

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Crow Butte Resources, Inc.

Docket Number: 40-8943

ASLBP Number: 08-867-02-OLA-BD01

Location: teleconference

Date: Thursday, February 18, 2021

Work Order No.: NRC-1382

Pages 2735-2785

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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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STATUS CONFERENCE

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In the Matter of:	:	Docket No.
CROW BUTTE	:	40-8943
RESOURCES INC.	:	
	:	ASLBP No.
In-Situ Uranium	:	08-867-02-OLA-BD01
Recovery Facility,	:	
Crawford, Nebraska	:	
(License Renewal)	:	

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Thursday, February 18, 2021

Teleconference

BEFORE:

MICHAEL M. GIBSON, Chair

G. PAUL BOLLWERK III, Administrative Judge

DR. GARY S. ARNOLD, Administrative Judge

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1 P-R-O-C-E-E-D-I-N-G-S

2 1:36 p.m.

3 JUDGE GIBSON: We are here this afternoon
4 on the renewal of a license for the in-situ leech
5 mining operations of Crow Butte Resources, Docket
6 Number 40-8943.

7 After the initial decision issued by this
8 Board was affirmed by the Nuclear Regulatory
9 Commission this fall, we set this matter for a status
10 conference. We held that, and this is now our second
11 status conference.

12 With me on this Board are Judges Bollwerk
13 and Arnold. Also with us are our law clerks, Molly
14 Mattison and Ian Curry.

15 I would now like to have announcements of
16 Counsel, first from Crow Butte.

17 MR. LEWIS: This is David Lewis from the
18 law firm Pillsbury Winthrop Shaw Pittman representing
19 Crow Butte Resources. Also on the videoconference is
20 Anne Leidich from my firm. In a listen-only mode is
21 Mr. Doug Pavlick, who is the general manager of U.S.
22 operations, and Walter Nelson, who is a safety,
23 health, environmental quality coordinator.

24 JUDGE GIBSON: Thank you, Mr. Lewis. For
25 the Oglala Sioux Tribe.

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1 MR. REID: Good afternoon. This is Andrew
2 Reid for the Oglala Sioux Tribe.

3 JUDGE GIBSON: Thank you, Mr. Reid. For
4 the NRC staff?

5 MS. SIMON: Good afternoon, Your Honor.
6 This is Marsha Simon, representing the NRC staff. And
7 on the listen-only line are Diana Diaz-Toro and Jean
8 Trefethen, who are the NRC project managers.

9 JUDGE GIBSON: Thank you, Ms. Simon. For
10 Consolidated Intervenors?

11 MR. BALLANCO: Good afternoon, Your Honor.
12 Tom Ballanco for Consolidated Intervenors.

13 JUDGE GIBSON: Hello, Mr. Ballanco.

14 MR. FRANKEL: Good afternoon, everybody,
15 Your Honors. David Frankel, also for Consolidated
16 Intervenors.

17 JUDGE GIBSON: Hello, Mr. Frankel. Thank
18 you. As I've tried to note at the beginning of every
19 argument, hearing conference that we've had in this
20 matter, you're probably getting tired of me saying
21 this but I am going to still repeat it, because I
22 think it needs to always be said.

23 Because artifacts and historic sites are
24 essential to this proceeding, it is important that all
25 of us be mindful that insofar as our discussions

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1 during this status conference might implicate either
2 the nature or location of any those cultural
3 resources, please flag that for us and we will simply
4 set that aside until the end of the conference when we
5 can exclude anyone who might be on this from the
6 public, and we will proceed into a non-public format
7 to address those matters.

8 Likewise, as I noted in our first status
9 conference at the end of 2020, this Board's job here
10 is not, in any way, to supervise the performance of
11 the NRC staff, but rather to monitor the progress that
12 the staff is making to address the cultural resources
13 issues that we adjudicated previously and that are
14 addressed in our initial decision.

15 Judges Bollwerk and Arnold, before we turn
16 the floor over to Ms. Simon to address the progress
17 the staff is making, is there anything else that we
18 need to cover?

19 JUDGE ARNOLD: I have nothing.

20 JUDGE BOLLWERK: I would just mention one
21 thing, which is that we are recording this for
22 purposes of a sort of backup to the court reporter, so
23 people should be aware of that.

24 JUDGE GIBSON: Thank you, Judge Bollwerk.
25 Very well, then. Ms. Simon, you may proceed.

1 MS. SIMON: Thank you, Judge Gibson. And
2 good afternoon, everybody. First, I want to just do
3 a quick recap of the staff's activities in December
4 and January, since the status request from those are
5 now over a month or two old.

6 So, in December, after our November
7 teleconference, a few weeks after that, the staff did
8 an initial outreach to Mr. Harold Salway, who is the
9 tribal contact. The staff also had an initial
10 outreach to the licensees regarding the feasibility of
11 offering some tribal members an opportunity to visit
12 the site to gain familiarity with the landscape and
13 the layout.

14 And during that interaction, the staff and
15 the licensee discussed state and local protocols, and
16 also the licensee's protocols with regard to COVID-19,
17 such as social distancing, masking, and limiting the
18 number of participants. And, as envisioned, this
19 visit, if it takes place, would be entirely outdoors
20 and would probably last two to four hours. And it
21 could include visiting some of the sites that were
22 previously identified during the 1987 archeological
23 survey. And the visit would not involve any
24 evaluation of sites or specific identification
25 efforts.

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1 And then, in January, which is mentioned
2 in our February update, the staff had an interaction
3 with the Advisory Council on Historic Preservation
4 staff member who is assigned to support the NRC staff.
5 And his name is Mr. John Eddins. E-D-D-I-N-S. And as
6 reported in our February update, the staff learned
7 during that meeting that many agencies are proceeding
8 with field work despite the COVID-19 situation. And
9 most of the interactions with tribes have been through
10 virtual meetings.

11 And then, also in our February update, I
12 mentioned that the staff had been working with the
13 tribe to arrange a meeting. Hopefully for the week of
14 February 8th. And that meeting did take place on
15 February 8th. And Ms. Diaz-Toro and Ms. Trefethen
16 participated in that meeting, along with Mr. Salway
17 and Mr. Thomas Brings. Mr. Salway is the director of
18 Natural Resources for the Tribe. And Mr. Brings is
19 the Tribal Historic Preservation Officer for the
20 tribe.

