
9 there are certain requirements or procedural protocols
10 that we put out, and important to take a look at those
11 and make sure folks are aware of them and they're
12 trying to comply with them.

13 All right, anything else on limited
14 appearances any of the parties have in terms of Crow
15 Butte?

16 MR. SMITH: Nothing from Crow Butte.

17 CHAIR BOLLWERK: Staff?

18 MS. SIMON: Nothing from the staff, your
19 honor.

20 CHAIR BOLLWERK: And the Tribe?

21 MR. REID: No, your honor.

22 CHAIR BOLLWERK: All right. The next
23 issue that I would like to raise, the next matter I'd
24 like to raise, is the possible issuance of a license
25 amendment and a potential for a motion for a stay.

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1 Ms. Simon, relative to 10 CFR Section 2.1202, when
2 does the staff intend to issue the Marsland Expansion
3 Area license amendment?

4 MS. SIMON: Your honor, this is Marcia
5 Simon for the staff. The staff is actually preparing
6 to issue the license amendment. My understanding is
7 that they anticipate issuing it sometime next week.
8 And the staff would, in accordance with 2.1202(a),
9 notify the Board and parties when the amendment
10 license is issued.

11 CHAIR BOLLWERK: All right, thank you.
12 Mr. Reid, then I'll turn to you. Does the Oglala
13 Sioux Tribe anticipate filing a motion for a stay of
14 the license amendment at this point?

15 MR. REID: I can't really respond to that.
16 We don't know until I have a chance to discuss that
17 with my co-counsel.

18 CHAIR BOLLWERK: All right. Someone just
19 leave or come in to the call? Well, let me point out
20 again that at our January 2016 pre-hearing conference,
21 we noted that the parties may want to submit to the
22 Board a joint proposal regarding the scheduling for
23 filing of any stay motion and any responses. The
24 Board remains open to that possibility.

25 But in the absence of such a joint

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1 submission, the deadline for Section 2.1213 will apply
2 to any application for a stay, although consistent
3 with our February 2013 initial pre-hearing order, we
4 will entertain a party motion for an extension to file
5 a stay motion up to three business days prior to the
6 deadline for filing such a motion.

7 So again, that's just basically, the basic
8 provision that was in our initial pre-hearing order
9 about filing for extensions three business days before
10 the motion is due.

11 Additionally, consistent with the rulings
12 of the licensing boards presiding over the Strata and
13 Crow Butte, the Strata Proceeding and the Crow Butte
14 license renewal proceeding, we would consider the
15 five-day period for submitting a stay motion under
16 Section 2.1213 to be five business days rather than
17 five calendar days.

18 So for instance, if the staff were to
19 issue the notice on Friday, the motion would be due
20 five business days later, which would be the following
21 Friday. So you would not be penalized for the fact
22 that staff issued it on a Friday and having a weekend,
23 and, you know. Any comments anyone has on that
24 statement, anything from Crow Butte?

25 MR. SMITH: No, your honor.

1 CHAIR BOLLWERK: The staff?

2 MS. SIMON: Your honor, Marcia Simon for
3 the staff. No, we don't have anything further.

4 CHAIR BOLLWERK: All right, Mr. Reid?

5 MR. REID: Nothing further your honor.

6 CHAIR BOLLWERK: Okay, again, if there's
7 some sort of schedule you all want to set up, now
8 would be the time to talk about it. If not, then the
9 rule will apply as we've just talked about it.

10 All right, a couple of other procedural
11 items. In light of this call, we probably will be
12 issuing a revised general schedule, probably within
13 the next two weeks I would think, which would fill in
14 some of the information that we talked about here and
15 confirm some of it as well.

16 In January 2018, at the parties' request,
17 we suspended the requirement in our June 2013 initial
18 pre-hearing order that with the issuance of the
19 staff's final Safety Evaluation Report for the Crow
20 Butte license amendment application, the schedule for
21 mandatory disclosures and the staff hearing file
22 update would change from monthly to 14 days through
23 close of discovery, which currently would be at the
24 issuance of a Board initial decision on admitted
25 Contention 2.

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1 In other words, discovery runs through the
2 issuance of the Board's initial decision on Contention
3 2.

4 As for the request for a disclosure
5 schedule change, that schedule would maintain through
6 the balance of the proceeding. So basically, we had
7 indicated that that schedule would change from a month
8 to two weeks. We received a joint request from the
9 parties to maintain it at a month. That's what will
10 stay unless we hear something from somebody in the
11 future about that. I just wanted to make that clear.

