

Diaz Toro, Diana

From: lawyerreid <lawyerreid@gmail.com>
Sent: Wednesday, March 03, 2021 2:24 PM
To: Diaz Toro, Diana
Cc: Harold Salway; Thomas Brings; Trefethen, Jean; Simon, Marcia
Subject: [External_Sender] Re: Draft Summary - February 8 Meeting between the Nuclear Regulatory Commission staff and Oglala Sioux Tribe representatives
Attachments: Summary-February 8 2021 Meeting with Oglala Sioux Tribe-Draft w ABR revisions.docx

I've been asked by Thomas Brings to provide you with the attached revised draft Summary of the Feb. 8, 2021, initial online conference.

Thank you,

Andrew B. Reid

On Tue, Feb 16, 2021 at 2:11 PM Diaz Toro, Diana <Diana.Diaz-Toro@nrc.gov> wrote:

Good afternoon,

Thank you for the opportunity to meet with you on February 8 to share information as part of NRC staff's efforts to identify sites of historic, cultural, and religious significance to the Oglala Sioux Tribe that could be affected by the continued operation of the Crow Butte in situ uranium recovery (ISR) facility, located in Crawford, Nebraska, under the renewed license. As discussed during the meeting, it is the NRC staff's practice to prepare meeting summaries as part of the record. Attached for your review and comment is the draft summary of the February 8 meeting. The draft summary captures the information shared at a level of detail commensurate with that exchanged during the meeting. Comments would be greatly appreciated by Friday February 19.

Additionally, during the meeting you asked about the current status of the Crow Butte ISR facility. The licensee's letter dated August 3, 2020 letter ([ADAMS Accession No. ML20234A424](#)) provides a status update of each of the wellfields. With respect to the maximum license term for uranium recovery facilities, applicants and licensees can seek a license under 10 CFR Part 40 for a maximum term of 20 years per the Commission's Staff Requirements Memorandum, SECY-17-0086, "Increasing License Terms for Uranium Recovery Facilities," dated November 9, 2017 (see [ADAMS Accession Nos. ML17313B020](#) and [ML17093A951](#)).

Finally, we are available the week of March 15, 2021 for a follow-up meeting to continue the discussions. Potential dates and times for your consideration:

March 15, 10:30am-12pm MT (12:30an-2pm ET) or 1-2:30pm MT (3-4:30pm ET)

March 16, 1-2:30 pm MT (3-4:30pm ET)

March 17, 10:30am-12pm MT (12:30am-2pm ET) or 1-2:30pm MT (3-4:30pm ET)

If none of these dates work, please, propose a date and time, and we will do our best to make ourselves available.

Regards,

Diana

Diana Diaz-Toro

Project Manager

NMSS/REFS/ERMB

301-415-0930

diana.diaz-toro@nrc.gov

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Crow Butte Resources *In Situ* Uranium Recovery License Renewal Application

U.S. Nuclear Regulatory Commission (NRC) Meeting with the Oglala Sioux Tribe

Draft Summary

Date: February 8, 2021

Time: 10:30am – 12:30pm MT (12:30 - 2:30pm ET)

Purpose:

The purpose of the meeting was for the participants to introduce themselves to each other and share information as part of the efforts to identify sites of historic, cultural, and spiritual (religious) significance to the Oglala Lakota Nation (referred to as the Oglala Sioux Tribe ("Tribe") and its people) that could be affected by the continued operation of the Crow Butte *in situ* uranium recovery (ISR) facility, located in Crawford, Nebraska, under the renewed license.

Participants:

Oglala Sioux Tribe	NRC
Harold Salway, Director, Natural Resources Regulatory Agency	Diana Diaz-Toro, Project Manager
Thomas Brings, Tribal Historic Preservation Officer, Cultural Affairs and Historic Preservation Office	Jean Trefethen, Project Manager
Andrew Reid, Counsel for Oglala Sioux Tribe	Marcia Simon, Counsel for NRC Staff

Summary:

After introductions, the Tribe's participants explained that during this February 8, 2021 meeting they could not provide positions or commitments on behalf of the Tribe, and their role was to listen and hear what the NRC staff had to say. They further explained some aspects of the decision-making process within the Tribe as a sovereign nation. The Tribe's Cultural Affairs and Historic Preservation Office has a four-member Elder advisory council that advises on all cultural and spiritual affairs, and the Tribe's participants could not make decisions without consulting spiritual advisors and the Elder advisory council. Also, commitments, positions, or decisions from the Tribe must be discussed with and authorized by the Tribal Council and, in certain instances, the Tribe's spiritual advisors.

Mr. Reid explained his view that the National Environmental Policy Act (NEPA) requires a more extensive survey of spiritual "intangible" interests (i.e., spiritual, historical, cultural), not just artifacts from the site. He also shared, for example, the Tribe's view that surface and underground water at the Crow Butte site, which is within the Tribe's ancestral lands and still claimed by it under its 1851 and 1868 Fort Laramie Treaties (the "Unceded Lands"), is an intangible spiritual and cultural interest, and for this reason they would like to include Mr. Reno Red Cloud, the Tribe's Water Resources Director, in discussions.