21 And Mr. Reid and I were also in attendance
22 at that meeting, which was held virtually. And the
23 meeting was an opportunity for the various
24 participants to introduce themselves and to begin
25 sharing information. A couple of the main takeaways

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1 from the meeting, from the staff's perspective, were
2 the staff requested input from the Tribe on aspects or
3 elements of the methodology that the Tribe believed
4 should be included in a survey in order to permit
5 identification and evaluation of sites that are
6 significant to the Tribe at the Crow Butte facility.
7 And the staff seeks this input to facilitate
8 development and the methodology to identify these
9 sites.

10 There was also discussion of a potential
11 site visit, as I discussed earlier, to provide an
12 opportunity for Mr. Salway and Mr. Brings, and
13 potentially a couple of other tribal participants, to
14 become familiar with the site.

15 And Mr. Salway and Mr. Brings provided
16 some information to the staff with regard to the
17 internal processes that the Tribe has for decision-
18 making and obtaining approvals. And they informed the
19 staff, for instance, that they need to seek advice and
20 approval from various committees and advisory groups,
21 and also the Tribal Council, before providing input
22 and expressing views of the Tribe to the NRC staff.

23 And so they said that they would take the
24 Tribe's request -- sorry, the staff's request for
25 input and the potential for a site visit back to their

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1 advisory groups and to the council, and would try to
2 get back to the staff by mid-March on that. And so at
3 the end of the meeting there was agreement that we
4 would try to schedule another meeting for mid-March.
5 And the staff has tentatively proposed the week of
6 March 15th to the Tribe for that.

7 Also, per its usual practice, the staff
8 created a draft meeting summary and has provided that
9 to the Tribe for them to review and comment on. And
10 once that is final it will be placed in the public
11 ADAMS. And that's the summary of that event meeting.

12 I also wanted to discuss, briefly, the
13 status of the contractor and the statement of work for
14 that effort. In November, I mentioned that the staff
15 was planning to hire a contractor to assist with these
16 identification efforts. And that would include
17 helping to develop the methodology, with input from
18 the tribes. Facilitating and managing in-field work
19 and other information gathering efforts, recording and
20 collecting information, preparing reports. And then
21 assisting the staff in preparing the EA supplement,
22 which would address the deficiencies that the Board
23 had identified.

24 And so the staff has prepared a statement
25 of work for this effort and is embarking on the

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1 acquisition process. They've decided to use the
2 enterprise-wide contract. That's the contract that
3 Judge Bollwerk referred to as the umbrella contract in
4 the previous teleconference.

5 And, with that, that's pretty much my
6 status update. If you have questions or would like
7 further information, I'm glad to answer questions.

8 JUDGE GIBSON: Good. Judge Bollwerk,
9 Judge Arnold, do you all have any specific questions
10 for Ms. Simon?

11 JUDGE BOLLWERK: This is Judge Bollwerk,
12 just a couple of things. In terms of contractor
13 support, and I guess you're using the enterprise-wide
14 contract, the umbrella contract that the agency has,
15 when do you expect that that will be finalized?

16 In theory, they are sitting there ready to
17 be used at any time, so my recollection is that
18 process is not a long one.

19 MS. SIMON: Yes, that's correct, Judge
20 Bollwerk. The staff is hoping that by early April the
21 contractor will be on board. And, of course, that's
22 somewhat contingent on the efficiency of the
23 contracting process. But that's what they're
24 estimating right now.

25 JUDGE BOLLWERK: And is your contract for

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1 an individual or is it for a number of individuals?
2 How is it written, to the degree you can tell me that?

3 MS. SIMON: I'm not quite sure I
4 understand. Are you asking if it's written? Can you
5 clarify that?

6 JUDGE BOLLWERK: Sure. So, for Powertech
7 -- and, again, that's my background, I'll use that as
8 sort of a jumping off point -- I believe SAIC was
9 eventually the contractor that was given the work, and
10 they in turn hired an individual. And the individual
11 then had contemplated, at least to one point, hiring
12 additional people. Is that within the scope of this
13 contractual vehicle that you put out?

14 MS. SIMON: So, the question is, if the
15 contract is initially assigned to one individual, is
16 it potentially possible for additional individuals to
17 be added to it?

18 JUDGE BOLLWERK: Well, I guess, in part.
19 I mean, it sounds like you've put it out and there are
20 different companies that are going to bid on it.
21 Potentially. And those companies then will have
22 someone they'll put up as a project manager. And in
23 theory, then the project may have, depending on how
24 the contract is written, other individuals that he can
25 bring, or she can bring in, to help him or her fulfill

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1 the contract. Is that general description accurate or
2 have I misstated anything?

3 MS. SIMON: I think that is accurate. I
4 think one of the advantages of this enterprise-wide
5 contract is it has a fair amount of flexibility. So
6 if the contractor feels they need additional people,
7 I believe that is either possible under the contract
8 as-written or be relatively easy to modify it.

9 And I will ask the staff, if they have any
10 additional thoughts on that, to let me know and I will
11 convey them to you.

12 JUDGE BOLLWERK: And can you provide us
13 some idea about the scope of the contract, in terms of
14 how much the staff is putting on the contract or is
15 that something that would be procurement-sensitive?

16 MS. SIMON: I'm sorry, could you repeat
17 that?

18 JUDGE BOLLWERK: Sure. Can you give us
19 some idea about the amount of money that the staff has
20 put on the contract or is that something that's
21 procurement-sensitive at this point?

22 MS. SIMON: I am not aware of the amount
23 of money, and I will ask the staff to let me know so
24 I can respond to you shortly.

25 JUDGE BOLLWERK: All right. Well, I think

1 we need to hear from the Tribe, obviously, in terms of
2 their response to some of the things that you've
3 raised. But do you have a general plan in your mind
4 at this point if you'll have a contractor onboard in
5 early April when you try to proceed to some kind of
6 field work?

7 MS. SIMON: Yes. As was discussed in the
8 November teleconference, the staff's goal, at that
9 point, and the staff's goal still is, to try to get
10 field work completed by the end of October 2021, with
11 the idea that that's kind of a critical path activity,
12 because if you go much past October then the weather
13 can become an influence in that, can essentially
14 preclude any work until the following spring. And so
15 that's still the staff's goal.

16 JUDGE BOLLWERK: And I guess we can hear
17 from the Tribe, but did they give you any kind of
18 response in terms of, have you presented that sort of
19 schedule to them or did you not get that far in your
20 discussions?

21 MS. SIMON: Well, I believe that -- I
22 mean, the Tribe, like everyone else, was aware of that
23 goal from November. And we haven't had detailed
24 discussions about a schedule. At the end of the
25 meeting on the 8th -- the staff is working to put

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1 something on paper as far as milestones and target
2 dates and is planning to share that with the Tribe.
3 And can share that with all the parties when that's
4 completed.

