

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

Before Administrative Judges:

Michael M. Gibson, Chairman
G. Paul Bollwerk, III
Dr. Gary S. Arnold

In the Matter of

CROW BUTTE RESOURCES, INC.

(License Renewal for the
In Situ Leach Facility, Crawford, Nebraska)

Docket No. 40-8943

ASLBP No. 08-867-02-OLA-BD01

November 10, 2020

ORDER
(Scheduling Status Conference)

In response to the Commission's recent decision, CLI-20-8,¹ the Licensing Board hereby schedules a status conference with counsel to be held on November 18, 2020, at 3:30 PM EST for the above-captioned proceeding. The status conference will be conducted virtually using the Cisco WebEx web conferencing platform. The parties will conduct a test with the Board's IT Staff to mitigate any technical issues that might arise during the status-conference. The Cisco WebEx test will be held on November 17, 2020, at 3:30 PM EST.

During the status conference, the NRC Staff should be prepared to discuss its "next steps in renewing its efforts to cure the deficiencies associated with Contention 1."² The parties should also be prepared to address the attached questions.

Prior to the conference, the Board's law clerk will email the parties with the requisite information to join the Cisco WebEx status conference. Listen-only telephone access will also

¹ Commission Memorandum and Order, CLI-20-8, 92 NRC __ (slip op.) (Oct. 8, 2020).

² NRC Staff Monthly Status Report (Nov. 2, 2020) at 1.

be made available for members of the public and the press. Interested persons may contact the Board's law clerk, Ian Curry, at Ian.Curry@nrc.gov, for the necessary access information. Promptly following the status conference, a transcript will be made publicly available on ADAMS.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 10, 2020

ATTACHMENT 1

Questions for the Parties at
Crow Butte License Renewal Proceeding
November 18, 2020 Status Conference

- I. For Crow Butte Resources, Inc. (CBR)
 - A. Given the current circumstances with the price of uranium, the possibility of legislation establishing a domestic uranium reserve, and the recently modified Russian Suspension Agreement, what is the status of operation/decommissioning at the Crow Butte facility and, as applicable, the licensing/operation of the Marsland, North Trend, and Three Crow expansion facilities?
 - B. Does CBR intend to apply for a license renewal for the Crow Butte facility prior to the November 2024 expiration of its current 10 C.F.R. Part 40 license (ADAMS Accession No. ML15239A938)? If so, how would the scope of activities authorized under the proposed renewed license be different, if at all, from what is permitted under its current license?
- II. For NRC Staff
 - A. Before the NRC Staff decided in January 2017 to await a Commission decision on the then-pending party appeals from LBP-16-7 prior to moving forward with additional cultural resource information-gathering activities, its 2016 monthly status reports indicated it had (1) prepared a statement of work for, and awarded a contract to support, the Staff's cultural resources identification effort (noted in August 1 and October 3, 2016 reports); (2) met with the Tribal Historic Preservation Officer and other representatives of the Oglala Sioux Tribe (OST) in Pine Ridge, South Dakota, and discussed the potential for a targeted cultural resources survey at the license area (noted in September 2, 2016 report); and (3) determined that the costs of the Staff's work on curative action regarding its

environmental assessment (EA) would need to be billed to CBR under 10 C.F.R. Part 170 (November 1, 2016 report). In light of these three developments during 2016:

1. What is the current status of the Staff's cultural resources identification support contract?
2. Has anything changed in the intervening four years regarding the agency's determination about billing CBR for the costs of the Staff's work on any curative actions regarding the EA?
3. How does the Staff contemplate that its approach for gathering cultural resources information to supplement the Crow Butte license renewal EA will compare to the Staff's February 2019 proposed draft cultural resources site survey methodology for gathering additional cultural resources information at the Dewey-Burdock site (ADAMS Accession No. ML19242C158) relative to:
 - a. The retention of a cultural resources contractor, as well as the possibility of utilizing a cultural resources management (CRM) and/or traditional cultural properties (TCP) firm, to oversee/coordinate/execute the technical aspects of the Staff's effort to create an EA cultural resources supplement?
 - b. The site survey methodology to be employed, including
 - i. The use of OST members and participants from other Native American tribes for any field survey, both in terms of the number of tribes and the individual participants per tribe, including tribal elders/spiritual leaders?
 - ii. The compensation/reimbursement of tribal members participating in any site survey, including the use of tribal

honoraria, hourly salaries for participating tribal members, lodging and per diem, and mileage?

