

Diaz Toro, Diana

From: lawyerreid <lawyerreid@gmail.com>
Sent: Thursday, April 29, 2021 7:23 PM
To: Diaz Toro, Diana
Cc: Thomas Brings; Baer, Lorraine; Trefethen, Jean; Simon, Marcia
Subject: [External_Sender] Re: Draft summary of the April 12, 2021 meeting with the NRC re: Crow Butte ISR license renewal proceeding - For Review and Comment
Attachments: Crow Butte Resources In Situ Uranium Recovery - revised.docx

Ms. Diaz Toro -

I've been requested to provide you with the attached online meeting summary with the Tribe's revisions.

Thank you.

Andrew Reid
Special OST Counsel, Crow Butte litigation

On Wed, Apr 21, 2021 at 3:31 PM Diaz Toro, Diana <Diana.Diaz-Toro@nrc.gov> wrote:

Mr. Brings,

Thank you for the opportunity to meet with the Oglala Sioux Tribe on April 12, 2021. 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 April 12 meeting. The draft summary captures the information shared at a level of detail commensurate with that exchanged during the meeting. Please provide comments by Wednesday April 28.

Thank you,

Diana

Diana Diaz-Toro

Project Manager

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Crow Butte Resources *In Situ* Uranium Recovery (ISR) License Renewal Application

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

Draft Summary

Date: April 12, 2021

Time: 1:00pm – 3:00pm MT (3:00 – 5:00pm ET)

Purpose:

The purpose of the meeting was for the NRC staff to discuss with the Oglala Sioux Tribe (the Oglala Lakota Nation) (hereinafter “Tribe”) several topics related to planning a site survey. Specifically, the topics included discussing an (i) initial site visit, (ii) materials that would help inform the initial site visit, (iii) the Tribe’s input on the survey methodology and project schedule, (iv) the Tribe’s written response to the NRC’s March 5, 2021, letter, (v) the Tribe’s interest in a presentation by the licensee on the site and ISR operations, and (vi) scheduling future meetings.

Participants:

Oglala Sioux Tribe	NRC
Thomas Brings, Tribal Historic Preservation Officer (THPO), Cultural Affairs and Historic Preservation Office	Diana Diaz-Toro, Project Manager
Michael Catches Enemy, former THPO and Liaison to Tribal Government/Fifth Member	Jean Trefethen, Project Manager
Tim Mentz, Standing Rock Sioux Tribe, potential contractor/expert for the Oglala Sioux Tribe	Marcia Simon, Counsel for NRC Staff
Reno Red Cloud, Director, Water Resources Department	Lorraine Baer, Counsel for NRC Staff
Carl Eagle Elk, Director, Natural Resources Mineral Department	
Harold Salway, Director, Natural Resources Regulatory Agency	
Andrew Reid, Counsel for Oglala Sioux Tribe	

Summary:

Prior to introductions, Mr. Reid asked the staff about the NRC’s rules on travel given the ongoing COVID-19 public health emergency and informed the staff that the Pine Ridge Reservation has established protocols on who can visit – for instance, all visitors are-may be required to have received a COVID-19 vaccination before entering.

Ms. Diaz-Toro also reiterated the NRC Staff’s practice of creating a draft summary of the meeting and providing it to Mr. Reid for the Tribe’s review and comment.

During the introductions, Mr. Reid noted that the Tribe is looking to retain Mr. Mentz to assist the Tribe with site survey efforts.

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Topic 1: Initial site visit

After introductions, the meeting attendees began discussing an initial site visit. The NRC staff explained that the purpose of this visit would be for the Tribe to familiarize themselves with the site in order to help the Tribe make decisions about elements to consider in a survey methodology. An initial site visit was discussed at the February 8 meeting. Based on COVID-19 restrictions, the [NRC Staff's](#) proposed plan was to have 2-3 participants from the Tribe spend 2-4 hours driving to different locations to provide an overview of the site and the landscape, and to see sites of significance that were identified during the Bozell & Pepperl survey in the 1980s, if desired.

The Tribal participants generally think that the initial site visit would be beneficial. Mr. Reid explained that there is a lot of interest from the Tribe in an initial site visit, so the number of participants would probably be at least double the staff's suggestion. Ms. Diaz-Toro suggested that perhaps two site visits could take place to limit the number of people gathered, but Mr. Reid's preference would be for everyone to attend at the same time. Mr. Reid stated that Mr. Mentz and at least one other expert would need to attend, as well as Mr. Brings, Mr. Red Cloud, Mr. Eagle Elk, and Mr. Salway. Mr. Reid also expressed interest in attending, and Mr. Salway suggested that Mr. Catches Enemy also attend as a link to Tribal government. Mr. Brings added that at least one and possibly two spiritual advisors would need to come and suggested the total number of Tribal participants would probably be closer to ten.