5 JUDGE BOLLWERK: Did you talk at all about
6 doing interviews with tribal members, elders, or
7 others?

8 MS. SIMON: We didn't have detailed
9 discussions in the February 8th meeting about that.
10 Mr. Reid and I did have a counsel-to-counsel call in
11 January where we talked about a couple of ideas for
12 interactions that might be parts of a methodology.

13 And the idea of having tribal elders visit
14 the site and be interviewed kind of in the context of
15 the area and any sites was discussed. And Mr. Reid
16 also talked about the possibility of having staff
17 members go to Pine Ridge Reservation and interact with
18 elders or spiritual advisors there, and hear stories
19 and things like that.

20 JUDGE BOLLWERK: And in terms of your
21 interaction with the Advisory Council on Historic
22 Preservation, did they give you any advice in terms of
23 dealings with the Tribe or suggestions or
24 recommendation?

25 MS. SIMON: I don't believe that the

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1 discussion went into a great level of detail about
2 that topic. Again, I'll ask the staff who's listening
3 to let me know if there is any changes on that.

4 JUDGE BOLLWERK: All right.

5 MS. SIMON: Also, regarding your question
6 about funding, the staff said that they need to wait
7 for cost proposals to come in from the companies who
8 will be bidding.

9 JUDGE BOLLWERK: Okay. And just maybe
10 when the staff, if you need to talk with them, is the
11 statement -- is any of this on the public record yet
12 in terms of statement of work or what you've put out
13 onto the umbrella contract?

14 MS. SIMON: No, it's not on the public
15 record at this point.

16 JUDGE BOLLWERK: Okay. All right, I think
17 that does it for me at this point. I don't know if
18 Judge Arnold has anything.

19 JUDGE GIBSON: Judge Arnold?

20 JUDGE ARNOLD: No, I have nothing.

21 JUDGE GIBSON: Okay, very well. Then, Mr.
22 Reid, would you have anything to share with us?

23 MR. REID: Thank you. I think, generally,
24 Marcia Simon's description is accurate. I would note
25 or emphasize that we've had -- I think, at least so

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1 far, we've developed a pretty good good-faith working
2 relationship at this point, both between counsel and
3 between the NRC staff and the Oglala Sioux Tribe
4 staff.

5 A couple of things I would like to just
6 emphasize. First off, in regards to the work between
7 the two staffs, I think we made it clear, and I want
8 to emphasize that again, is that the Tribe staff, Mr.
9 Salway and Mr. Brings, and whomever else they bring
10 into this, there's been a request to bring in the
11 tribal water person, Mr. Red Cloud, as part of the
12 discussion process on this.

13 The Tribe requires that all of those be at
14 very high level. It's a nation-to-nation
15 communications. And I'm thinking of perhaps similar
16 examples that may be -- they wouldn't fit exactly,
17 but, for example, the border wall between Mexico and
18 the United States. If the United States is doing an
19 environmental impact statement on the wall, Mexico
20 might intervene and want to communicate and have a
21 certain role in the process. And I understand the NRC
22 may not accept this view, but it's certainly the
23 Tribe's point of view, is that the Tribe is a nation
24 and that these things have to proceed at a very high
25 level.

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1 Another example may be the KXL Pipeline,
2 for example, that crosses the border between Canada
3 and the United States. Any EIS being done on that
4 pipeline, if Canada were to desire to participate, in
5 how it would be treated.

6 And I've brought this up with counsel for
7 the staff, Ms. Simon, the recent memorandum
8 emphasizing the executive order on consultation that
9 was issued by President Biden, which emphasizes that
10 it's not just a government-to-government relationship
11 but a nation-to-nation relationship. And his desire
12 of strengthening that relationship by strengthening
13 consultation.

14 And essentially what we're talking about
15 here in terms of deciding both the surveying and the
16 process under NEPA, and the National Historic
17 Preservation Act, in order to satisfy the decisions of
18 the court -- decisions of the Commission on the survey
19 is an application of that recent memorandum. So it
20 only strengthens the process, and I think raises the
21 level of importance in terms of this.

22 The other thing we discussed is that this
23 whole process is somewhat designing a new policy or
24 new procedures in dealing with Native nations that
25 hopefully the NRC and other government agencies can

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1 take in dealing with other Native nations that deal
2 with the kinds of issues that are a little bit broader
3 than the National Historic Preservation Act. The
4 tangibles that were discussed by the Board's decision
5 and were affirmed by the Commission that have to be
6 included in the survey under NEPA.

7 And so there has been some discussion on
8 that. And we're looking forward to trying to help
9 design something that will be beneficial for all
10 parties, as well as the applicant, because the
11 applicant has to satisfy these requirements, as well.

12 So we're trying to approach this in a good
13 faith, optimistic, trying to avoid litigation, and
14 trying to do this the right way. And so that's our
15 main goal. That's the background of the discussions
16 we've had. I have had both, as counsel with Ms. Simon
17 and then with the NRC staff, that the Tribe had with
18 the NRC staff.

19 Second thing I'd like to mention is, in
20 terms of the conversation between the staffs of the
21 two parties that occurred on February 8th. And both
22 conversations, the one between Council, the one
23 between staff, were lengthy conversations. I think
24 they were over two hours. They were quite involved.
25 It was open and candid, I believe, which I think is

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1 good. But I think one thing that will have to be
2 narrowed down a little bit, where there might not be
3 an agreement at this point, is on the scope of the
4 survey.

5 In other words, what exactly we're looking
6 at and how broad it will be. And that's an ongoing
7 discussion. I think we made some progress. I think
8 the parties are starting to understand each other, the
9 staffs, on that.

10 And also I think the NRC staff understands
11 that Mr. Brings and Mr. Salway cannot make any
12 commitments without clearing them both with the
13 spiritual advisors for the Tribe and with the Tribal
14 Council because of the high level nature this
15 situation.

16 And we've also, I think, reasserted, and
17 we always reaffirm, the Tribe's claim that that
18 territory is unceded lands that hasn't been given up
19 by the Tribe under the treaty of 1868. But we're
20 trying to work around those issues. But within the
21 Tribe's point of view, that's always underlying. The
22 Tribe's position is that, in some ways, it questions
23 the NRC's jurisdiction in that should be a matter that
24 it should be subject to the Tribe's not just
25 consultation, but consent. And that's an issue that

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1 was raised in the previous proceedings and has been
2 ruled on by the Board. And jurisdictional issues can
3 be brought up at any time, and we'll continue to
4 assert that. Although that's not part of the ongoing
5 discussions, it's just background.