The NRC staff provided a brief overview of the Crow Butte Resources ISR facility and operations. The facility is located approximately 4 miles southeast of the city of Crawford, Nebraska. It was originally developed as an R&D facility in 1986. Crow Butte Resources has

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operated the current production area since commercial operations began in 1991. Approximately 1,100 acres out of the 3,300-acre license area have been disturbed by ISR operations. The license area includes a Central Processing Facility (CPF), 11 wellfields or mine units, deep disposal wells, and evaporation ponds.

The staff explained that all wellfields at the site have been developed and no further wellfield development is anticipated during the current license renewal period. In February 2018, the licensee announced plans to cease operations, and the facility is currently in "standby" mode with no active uranium recovery in any of the wellfields. The NRC staff referred to the licensee's August 2020 letter, which provides a status update of each of the wellfields. The NRC staff also explained that the licensee's plans for this site—such as whether the main purpose of keeping the license is to operate the CPF for planned expansion facilities—would be best addressed by the licensee.

In response to a question about the licensee's plans to seek a subsequent license renewal, the NRC staff explained that the Commission recently approved a staff recommendation to implement revised regulations that provide for a 20-year term for new applications and license renewals for uranium recovery facilities.

The NRC staff explained that the safety evaluation report (SER) and environmental assessment (EA) were published in 2014, and the renewed license was issued in November 2014 for 10 additional years. The NRC staff explained that they plan to supplement the EA with information gathered about sites of cultural, religious spiritual and historical significance to the Tribe.

Mr. Reid mentioned two recently issued executive Executive Orders by President Biden related to environmental justice and nation-to-nation consultation with Indian Tribes Native nations, and his view that these documents may impose additional obligations on the Staff regarding its work to resolve Contention 1. He requested the NRC's position on whether or not it considered these Executive Orders as binding upon the agency.

The Tribe's participants asked what specific information the NRC staff needs from the Tribe. The staff explained that it seeks input on aspects or elements of a survey that the Tribe considers important to identifying sites of significance to the Tribe. Mr. Reid reiterated that the Tribe considers water (both surface and groundwater) to be an intangible spiritual and cultural interest, and that healing and spiritual ceremonies might be needed to renew the relationship fulfill the responsibilities of the Lakota people with to the water and Grandmother Earth. He said it is inappropriate for the NRC to say what the Tribe's interests are and, in addition to water, gave examples of the impact of site disturbance on "relatives" of the Lakota people such as animals and birds, and on plants and herbs that have spiritual or medical uses.

The Tribe's participants said they would need to talk to the Tribal Council and Cultural Resources Committee, and spiritual advisers, regarding the sharing of cultural and spiritual information. They emphasized the sensitivities of sharing cultural and spiritual information considering their spiritual laws. The NRC staff indicated that it is respectful of the Tribe's requirements to protect such information and suggested that the information provided could be less specific because detailed information about significance would not be necessary to develop a survey methodology. The staff clarified that it seeks information about activities that the Tribe would need to have included in a methodology so the Tribe could reach significance determinations.

Mr. Reid noted that the Tribe is considering using Mr. Tim Mentz to replace the late

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Dr. Redmond as the Tribe's expert on cultural resources. Mr. Reid said that Mr. Mentz or spiritual advisors could look at the geography and through the unique understanding of their culture and history~~conduct ceremonies to~~ identify possible sites of ceremonial grounds like Sundances or where encampments might be located. He said such assessments ~~could may require involve~~ extended visits by appropriate people having knowledge of Lakota spirituality, culture, and history. The NRC staff explained that there are important safety and security considerations and limitations associated with an operating facility like the Crow Butte ISR facility (as opposed to a greenfield site), and these restrictions ~~will bound may limit~~ the assessment activities that can be carried out at the site.

Regarding an initial site visit, the Tribe explained that spiritual advisors should may need to participate, and they would need to discuss such a visit and obtain approval from its advisory committees or Tribal Council. The NRC staff clarified that the purpose of an initial site visit would not be to make commitments or decisions, or to conduct evaluations, but to gain familiarity with the site and landscape. Additionally, the NRC staff noted that the site visit would need to be conducted following state and the site's requirements and protocols for the Covid-19 public health emergency such as wearing masks, social distancing, and limiting the number of participants. The Tribe's goal of Mr. Salway and Mr. Brings is to bring this matter to the advisory committees and Tribal Council within the next month for discussion and direction.

In response to a question regarding the possibility of compensation to tribal participants, the NRC staff explained that it would need to further discuss this with the licensee. Additionally, Mr. Reid explained, in response to a question from one of the Tribe's participants, that the NRC's obligation with respect to resolving Contention 1 is only to the Oglala Sioux Tribe, but that does not preclude the Tribe from consulting with other tribes that may have an interest in the area.

Other matters discussed included the NRC's staff's development of a project schedule that considers weather limitations in carrying out fieldwork, the timing of Sundance ceremonies, and timely resolution of the contention~~Contention~~; and the staff's plan to hire a contractor to assist with the identification efforts.

The Tribe's participants and NRC staff agreed to continue to work in good faith and will meet again in March 2021 to continue discussions. The NRC staff will share the project schedule with the Tribe, when available.

Before adjourning, the NRC staff explained its practice of developing meeting summaries that are official agency records. The meeting summaries are intended to facilitate communication and common understanding of meeting discussions and outcomes. The NRC will provide a draft meeting summary for the Tribe's participant review and comment.