In discussing the possibility for the visit to occur in May, Mr. Reid said that although May could work, the visit might have to occur in June. While he understands that the NRC would like to accomplish the initial visit according to their schedule in support of timely resolution of the contention and because the Atomic Safety and Licensing Board is interested, he does not want to [compromise the survey by](#) rushing it. Mr. Brings will not be available during the first week of May but is available the rest of the month. Mr. Reid also mentioned that the Tribe is interested in a presentation from Cameco about the facility. Ms. Diaz-Toro mentioned that a presentation could be conducted in advance of the initial site visit.

In response to an inquiry regarding the scope of the initial site visit from Mr. Red Cloud, the staff explained that the initial site visit will not be the same as the site survey; the purpose of the initial site visit is orientation and familiarization. The focus is to see the location of the facility, the location of wellfields, and the landscape. The initial visit is not intended to include identification or evaluation of sites of significance [and of both tangible and intangible interests](#), but instead is intended to help the Tribe make decisions on elements the Tribe believes are important to include in a methodology so that the Tribe can provide the NRC staff with that input. The NRC staff agreed to discuss the possibility of up to 10 tribal participants with the licensee, and the Tribe agreed to identify the people who would participate.

Topic 2: Additional materials the Tribe may need

The NRC staff offered to share additional documents that could further inform the Tribe about the site and help the Tribe determine elements it believes are necessary for a survey. For example, Ms. Diaz-Toro stated that the NRC staff could provide the survey report from the Bozell & Pepperl survey and the map showing the sites that were identified during that survey. She noted that this map and other documents that are non-public would need to be encrypted before transmittal. Mr. Brings requested any archaeological reports the staff has. Mr. Mentz also requested any other archaeological reports or traditional cultural properties surveys after

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the 1992 amendments to the National Historic Preservation Act of 1966 (NHPA), including the 2012 Santee Sioux and Crow Nation report; any Class I Literature Reports; the Determination Letter from the Bozell & Pepperl survey; any other determination letter or concurrence letter from State Historic Preservation Office , and any evaluations that were considered for national landmark status. Mr. Reid additionally asked for anything that was not brought up during the evidentiary hearing – for example, if Cameco had walked the site and identified something since the hearing. Ms. Diaz-Toro said that she would ask the licensee about any additional identification activities since the hearing.

Mr. Reid then explained that, as it relates to the supplemental environmental assessment and intangible resources, much of the information the NRC staff is seeking is not written down because it has only been conveyed orally among the Lakota people. He mentioned, for example, information regarding history and use of the area, practice of ceremony, and value of herbs and other resources found there. He noted that because a lot of the information is not written down, and because elders and spiritual advisors are reluctant to share sensitive and sacred information with those outside (i.e., NRC staff, its contractor, and Cameco), the Tribe will need to determine how best to convey that information to the staff.

Mr. Red Cloud asked whether water, treaty laws, and environmental justice would be included in this effort. Ms. Simon clarified that the other contentions in this proceeding (e.g., those related to surface water and groundwater) have already been resolved, and the focus of Contention 1 is on identifying sites of significance to the Tribe. Mr. Reid echoed that the other contentions had been resolved in favor of the staff and the only remaining issue is-are the tangible and “intangible” interests (including but not limited to the spiritual, cultural, and historical interests) and satisfying the National Environmental Policy Act with respect to those interests. Mr. Reid stated that the staff failed to adequately address intangible interests of the Tribe, which includes spiritual, historical, and cultural interests beyond just artifacts. He expressed the view that, for example, if there needed to be a healing ceremony or another way of addressing water as sacred at the site in response to the past mining activity, that involves an intangible interest because of the value of water to the Tribe in ceremony and culture.

Topic 3: Additional materials the Tribe can share with the NRC Staff

Ms. Diaz-Toro asked whether the Tribe had publicly available information related to sites of significance in the area that they could provide to the staff. Mr. Brings stated that he would need the advice from the Elder Advisory Council on information and materials the Tribe can disclose. Ms. Diaz-Toro reiterated that the staff is seeking any publicly available documents. Ms. Simon asked Mr. Mentz whether he knew of any information, such as survey reports, related to sites of significance to the Lakota in the vicinity of the Crow Butte facility. He responded that he was aware of such publicly available reports, but he did not see much value in them or recommend them largely due to potential cultural bias or lack of appropriate relevant cultural information. He also said that he has information on site types that survey participants might encounter, but he only wants to share that information with other Lakota members and Mr. Reid because he is reluctant to expose that spiritually or culturally sensitive information to the public. Mr. Reid stated that the Tribe wants to work in good faith and clarified that the Tribe would only withhold culturally or spiritually sensitive information. He also stated that although he cannot release information without permission from the Tribe, he will encourage sharing of information.

Topic 4: Survey methodology

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Mr. Reid stated that the Tribe cannot decide what is necessary for a survey methodology (such as the exact scope, number, dates, lengths, and nature of visits, number of phases, and how many people will participate) until after the initial site visit. Mr. Brings added that every methodology needs to be site-specific rather than one-size-fits-all. The NRC Staff mentioned that its March 5, 2021, letter provided some ideas on elements of a methodology to consider.