6 On Judge Bollwerk's questions, in terms of
7 the contractor, the Tribe is also looking at retaining
8 a contractor. The Tribe still has to work out, we
9 have somebody I think that is acceptable, but we still
10 have to work out funding and so forth.

11 Looking at a date for the NRC staff
12 contractor of early April, that will probably fit with
13 the Tribe's date for bringing somebody onboard, too.
14 And right now we're looking at Tim Mentz, who is the
15 archeologist who did work on the Dakota Access
16 Pipeline and I think has done work with on the Dewey
17 Burdock litigation matter there up in the Black Hills.
18 He should be fairly well-experienced.

19 And one thing that would interest me would
20 be, whoever the Tribe brings onboard, it would be to
21 be able to get him or her to work closely, or at
22 least, they don't always have to agree, but ,anyway,
23 to be able to communicate in good faith with the
24 expert from the NRC.

25 So, I think the point I'm trying to make

1 is that we are proceeding with this in good faith. We
2 don't believe that it necessarily should be rushed,
3 but we do understand it needs to be completed. And I
4 think we need to be careful.

5 One of the problems that's complicated
6 this, obviously, is COVID. And the NRC staff has, in
7 my understanding, a standing non-travel policy.

8 So we would like to be able, for spiritual
9 advisors and the people, for example, Judge Bollwerk
10 talked about doing interviews. Those really cannot be
11 well done over the computer with Zoom or whatever;
12 those have to be done in-person. And it has to be
13 done under certain circumstances. And there has to be
14 a level of trust that's worked out with the spiritual
15 leaders and tribal requirements and so forth on this.

16 And we have people that we're identifying
17 who have this information. I think the NRC staff
18 understands that they do not have that information.
19 And I think that was one of the foundations of the
20 ruling of the Board, is that that information is
21 uniquely held by the traditional people and the
22 spiritual advisors of the Tribe.

23 And so we're working with that trying to
24 work that out. At some point I think it will require
25 in-person meetings. And hopefully the COVID will be

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1 under control by May or June or July, that we can do
2 it. But certainly we can do the groundwork for that,
3 to get that done in the meantime. And get the travel
4 approval.

5 I cannot guarantee the level of approval.
6 We haven't done this. But I will say that those
7 discussions are being taken up to the Tribal Council.
8 And there will be a detailed plan and proposal
9 provided to the council, hopefully, within the next
10 month or so, about where to start.

11 The other thing that I don't think Marcia
12 mentioned is, Ms. Simon mentioned is that we're
13 looking in the meantime of trying to schedule an
14 initial visit. So, the February 8th call was
15 essentially an information exchanging. There was an
16 understanding that there would be no commitments or
17 positions stated by the Tribe on that. It's gathering
18 information that it can take back to its decision.

19 And, again, part of this information
20 gathering process, and something I think that Ms.
21 Simon proposed, is having an initial visit to this
22 site by the appropriate people from the Tribe. It's
23 about, I guess, a 70- or 80-mile drive, or so, on
24 average. And, obviously, we would need to get the
25 applicant's approval or participation in this. And we

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1 would work that out.

2 Certainly, we can drive around the
3 exterior, along the public roads, but if we need to
4 actually go onsite and make an initial look-see,
5 without making any final decisions, that's something
6 we can see doing within the next few months, if we go
7 ahead with this process.

8 I think that's probably about it. And the
9 only other thing I'd mention is, I did send over,
10 prior to the meeting, President Biden's memo on
11 consultation with Native tribes, in case you haven't
12 seen that. And I sent over also the executive order
13 that he recently issued on environmental justice.
14 Now, we've already litigated the environmental justice
15 issue, that's been a ruling by the Board. But I
16 believe that President Biden's new ruling is quite
17 extensive on environment justice and does help inform
18 this process.

19 We're not asking necessarily to re-
20 litigate that at this time, but in terms of the
21 considerations, it would have to be undertaken in
22 designing the procedure and the process for the
23 survey. We're going to keep in mind the President's
24 requirements for satisfying the environmental justice
25 obligations.

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1 One question I had, and as you're probably
2 aware, I believe there are some issue as to whether or
3 not executive orders are binding on the NRC. And the
4 NRC has chosen to follow an executive order on
5 consultation, I believe, from President Clinton. And
6 so we've been asking the NRC staff, and perhaps the
7 Board can give some guidance on this, as to whether or
8 not we're working within the guidelines issued by
9 President Biden, both on consultation and on
10 environmental justice.

11 And then, finally, I sent over a copy of
12 the recent decision on the Dakota Access Pipeline from
13 the D.C. Circuit, which dealt with the unceded lands
14 of the 1868 treaty (audio interference) between the
15 Dakota Access Pipeline project and the Crow Butte
16 (audio interference). And there is some discussion
17 (audio interference) parties (audio interference) that
18 have initial (audio interference) who acknowledge
19 their central role in this process. And I think the
20 Board has been doing that, which is emphasized that
21 there's been some times at some point where (audio
22 interference) is like a regular party rather than a
23 nation.

24 Judge Gibson, I think that's all I have to
25 add.

1 JUDGE GIBSON: Mr. Reid, this is Judge
2 Gibson. Your last point that you were just making did
3 not come through. There was a bad connection and we
4 can only hear a little bit of what you were saying.

5 MR. REID: Okay. Well, I'll repeat it.

6 JUDGE GIBSON: Okay, thank you.

7 MR. REID: What I was saying --

8 JUDGE GIBSON: As long as the court
9 reporter gets it, that's all.

10 MR. REID: Okay. All right. What I was
11 saying is that there's been a recent decision, a
12 couple weeks ago, on the D.C. Circuit Court on the
13 appeal on the Dakota Access Pipeline decision, I
14 believe out of Montana. And in that decision there is
15 some good language that I think would be very helpful
16 to the Commission about how to treat Native nations
17 and their status as parties to these proceedings. And
18 it distinguishes nations from other types of parties,
19 such as the Consolidated Intervenors, for example, and
20 also from the applicant.

21 That Native nations even have, in some
22 instances, greater standing than federal agencies
23 themselves because they are nations, and that there is
24 certain obligations within agencies, within federal
25 agencies, on how they approach and treat and deal with

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1 that status of Native nations and their participation
2 in the case of grievance that they have to be given as
3 a party.

4 And what I am trying to do is to tie this
5 into our continual request that the Board recognizes
6 that this is a nation-to-nation issue here. It's not
7 simply an environmental organization intervening in an
8 NRC licensing proceeding. This is a nation-to-nation
9 proceeding, and the Tribe needs to be treated
10 accordingly. And I think, generally, the Board has
11 done that and I am very pleased with that and I
12 appreciate the consideration the Board has made to the
13 Tribe as a nation. But I think there have been
14 occasions in the past regarding certain motions and
15 other things, and I won't bring them up here, that the
16 Tribe has had to struggle somewhat being acknowledged
17 in that status.