- iii. The coverage (in terms of Crow Butte facility areas/acreage), number, length, and timing (e.g., seasonal) of any site survey sessions?
- iv. The use of any associated survey methodologies, including oral history interviews with tribal elders/spiritual leaders and geo-spatial mapping of cultural and natural resources?
- v. Protocols to protect sensitive cultural resources information?
- vi. Preparation of any survey reports and circulation of such reports for comment?

B. What protocols does the Staff contemplate in its preparation and circulation for comment of a draft and final EA cultural resources supplement?

C. What impact will the covid-19 pandemic have on the Staff's ability to gather additional information for, and prepare a cultural resources supplement regarding, the Crow Butte license renewal EA?

D. Has the Staff considered the possibility of consulting with the Advisory Council on Historic Preservation about possible approaches for obtaining the TCP information needed to prepare the EA cultural resources supplement for the Crow Butte facility?

III. For CBR

A. What is Crow Butte's position regarding the efficacy of the Staff's approach to any cultural resources survey and EA supplement preparation and issuance, as described in its response to items II.A through II.C above?

B. What is Crow Butte's position regarding the potential costs associated with the Staff's approach, including the retention of Staff technical assistance and the methodology employed for, and the cost of reimbursing tribes and/or tribal members involved in, conducting any cultural resources survey of the Crow Butte facility?

IV. For OST and Consolidated Intervenors

A. What is the Intervenors' position regarding the efficacy of the Staff's approach to any cultural resources survey and EA supplement preparation and issuance, as described in its response to items II.A through II.C above?

B. What is the willingness of OST and the Consolidated Intervenors to re-engage with the NRC Staff to assist in the conduct of any cultural resources survey process at the Crow Butte facility?

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
CROW BUTTE RESOURCES, INC.) Docket No. 40-8943-OLA
)
In-Situ Leach Uranium Recovery Facility,)
Crawford, Nebraska)
)
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Status Conference)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop O-16B33
Washington, DC 20555-0001
E-mail: ocaamail.resource@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16B33
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-15D21
Washington, DC 20555-0001
Lorraine Baer, Esq.
Marcia J. Simon, Esq.
Susan Vrahoretis, Esq.
OGC Mail Center
E-mail:
Lorraine.Baer@nrc.gov
marcia.simon@nrc.gov
Susan.Vrahoretis@nrc.gov
OGCMailCenter@nrc.gov

Michael M. Gibson, Chairman
Administrative Judge
E-mail: michael.gibson@nrc.gov

Gary S. Arnold
Administrative Judge
E-mail: gary.arnold@nrc.gov

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

Molly Mattison, Law Clerk
Molly.Mattison@nrc.gov

Ian R. Curry, Law Clerk
ian.curry@nrc.gov

Stephanie Fishman, Law Clerk
stephanie.fisher@nrc.gov

DOCKET NO. 40-8943-OLA
ORDER (Scheduling Status Conference)

Tyson Smith
889 Marin Drive
Mill Valley, CA 94941
Counsel for Crow Butte Resources, Inc.
E-mail: tsmith@nuclear.law

Owe Oku, Debra White Plume,
and David House
P.O. Box 2508
Rapid City, South Dakota 57709
Bruce Ellison, Esq.
E-mail: belli4law@aol.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

Thomas J. Ballanco*
945 Taraval Avenue, # 186
San Francisco, CA 94116
Counsel for Joe American Horse, Thomas Cook,
Loretta Afraid-of-Bear Cook, Slim Buttes
Community, and Pine Ridge Reservation, South
Dakota 57770
E-mail: HarmonicEngineering@gmail.com

Western Nebraska Resources Council
Chief Joseph American Horse
Thomas K. Cook, Francis E. Anders
P.O. 3014
Pine Ridge, South Dakota 57770
E-mail: arm.legal@gmail.com

David C. Frankel, Esq.
1430 Haines Ave., #108-372
Rapid City, SD 57701
Counsel for Consolidated Intervenors
E-mail: arm.legal@gmail.com

Dated at Rockville, Maryland,
this 10th day of November 2020.

Office of the Secretary of the Commission