Topic 5: Tribe's written response to NRC's March 5, 2021 letter and proposed schedule

Mr. Reid explained that the Tribe cannot provide feedback on the survey methodology, including the staff's suggested survey elements, as requested in the NRC staff's March 5, 2021 letter until after the initial site visit. He also mentioned that the survey methodology will have to cover how to compensate tribal participants for their time and effort. Mr. Reid stated his view that the company profiting of millions of dollars off of the past and future commercial mining activity (Cameco) should ensure that the Tribe does not have to suffer to pay their own expenses for their participation in a survey involving the Tribe's own ancestral and Treaty territory and lands.

Mr. Mentz elaborated that it can be difficult to convert the Tribe's oral history, knowledge, and worldview into the format of an NHPA Section 106 evaluation. Additionally, he indicated that the person obtaining that information cannot be a non-Indian, even if they have an anthropology or archaeology degree, because the Tribal elders and spiritual leaders would be reluctant to talk to a non-Indian person, and he sees the NRC staff's hiring of a contractor as a red flag. However, he did mention that the elders and spiritual leaders prefer audio recording over video recording.

Mr. Mentz relayed that there is a way to address intangible resources that has been used in other projects, such as a North Dakota Department of Transportation survey in Williston, ND. He then reiterated that it would be very hard for a non-Indian to sit down with individuals of the Oglala Sioux Tribe to obtain the information needed.

Because Mr. Reid stated that the Tribe cannot provide input on the NRC staff's March 5 letter until after the initial site visit, Ms. Simon suggested that the visit should occur sooner rather than later and reiterated the mid-May 2021 goal. Ms. Simon explained that a mid-May site visit would give the Tribe more time to discuss ideas and would allow the NRC staff to start developing a proposed methodology sooner, which would balance the needs of both groups. Mr. Reid stated that he would work with Mr. Brings to get the NRC staff a more definitive number of people who want to participate, with a goal of accomplishing the initial site visit in mid- to late- May.

The NRC Staff went over the schedule included in the staff's March 5, 2021 letter. Ms. Diaz-Toro reiterated the importance to the NRC Staff of having a methodology completed by the end of June in order to complete all fieldwork by October 2021. She acknowledged that it is the staff's intention for the staff and contractor to draft the survey report with input from the Tribe, but that the staff would consider Mr. Mentz's observations that a non-Indian cannot obtain the information developed by Indian tribes.

Mr. Reid then spoke about Mr. Mentz's role in the process. He described Mr. Mentz as a "filter," because Mr. Mentz has the position, respect, and credibility to obtain the information needed from the Oglala Sioux Tribe to assess the intangibles. Mr. Reid suggested that because the NRC's expert will not be able to get the information easily, Mr. Mentz will need to be the liaison between the Tribe and the NRC's expert, and it will not be possible to obtain the information unless Mr. Mentz is involved.

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Mr. Reid further stated that retaining Mr. Mentz's services cannot happen unless there is compensation to hire his company, and what Cameco has proposed so far is insufficient to cover those costs. He indicated that the Tribe would obtain an estimate from Mr. Mentz, and the Tribe would also provide an estimate for compensation of non-tribal employees (e.g., spiritual advisors, historians, and elders). Mr. Reid said that if the estimates are quite a bit higher than Cameco's original proposal, then Cameco will need to get on board or the survey will not take place, resulting in further litigation. Mr. Reid stated that he would be willing to engaged directly with Cameco's counsel over the issue of compensation to the Tribe and Mr. Mentz for their services in performing and completing the required supplemental NEPA survey.

Mr. Reid said that the Tribe cannot financially afford and as the victim of Cameco's commercial mining activities should not be required, to bear the costs of protect its own interests. ~~He thinks~~The Tribe's position is that the NRC can tell Cameco that they have to pay what is necessary to complete the supplemental NEPA assessment. He also reiterated that after the initial site visit, unless Cameco is willing to come up with "real money," it may all fall apart, and he wanted that in the record. He mentioned that he would be willing to have discussions with Cameco's attorney about this issue.

Ms. Diaz-Toro acknowledged and appreciated the input, and understood that after the initial site visit, the Tribe will get back to the NRC staff about cost estimates, input on the methodology, and the proposed project schedule.

Topic 6: Future meetings

Mr. Reid suggested that once a date is set for the initial site visit, the staff and the Tribal participants should hold another 30-minute to one-hour meeting to discuss logistics of the initial site visit. The NRC staff also indicated that at this time, Cameco can also provide an overview of the site and operations.

Closing remarks

The NRC staff thanked the Tribe's participants for their time and all of the information that they shared.

Summary of Action Items

Staff

- Provide the Tribe historic and cultural resources-related documents discussed under Topic #2
- Contact Cameco regarding number of initial site visit participants
- Propose dates for initial site visit
- Provide draft meeting summary to Tribe

Tribe

- Identify necessary participants for initial site visit
- Confirm availability for initial site visit after receiving proposed dates
- Discuss with Cameco the payment of the full costs incurred by the Tribe and Mr. Mentz in participating in the survey and report
- Provide comments on draft meeting summary