18 I would simply emphasize that is a ruling
19 in the D.C. Circuit on unceded lands of the 1868
20 Treaty. Thank you.

21 JUDGE GIBSON: All right, thank you.
22 Thank you, Mr. Reid. Before we go on I should make a
23 note that the materials that you sent to Mr. Curry
24 today we are going to turn around and file that in the
25 record essentially as an ex parte communication

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1 because it didn't come through the normal procedure
2 and since it goes to some of the merits on the
3 arguments that you are making it needs to be a part of
4 the record and so we will be doing that.

5 So, you know, I just wanted to let you
6 know that would be happening.

7 MR. REID: That's fine. I believe it was
8 sent out to all the parties.

9 JUDGE GIBSON: It was.

10 MR. REID: And I didn't mean it as part of
11 legal argument, but more as helping to define the
12 parameters of what we have to do today, you know, and
13 how we are designing how we go ahead, so that's all.
14 Thank you.

15 JUDGE GIBSON: Okay, very well. Well,
16 whatever your intent that's the way we have construed
17 it and so we are going to make it part of the record,
18 okay.

19 Okay, with that let me ask the applicant,
20 Crow Butte, is there anything that you all would like
21 to respond to what you have heard so far?

22 JUDGE BOLLWERK: Could I ask Mr. Reid a
23 couple questions before we move on?

24 JUDGE GIBSON: Of course. I'm sorry,
25 Judge Bollwerk.

1 JUDGE BOLLWERK: That's no problem.

2 JUDGE GIBSON: My fault. Hold on just a
3 minute, let's let Judge Bollwerk ask some questions of
4 Mr. Reid.

5 JUDGE BOLLWERK: Mr. Reid, you mentioned,
6 I guess, there was a discussion about the scope of the
7 activities that would be undertaken. I recognize this
8 is still preliminary, but can you give us any idea of
9 how you see the scope of what needs to be done on the
10 site to satisfy the Tribe's concerns?

11 MR. REID: Yes. I think it's been an
12 issue. It's included in some of the arguments leading
13 up to the decision of both the Board and the
14 Commission on compliance with the NEPA hard-look
15 compliance as being broader than that of the National
16 Historic Preservation Act.

17 As you know, the National Historic
18 Preservation Act is focused on tangible, tangible
19 objects, and so for like grave sites, teepee rings,
20 and so forth. But the Board's decision also said that
21 NEPA requires a consideration of intangibles in which
22 the Tribe has an interest in, and the way that we
23 interpreted that it included cultural and historic and
24 spiritual intangibles.

25 So, for example, there is a spirit quest

1 site close by at Crow Butte. There's a history there
2 that is -- and I think this was mentioned in the March
3 decision, that this was a location of the Cheyenne
4 encampment of the Oceti Sakowin, the Great Sioux
5 Nation, and so forth, during the treaty process. And
6 so there is a historic intangible there.

7 There are other things involving the
8 culture, for example, the use of plants and herbs,
9 that are more than just the plants and herbs
10 themselves, but they have an intangible value to the
11 Tribe. So the Tribe has an interest on how all these
12 things are affected by the project, by the
13 application, and so that's what I am talking about in
14 terms of the scope.

15 And we're ironing that out. I think there
16 has been some recognition by the NRC staff that it
17 needs to consider these things. The issue is going to
18 be how far do we go with that. And I think they are
19 open -- I get the impression, Marcia Simon can correct
20 me on this, but I got the impression that the NRC
21 staff is willing to accept anything that the Tribe
22 wants to provide in that regard to the NRC staff as
23 part of their survey.

24 Whether or not they believe that it needs
25 to be incorporated or discussed in the supplemental EA

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1 and in the survey, that's going to be up to them and
2 there may be some disagreement on that. I will assure
3 you that we will try to work those out ahead of time
4 and in good faith try to reach, if we can, agreement.
5 But it would be on those kinds of things.

6 Let's say there is, for example, the
7 spirit quest site, as you may or may not know there is
8 a ceremony that is connected at Bear Butte, which is
9 near the Black Hills. There is also a ceremony at
10 Devil's Tower. Both of those areas have been
11 recognized by the federal government as having special
12 value, and so they make accommodation in those areas
13 to those persons from the Lakota people that would
14 like to engage in spiritual activity.

15 There may be certain accommodations that
16 need to be taken or made in regards to spiritual
17 practices that the Tribe would like to -- that members
18 of the Tribe would like to engage in within an
19 appropriate area. That has yet to be decided or
20 assessed, and that would give you an idea of the
21 spiritual component in this.

22 I hope that answers your question. That's
23 kind of what we're looking. It's mostly the
24 intangibles.

25 JUDGE BOLLWERK: All right. Details,

1 things like viewsapes as well as the things that you
2 have mentioned are the things you are concerned about
3 potentially as well?

4 MR. REID: Well, on a broader level, that
5 would be the Tribe's interest and their relationship
6 with Grand Mother Earth. When they view the site --
7 and this is one thing that we have had a discussion,
8 that I mentioned to Ms. Simon -- is that, for example,
9 the Native people have a different relationship, as
10 I'm sure you understand, have a different relationship
11 with their ancestral grounds and the earth and so
12 forth that they have.

13 They feel the responsibility to care for
14 that part of their -- that they were put there by the
15 creator to be there to care for the earth. So when
16 they observe what has been done to that site by the
17 mining activity it may place certain obligations on
18 them to go to the site and perhaps do healing
19 ceremonies, do ceremonies that apologize or whatever,
20 but there may be certain ceremonial activity or
21 whatever that they would need to engage in.

22 So it's not just the views and so forth of
23 that, it would be their obligations really to heal
24 that area from what has been done by the 40 years or
25 so of mining, and so mainly the contamination water

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1 and so forth.

2 But those are things -- and hopefully it's
3 not going to -- we're not trying to re-open at this
4 point the discussion in terms of the water
5 contamination, but there might certain spiritual or
6 cultural components that relate to that that follow
7 the NRC or the obligations underneath.

8 JUDGE BOLLWERK: All right. Thank you for
9 that explanation. Both parties have spoken about the
10 need to I guess get a contractor, and those are sort
11 of the folks that are on the top level, but obviously
12 depending on how you are going to do the survey
13 somebody has to walk the area, somebody has to look
14 around, boots on the ground.