12 Let me see if there's any questions about
13 that. From Crow Butte?

14 MR. SMITH: No, your honor, we don't have
15 any questions.

16 CHAIR BOLLWERK: All right, the staff?

17 MS. SIMON: No questions from the staff.

18 CHAIR BOLLWERK: And Mr. Reid?

19 MR. REID: No questions from the Tribe.

20 CHAIR BOLLWERK: All right, thank you. I
21 always like to raise the possibility of settlement at
22 pre-hearing conferences. In the past, the parties
23 have come back and said they didn't think there was a
24 settlement or a need for a settlement judge, at least
25 not at that time, given how far out we were, which

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1 turned out to be about, last time about two years
2 before we were ready for it actually to go to trial.

3 However, if for any reason you have all
4 changed your minds and want to talk further, that
5 would be something we obviously would encourage. If
6 you want to have a possibility of having a settlement
7 judge appointed, you want to have a settlement judge
8 appointed, that's something we'd certainly be willing
9 to take to the Chief Administrative Judge.

10 So I raise that possibility, and if you
11 think it appropriate, you can discuss it among
12 yourselves and contact us if you would like a
13 settlement judge appointed. Anything anybody wants to
14 say on the issue of settlement? Mr. Smith?

15 MR. SMITH: No, your honor.

16 CHAIR BOLLWERK: All right, the staff?

17 MS. SIMON: No, your honor.

18 CHAIR BOLLWERK: And the Tribe?

19 MR. REID: Well, yeah, I do have one thing
20 that I'd like to bring to the attention of the Board
21 on that. It appears to me that there are no plans to,
22 at least I haven't see anything, plans by the
23 applicant to go ahead with the license, if it's
24 issued. They're on hold on the North Trend and
25 there's restoration on the renewal. I, you know, I've

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1 got, and the purpose of the stay on the north trend
2 was specifically because of the depressed uranium
3 market.

4 And so I, if there's no plans by Crow
5 Butte to proceed on its license, on a license for the
6 Marsland Expansion, it seems to me that it would make
7 sense, rather than go through all of this, to perhaps
8 stay the Marsland application as well until the time
9 that the applicant might be interested in proceeding
10 on the development of that facility. You know, it
11 seemed to me that could be something that could be
12 discussed in settlement, but I didn't know.

13 I haven't had a, I guess I had the
14 opportunity, but I haven't discussed this with Counsel
15 from Crow Butte. But I am curious why we're going
16 ahead with this, particularly with them having a
17 evidentiary hearing in a few months, when it's clear
18 that Crow Butte has no interest in developing the
19 deposit.

20 CHAIR BOLLWERK: Let me turn to Mr. Smith
21 and see if he wants to respond.

22 MR. SMITH: This is Tyson Smith for Crow
23 Butte. I mean, obviously we are still pursuing the
24 license amendment for the Marsland site. And it's
25 about maintaining the optionality for the future.

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1 And while we have no immediate plans to
2 begin construction or development of that site, still,
3 we would want to have the license in place so that if
4 that time comes, we'd be able to respond quickly,
5 rather than having to go through the uncertain and
6 potentially lengthy hearing process in order to
7 finalize the license amendment at that time.

8 CHAIR BOLLWERK: All right, thank you.
9 Anything the staff wants to say on this issue?

10 MS. SIMON: Your honor, this is Marcia
11 Simon for the staff. No, we don't have anything
12 further.

13 CHAIR BOLLWERK: All right, Mr. Reid,
14 anything further you want to add?

15 MR. REID: No, your honor.

16 CHAIR BOLLWERK: All right. And the only
17 observation I would make is that in the Powertech
18 case, with which I was a member of the Board,
19 basically Powertech I think had made the same
20 representation to the Board that while they don't have
21 any immediate plans to use the license, if and when
22 it's granted, they nonetheless wish to pursue it. So
23 just thought I'd put that on the record, for whatever
24 it's worth.

25 Finally, I need to correct the record

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1 about something I said on the record in 2016 about the
2 possibility of a Subpart N hearing. At the time it
3 was described as a hearing in which everything is
4 written and nothing oral. In fact, this is exactly
5 180 degrees wrong. It's a hearing in which oral input
6 predominates with relatively little done in writing.

