

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Richard E. Wardwell
Dr. Thomas J. Hirons

In the Matter of

CROW BUTTE RESOURCES, INC.

(Marsland Expansion Area)

Docket No. 40-8943-MLA-2

ASLBP No. 13-926-01-MLA-BD01

October 12, 2018

MEMORANDUM

(Regarding Taking Photographs on Site Visit)

On October 3, 2018, the Licensing Board scheduled a prehearing conference call with the parties to this proceeding and provided an agenda for the teleconference. See Licensing Board Memorandum and Order (Scheduling Prehearing Conference and Providing Teleconference Agenda and Hearing Presentation Order) (Oct. 3, 2018) (unpublished). In that memorandum and order, the Board asked that counsel for Crow Butte Resources, Inc., (CBR) be prepared to discuss logistical information regarding the planned site visit to CBR's existing in situ uranium recovery (ISR) facility scheduled for October 29, 2018.* See id. at 2–3.

* As the Board explained during the teleconference in response to an inquiry from counsel for intervenor Oglala Sioux Tribe (OST), see Tr. at 266–68, the Board previously indicated that because of logistical and other considerations, the Board's site visit request was limited to the existing CBR central processing facility site and did not include the Marsland Expansion Area (MEA) site that is the subject of the CBR license amendment application at issue in this proceeding, see Licensing Board Memorandum and Order (License Amendment Effectiveness Stay Application, In Limine Motions, and Site Visit/Limited Appearance Session/Evidentiary Hearing Scheduling) (May 21, 2018) at 4–5 (unpublished) [hereinafter Board Order]; see also Tr. at 166–67 (explaining why a site visit to the MEA would be difficult);

Specifically, the Board asked that CBR be prepared to answer whether photographs would be allowed during the tour facility. During the teleconference, counsel for CBR acknowledged that tour participants were free to take photos of its existing facility from public roadways or other public land. See Tr. at 269. He indicated, however, that the company's general policy is that photos should not be taken while on CBR-owned property, although if tour participants wished to take one or two photos of landscapes while on CBR-owned property, it would likely not be an issue as long as the photographs did not include equipment, materials, machinery, or buildings at the existing facility site. See Tr. at 269–70. OST counsel objected, indicating this was not acceptable and asserting that OST representatives should have the right to take as many photos of the landscape as they wished. See Tr. at 270–71.

CBR's policy that photos not be taken while on its property is not an unreasonable one. CBR agreed to allow the Board and its law clerks, NRC staff counsel and personnel, and OST experts, counsel, and other representatives to come onto its existing facility, a site visit the Board requested to provide its members with a better general understanding of ISR facility operations. See Board Order at 4 n.3. We do not consider CBR's request regarding photos to be inconsistent with that purpose. Nor do we see CBR's policy as having any impact on the parties' ability to fully and fairly participate in this proceeding, the subject matter of which is the MEA. That being said, we also recognize CBR counsel's acknowledgment that, notwithstanding this policy, a limited number of landscape photos while onsite would not be an issue so long as they did not include equipment, materials, machinery, or buildings at the facility. See Tr. at 269–70.

Accordingly, the Board expects that all tour participants will follow the policy as stated during the teleconference that photography on the CBR site generally is not permitted, albeit

Tr. at 167–68 (explaining that there was nothing NRC-related occurring at the MEA at this time); Tr. at 168–70 (discussing visiting the central processing facility and existing CBR site).

with the caveat that a limited number of landscape photos may be taken that should not include equipment, materials, machinery, or buildings. We further expect that in the spirit of cooperation, as the tour group moves around the site, any photographic efforts by OST representatives will be focused solely on obtaining a few pictures of landscapes meeting this criteria.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 12, 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
CROW BUTTE RESOURCES, INC.)	Docket No. 40-8943-MLA-2
)	
In-Situ Leach Uranium Recovery Facility,)	ASLBP No. 13-926-01-MLA-BD01
Crawford, Nebraska)	
)	
(License Amendment –)	
Marsland Expansion Area))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM (Regarding Taking Photographs on Site Visit)** have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Office of the Secretary of the Commission
Mail Stop O-4F00
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-14A44
Washington, DC 20555-0001
Susan Vrahoretis, Esq.
Marcia J. Simon, Esq.
Emily Monteith, Esq.
Robert G. Carpenter, Esq.

G. Paul Bollwerk, III, Chair
Administrative Judge
E-mail: paul.bollwerk@nrc.gov

E-mail:
susan.vrahoretis@nrc.gov
marcia.simon@nrc.gov
emily.monteith@nrc.gov
robert.carpenter@nrc.gov

Dr. Richard E. Wardwell
Administrative Judge
E-mail: richard.wardwell@nrc.gov

Dr. Thomas J. Hirons
Administrative Judge
E-mail: thomas.hirons@nrc.gov

Law Clerks
Sarah B. Ladin
E-mail: sarah.ladin@nrc.gov
Joseph D. McManus
E-mail: joseph.mcmanus@nrc.gov
Taylor Mayhall
E-mail: taylor.mayhall@nrc.gov
U.S. Nuclear Regulatory Commission

OGC Mail Center:
OGCMailCenter@nrc.gov

Crow Butte Resources, Inc., Docket No. 40-8943-MLA-2
MEMORANDUM (Regarding Taking Photographs on Site Visit)

W. Cindy Gillis, Esq.
522 Seventh Street, Suite 202
Rapid City, S.D. 57701-2756
Counsel for Oglala Sioux Tribe
Email: cindy@mariogonzalezlaw.com

McGuire Law Firm
625 South 14th Street, Suite C
Lincoln, Nebraska 68508
Mark D. McGuire
Counsel for Crow Butte Resources, Inc.
E-mail: mdmcguire46@gmail.com

Tyson R. Smith, Esq.
Counsel for Crow Butte Resources, Inc.
E-mail: trsmith@nuclear.law

Counsel for Oglala Sioux Tribe
David C. Frankel, Esq.
770 L Street
Suite 950
Sacramento, CA 95814
E-mail: arm.legal@gmail.com

Ved Nanda Center for International and
Comparative Law
1075 Waite Drive
Boulder, CO 80303
Andrew Reid, Esq.
Counsel for Oglala Sioux Tribe
E-mail: lawyerreid@gmail.com

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 12th day of October, 2018