15 Is the Tribe going to be willing to
16 provide individuals with the requisite knowledge?

17 MR. REID: That's what is being proposed.
18 I can't tell you the transposition at this point, but
19 what we are trying to work out is whether or not the
20 Tribe can agree to have spiritual advisors, for
21 example, on the intangibles as well as the expert come
22 to the site and be the boots on the ground.

23 I will tell you, for example, Tim Mentz
24 was able to identify hundreds of GCPs up at the Dakota
25 Access site that were missed by the non-native survey

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1 that was done up there.

2 And once you understand the traditions of
3 the culture of the people you can go to an area like
4 Crow Butte and have a fashion and different look at
5 that area and be able to identify that.

6 So we are looking at getting the
7 appropriate persons and people that have knowledge,
8 the tribal historians, for example, too. Mr. Salway
9 is also a tribal historian who can come to that area
10 and say, well, this is where, for example, the
11 encampment would have been for the Cheyenne Starve
12 Treaty, those kinds of things.

13 Therefore, we can -- This has certain
14 historic value that was overlooked under the Historic
15 Preservation Act. But, you know, you are asking me
16 for a commitment, we cannot give you a commitment yet
17 because the Tribe is not at a point where they could
18 actually approve the survey process, but we are
19 presenting that to the Tribe.

20 JUDGE BOLLWERK: Right, I understand. One
21 last question, Ms. Simon pointed out sort of a very
22 general schedule. Do you have anything you want to
23 say about the schedule you have heard from her or
24 anything you have in your mind about schedule?

25 MR. REID: I think she actually mentioned

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1 this during the last call, I believe, is that the NRC
2 staff is well aware of that August and the surrounding
3 months are a very important time of ceremony for the
4 Lakota people, but mostly the Sun Dance, or actually
5 hundreds of Sun Dances held every year around the
6 country, and mostly in August.

7 So she is trying to avoid that period. I
8 also think because of COVID, we have to get around
9 COVID, that now is the time to get the groundwork
10 done, not boots on the ground, but the underlying work
11 that needs to be done, design the program and get the
12 permissions that we need if we can get them and so
13 forth to go ahead.

14 And so we are looking at in terms of boots
15 on the ground, which is what you mentioned, I think
16 we're probably looking at some time after August. If
17 we can get there maybe for that initial visit that I
18 mentioned before then, which is what we are planning
19 to do, that's boots on the ground.

20 We are trying to do that before that. We
21 are looking at I think May or June/July, something
22 like that. That will help us a lot in terms of
23 deciding how the survey will go itself and the Tribe
24 is really looking towards trying to be as much in
25 control of the process as it will be allowed.

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1 I described this to Ms. Simon as a primary
2 participant, for example, in deciding that if the
3 Tribe is the one with that information there is a
4 certain manner in which that information has to be
5 conveyed then the Tribe should describe that and
6 dictate the parameters of the survey process.

7 So we are working with them seeing if we
8 can get agreement on that and rather than reacting to
9 something that the NRC simply gives us that they
10 design with their expert.

11 We are actually trying to take a more
12 proactive role in this and work with the NRC staff on
13 it.

14 JUDGE BOLLWERK: All right. Thank you
15 very much for your comments, I appreciate it.

16 MR. REID: All right. Thank you.

17 JUDGE GIBSON: Judge Arnold, do you have
18 anything?

19 JUDGE ARNOLD: No, I have nothing.

20 JUDGE GIBSON: Okay, very well. Thank
21 you.

22 MR. REID: Just one quick thing I wanted
23 to mention is one big issue will be, and we may have
24 to work this out, will be whether or not we can get
25 any funding on this and we'll have to perhaps have

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1 some discussions with Crow Butte.

2 As you know Pine Ridge is one of the most
3 impoverished areas in the country. The Tribe has very
4 little money to pay for this and we are talking about
5 employing our spiritual advisors and its tribal
6 historians.

7 Their time is as valuable as anybody
8 else's, and so we would like to be able to compensate
9 them. And so some of this will be driven about
10 whether or not we have the financial resources
11 available to actually enable our participation. Any
12 help we can get either from Crow Butte or the NRC
13 staff would be helpful.

14 JUDGE GIBSON: Okay. Thank you, Mr. Reid.
15 Now, Mr. Lewis, I don't know if there is anything you
16 want to react to, but I certainly want to give you the
17 opportunity.

18 MR. LEWIS: Yes, just general reactions at
19 this point, because we don't have a proposal before
20 us. I do hope that we can plug into the process
21 sooner rather than later.

22 We did receive an update from the staff
23 yesterday on the March 8th meeting, but we really have
24 had, you know, very limited interaction at this point
25 with the Tribe and the NRC staff on what their

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1 discussions are.

2 I think it is helpful to plug Crow Butte
3 in earlier rather than later simply because the survey
4 process will need our involvement and support and we
5 very much want to move this process forward and make
6 it work.

7 But, in addition, you know, the
8 reasonableness of the process also depends on, you
9 know, what we can do and what we can bear. And,
10 therefore, just hopefully at some point we get more
11 involved in understanding what is being proposed and
12 be able to react to it.

13 I very much appreciate the nation-to-
14 nation type of consultation that is going on here. I
15 would note that the Executive Order 13175, which Mr.
16 Reid referred to and has provided, is endorsed by a
17 Commission Policy Statement in 2017 and heavily
18 reflected in an NRC Tribal Protocol Manual. So I
19 don't think there is really much of an issue about,
20 you know, does the NRC respect that process. In fact,
21 I think it's also reflected by the decisions of the
22 Board and the Commission in this proceeding.

23 I hope that doesn't bog down the
24 discussions, though. I think there is a need for,
25 given the nation-to-nation discussion, parties to

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1 communicate through their representatives.

2 Of course, they can take, you know, the
3 different proposals back and get approvals, but I
4 think at some point, you know, there may need, you
5 know, to be some structure with dates on, you know,
6 providing, you know, different proposals and getting
7 reactions and, you know, trying to work through an
8 agreement. And so I hope the process doesn't get
9 bogged down unnecessarily.

10 JUDGE GIBSON: Thank you, Mr. Lewis.
11 Okay, Mr. Ballanco and Mr. Frankel, I don't know,
12 again, if you all have anything you want to add in,
13 but I don't want you all to not have an opportunity to
14 say anything, so please speak if you wish to.

15 JUDGE BOLLWERK: Could I ask Mr. Lewis one
16 question before we move on? Sorry.

17 JUDGE GIBSON: Judge Bollwerk. I'm so
18 sorry.

19 JUDGE BOLLWERK: It's all right.

20 JUDGE GIBSON: Please, Judge Bollwerk, yes.

21 JUDGE BOLLWERK: Mr. Lewis, Mr. Reid
22 raised the question of compensation which was an
23 important issue in the Powertech cases. Is there
24 anything you want to offer from Crow Butte's
25 perspective about that point?