7 Since, to the best of my knowledge, the
8 Agency hasn't had such a hearing since that provision
9 was put in place in 2004, it isn't something we focus
10 a lot on, but I would like to apologize for the error
11 and any confusion. As you all are undoubtedly aware,
12 the general schedule provides for an opportunity to
13 request a Subpart N hearing if any party wishes to do
14 so. So I just wanted to make that correction for the
15 record.

16 All right, at this point, do any of the
17 parties have anything they would like to bring to the
18 Board's attention or comment upon in terms of what we
19 talked in the hearing conference about, or anything
20 else that might be relevant to the upcoming, new or
21 admitted contentions, or the potential for an
22 evidentiary hearing in the fall? Let me start with
23 Crow Butte.

24 MR. SMITH: This is Tyson Smith for Crow
25 Butte. No, your honor, we have nothing to add.

1 CHAIR BOLLWERK: All right, the NRC staff?

2 MS. SIMON: Thank you, your honor, this is
3 Marcia Simon. I have one question. We were wondering
4 if the Board has considered whether they would expect
5 to question witnesses as a panel as they did in the
6 Crow Butte license renewal, and I believe in Powertech
7 as well. I was just wondering if the Board has
8 considered that and if you care to comment on that.

9 CHAIR BOLLWERK: I think that's a good
10 likelihood. I think in Strata we actually did sort of
11 a hybrid where we talked to some of the witnesses
12 individually or in their panels, and then had a full
13 panel of everyone who was seated at once in terms of
14 all the parties.

15 I think they did it slightly differently
16 in Crow Butte, but I know it will be some kind of
17 panel involved, I'm sure, where all the witnesses will
18 be on the stand at the same time. So it does tend to
19 facilitate conversation and discussion among the
20 witnesses, as well as questions from the Board. So I
21 think that's something you can probably count on at
22 some point.

23 The other thing I would mention again is
24 with one contention, at least currently, we talked in
25 the last pre-hearing conference about probably a

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1 hearing that ran no more than a day or day and a half,
2 two days at the most. That certainly seems quite
3 possible.

4 Having said that, we haven't seen the
5 pretrial testimony yet, we don't know exactly what's
6 going to be in it, what'll be raised. So we're going
7 to at this point keep the hearing schedule at three
8 days. There's also a possibility of new contentions,
9 as we've heard there are going to be potentially new
10 or amended contentions filed.

11 So all that is in the mix to some degree.
12 But again, if it really turns out to be only a one
13 contention case I think, and Judge Wardwell can
14 comment if he wants to or Judge Hirons, I think we're
15 talking about a day, day and a half, two days, given
16 what we've seen in the past.

17 ADMIN. JUDGE WARDWELL: This Jack
18 Wardwell. I would concur that it should be two days,
19 or under.

20 ADMIN. JUDGE HIRONS: Judge Hirons, I
21 agree.

22 CHAIR BOLLWERK: All right. Again, we
23 need to see what you all put into the record, and that
24 will obviously generate question, so. At this point,
25 let me see, Mr. Reid, anything you want to add in

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1 terms of what we've been talking about or anything
2 else?

3 MR. REID: No, your honor, not for me.
4 I'll defer to Mr. Frankel and Mr. Ballanco, if they
5 have anything.

6 MR. FRANKEL: David Frankel here, I don't
7 have anything.

8 CHAIR BOLLWERK: Mr. Ballanco, you all
9 right?

10 MR. BALLANCO: Nothing further, your
11 honor, thank you.

12 CHAIR BOLLWERK: And again, we anticipate
13 hopefully receiving from you all an in limine, I'm
14 sorry, a Notice of Appearance in the near future once
15 you have gotten all your permissions and whatever else
16 you need to get settled straightened out.

17 MR. REID: Yes, your honor, thank you.

18 CHAIR BOLLWERK: Welcome to the
19 proceeding. Is there anything else at this point that
20 Judge Wardwell, you want to say?

21 ADMIN. JUDGE WARDWELL: I have nothing.

22 CHAIR BOLLWERK: All right, Judge Hirons,
23 anything you want to put on the record?

24 ADMIN. JUDGE HIRONS: No, I'm good, thank
25 you.

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1 CHAIR BOLLWERK: All right. Then if
2 there's nothing further, we stand adjourned. And
3 while we're off the record, if the Court Reporter
4 needs to stay on and talk to us about anything, we're
5 here.

6 (Whereupon, the above-entitled matter went
7 off the record at 2:56 p.m.)

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