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1 MR. LEWIS: In the Powertech proceeding
2 there was a proposal that was developed by the staff,
3 it's the February 2019 proposal, and that had
4 compensation. I can't remember now the different
5 terms, but they had honorarium and per diem and some
6 other elements. That process and proposal looked
7 reasonable to us.

8 I think there is a need if that is the
9 springboard for our proposal in this proceeding to
10 recognize that, but the Crow Butte proceeding is much
11 smaller than the Dewey Burdock -- sorry, the Crow
12 Butte site is much smaller than the Dewey Burdock site
13 and, therefore, maybe it's not the same amount of
14 time.

15 I think that proposal had two events times
16 two weeks and, you know, the Crow Butte site is about
17 a third of the site so maybe it's two events each of
18 one week or something like that. But I think the
19 financial arrangements in there looked similar to what
20 Crow Butte had itself proposed earlier in this
21 proceeding. But, you know, there are limits. I mean,
22 this is a challenging time for a uranium mine in the
23 United States and, therefore, you know,
24 reasonableness, again, I think, you know, depends on,
25 you know, what ultimately is being asked for. And I

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1 can't really react more than that at this point in
2 time.

3 JUDGE BOLLWERK: Does Crow Butte have any
4 thoughts at this point about the possibility of the
5 creation of a uranium reserve and how that might
6 impact your ability at this site or others that you
7 are working on?

8 MR. LEWIS: I haven't really discussed it
9 with my client, though I believe the fact that there
10 is this proposal to create a uranium reserve may make
11 and resume an operation at Crow Butte attractive in
12 the future. So I'm not sure I answered your question.

13 JUDGE BOLLWERK: All right, okay. No, I
14 appreciate that. Thank you.

15 JUDGE GIBSON: Okay. Judge Arnold,
16 anything you wanted to ask Mr. Lewis?

17 JUDGE ARNOLD: No, I have no questions.

18 JUDGE GIBSON: Okay. Now, Mr. Frankel and
19 Mr. Ballanco, if there is anything you all wanted to
20 add please do so now.

21 MR. BALLANCO: Thank you, Your Honor. Tom
22 Ballanco. We are following, of course, the lead of
23 the Tribe on this. Obviously, individual tribal
24 members also have interests and rights in cultural
25 resources, but in this situation the Tribe is

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1 certainly making progress here. We remain cautiously
2 optimistic with the progress that we are seeing here
3 and encourage the continued dialogue and movement.

4 As you know, we are involved in a number
5 of these cases in the same vicinity and it seems like
6 this situation is one where we are noticing the most
7 progress, so we are appreciative of the efforts on all
8 sides in that and look forward to a continued
9 engagement.

10 JUDGE GIBSON: Thank you, Mr. Ballanco.
11 Now, Judge Bollwerk, did you have any questions you
12 wanted to ask Mr. Ballanco or Mr. Frankel?

13 JUDGE BOLLWERK: I think I am good with
14 Mr. Ballanco. I haven't heard from Mr. Frankel yet,
15 but --

16 JUDGE GIBSON: Okay.

17 MR. FRANKEL: Thank you, Judge. I don't
18 have anything to add to Mr. Ballanco's comments.

19 JUDGE GIBSON: Very well. Thank you. Now
20 I think we need to circle back around to Ms. Simon to
21 see if having heard, gotten the reaction from all
22 these folks, if there is something that she realized
23 she forgot to say or something to which she feels she
24 needs to respond.

25 MS. SIMON: Thank you, Judge Gibson. I do

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1 want to respond a little bit to Mr. Reid's discussion.
2 He discussed a lot of items there and I want to echo
3 his sentiment that I am encouraged by I think the good
4 faith efforts of both the tribal subject matter
5 experts and I think the staff's subject matter experts
6 so far in terms of trying to understand each other's
7 positions and try to work things out.

8 I do want to say that, and Mr. Reid and I
9 had a long discussion, which was very collegial and
10 very informative, where we shared the positions of our
11 clients on various topics and our legal views on some
12 topics.

13 We do have some differences in that
14 regard, for instance with respect to the scope of NEPA
15 and whether it's quite as broad in my view as Mr. Reid
16 looks at it.

17 But that being said, we're trying to work
18 out -- The staff's goal is to obviously have the input
19 of the Tribe because they have the expertise in
20 identifying the sites and their significance and the
21 staff also wants to do that in a way that is not going
22 to be overly costly to the applicant and that can be
23 done in a timely manner.

24 So we are trying to -- I guess it's a big
25 optimization problem and so, you know, the staff is

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1 appreciative of and understands, for instance, the
2 Tribe's processes internally and is, you know, the
3 goal is to be reasonable and to accommodate that with
4 also the understanding that there has to be a balance
5 with working towards a relatively timely resolution of
6 these issues.

7 Let's see. I did want to say with regard
8 to -- So I mentioned that the staff wants to have the
9 field work done by the end of October and Mr. Reid
10 mentioned the Sun Dances and my understanding from
11 previous years is that the main month for the Sun
12 Dances is July, so I will ask for clarification about
13 that.

14 I know sometimes parts of June and August
15 might be implicated as well, but right now what the
16 staff is envisioning is there is, you know, say a 10-
17 week period from say mid-August to the end October in
18 which they are looking at, you know, field work
19 activities and any kind of in-person, you know,
20 discussions with elders and things like that might
21 take place.

22 As Mr. Reid indicated hopefully COVID will
23 be somewhat under control by the summer, and so I
24 think that mid-August to October timeframe is, you
25 know, I am optimistic that based on news reports and

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1 the anticipated availability of vaccines that
2 hopefully conditions will be more conducive for that
3 kind of work, you know, at say the mid-August,
4 starting in say mid-August.

5 So with that in mind working backwards,
6 the staff's idea is to try to have the methodology
7 finalized by sometime in June, probably the end of
8 June, and that would give six to eight weeks, if I am
9 doing the math right, to kind of get logistics worked
10 out as far as starting field work.

11 So I think so now we are in mid to late
12 February, so that's, again, if I am doing the math
13 right, four months to try to work out the methodology,
14 so I am optimistic that we can make progress and meet
15 that target.

16 And with regard to Mr. Lewis and, you
17 know, his hope that the applicant can become more
18 involved in discussions, I think the staff is planning
19 to begin reaching out with regard to, like I said, the
20 potential target dates and milestones, providing that
21 information to all the parties shortly when it is
22 available and just having discussions about things
23 like the, well, once the methodology I guess becomes
24 a little more concrete, involving the applicant in
25 those discussions and also with regard to any funding

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1 issues.

2 So the staff does plan to have more
3 outreach with the applicant, again, you know, in the
4 next month or two I would imagine. Let me just see if
5 there is anything else.

6 I guess one thing with relation to the
7 nation-to-nation aspect that Mr. Reid mentioned,
8 certainly the staff is committed to following the
9 Tribal Protocol Manual and the Tribal Policy Statement
10 with regard to the interactions with the Tribe.

11 I do want to mention though that as far as
12 the resolution of Contention 1 the Board did not
13 identify deficiencies in the staff's consultation
14 process as part of Contention 1, and so the staff's
15 understanding of what needs to be done is primarily
16 related to the identification and evaluation of
17 cultural resources.

18 But, again, that being said, certainly in
19 the interactions with the Tribe so far and, you know,
20 coming up the staff does intend as always to follow
21 its policy and protocol manual.

22 And with that, I think I am done. So,
23 thank you, Judge Gibson.

24 JUDGE GIBSON: Thank you, Ms. Simon.
25 Well, with that let me ask if there is anything else

1 that anyone needs to raise before we go off this call?

2 MR. LEWIS: Not here.

3 JUDGE GIBSON: Okay.

4 JUDGE BOLLWERK: Could I ask a general
5 question?

6 JUDGE GIBSON: By all means, Judge
7 Bollwerk.

8 JUDGE BOLLWERK: Given the mid-March
9 meeting that is going to be held it makes sense for us
10 to get together with the parties again after that?

11 JUDGE GIBSON: That was going to be my
12 next point, but absolutely.

13 JUDGE BOLLWERK: Okay.

14 JUDGE GIBSON: No, no, no, I'm glad you
15 raised it. Precisely. Ms. Simon, is that agreeable
16 to you, do something after that mid-March confab that
17 you all are planning?

18 MS. SIMON: Whatever is good. Whatever
19 the Board would like to do is fine with me. I was
20 thinking maybe actually in the hopes of having a
21 meeting in March and then potentially another meeting
22 in April and again hoping that the staff had its
23 contractor on board say in early April, so perhaps an
24 April meeting could involve the contractor.

25 I was going to suggest of potentially

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1 waiting until April to do a meeting, but I am happy to
2 do one in March after that meeting if the Board would
3 like.

4 JUDGE GIBSON: Judge Bollwerk?

5 JUDGE BOLLWERK: I mean I think it might
6 be well, assuming that the staff can stay on target
7 with their contracting process, to wait until after
8 the contractor is there because then we may get more
9 of a sense of methodology and how that is going to be
10 developed and what the interaction is going to be with
11 the staff and the Tribe. Does that seem to make sense,
12 Ms. Simon?

13 MS. SIMON: That makes sense to me, yes.

14 JUDGE BOLLWERK: We are here to watch and
15 learn, we don't want to harass you all. On the other
16 hand, we do want to -- I think we have made it clear
17 already that as you have indicated that this process
18 can't go on forever and as part of the adjudication
19 it's our responsibility to make sure that things are
20 happening, whatever they might be.

21 Judge Gibson, I don't know, do you have
22 any thoughts about it, or Judge Arnold?

23 JUDGE GIBSON: April makes sense to me.
24 Judge Arnold?

25 JUDGE ARNOLD: April sounds about right to

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1 me.

2 JUDGE GIBSON: Okay, very good. What I
3 would suggest then, Ms. Arnold, is, I mean, Ms. Simon,
4 is that you propose a date to us in April after you
5 have sort of figured out when you are going to have
6 your contractors on board and we'll be able to talk a
7 little bit about some of the methodology and we could
8 do it about then.

9 JUDGE BOLLWERK: Could I ask Mr. Reid one
10 question before we -- Mr. Reid, do you think your
11 contractor will be around by April?

12 MR. REID: I think it's very likely.
13 Again, I think it would helpful to schedule the next
14 status conference at some point after the time that
15 the Tribe's contractor could actually speak with the
16 NRC staff contractor so perhaps we can give you more
17 information as to where the parties are going in this
18 process.

19 Also, that will give us -- as you probably
20 are well aware, it is very difficult for us sometimes
21 to get matters before the Tribal Council and get
22 approval. And it takes time and I can't help that,
23 it's just part of the process.

24 So later in April would probably be better
25 and I think it would work better for us, even early

1 May. Thank you.

2 MS. SIMON: Judge Gibson?

3 JUDGE GIBSON: Very well then. What I
4 would like to propose, Ms. Simon, would be that we
5 will not set a specific date at this time but give you
6 an opportunity to double back with your colleagues
7 there, with your contractor, with Mr. Reid and the
8 folks that are working with him, and then you provide
9 us with a proposed date in April when we can have this
10 status conference that makes sense to you all and let
11 Mr. Curry know that and then we will set it. Would
12 that work?

13 MS. SIMON: That sounds fine, Judge
14 Gibson. What I will likely do is for our April status
15 report I will try to get together with the parties
16 prior to that and provide the information either in
17 that or that day I can provide it separately.

18 Would you prefer that I just email Mr.
19 Curry separately or would you prefer that I provide it
20 in the status report or no preference?

21 JUDGE GIBSON: I think it's far more
22 important to get it to Mr. Curry because we are
23 talking about two separate things and we need to get
24 this thing set once we know about when it's going to
25 happen and not to wait for another event to do that.

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1 Would that be okay?

2 MS. SIMON: That sounds fine. Thank you.

3 JUDGE GIBSON: Very well. Okay. With that,
4 is there anything else that we need to address that
5 anyone has? Speak now or forever hold your peace.

6 (No response.)

7 JUDGE GIBSON: Very well. Okay. Before
8 we recess I again want to note the superb support that
9 we have gotten from Andrew Welkie who is overseeing
10 this video yet again and has done a superb job to keep
11 us all operating in sync, and also to recognize Sara
12 Culler, our administrative assistant who has been
13 working on this matter as well.

14 Finally, I would like for everyone to
15 please stay on until the court reporter dismisses you
16 just in case the court reporter has any questions that
17 they couldn't transcribe, and so if you could please
18 do that we'd appreciate it.

19 With that, I think Judge Bollwerk and
20 Judge Arnold and I will probably get off this call.
21 Thank you so much. We stand in recess.

22 MR. LEWIS: Thank you.

23 MR. REID: Thank you.

24 (Whereupon, the above-entitled matter went
25 off the record at 2:42 p.m.)