

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: Wednesday, May 4, 2022

Work Order No.: NRC-1944

Pages 3102-3155

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1716 14th Street, N.W.
Washington, D.C. 20009
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

-----x

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

-----x

Wednesday, May 4th, 2022

Teleconference

BEFORE:
MICHAEL M. GIBSON, Chairman
G. PAUL BOLLWERK, III, Administrative Judge
DR. GARY S. ARNOLD, Administrative Judge

1 APPEARANCES:

2

3 Counsel for the Applicant

4 Anne R. Leidich, Esq.

5 David R. Lewis, Esq.

6 of: Pillsbury Winthrop Shaw Pittman, LLP

7 1200 Seventeenth Street, NW

8 Washington, DC 20036

9 202-663-8707 (Leidich)

10 202-663-8474 (Lewis)

11 anne.leidich@pillsburylaw.com

12 david.lewis@pillsburylaw.com

13

14 On Behalf of the Nuclear Regulatory Commission

15 Lorraine Baer, Esq.

16 Marcia J. Simon, Esq.

17 of: U.S. Nuclear Regulatory Commission

18 Office of the General Counsel

19 Mail Stop O-15D21

20 Washington, DC 20555-0001

21 301-415-4126

22 lorraine.baer@nrc.gov

23 Marcia.simon@nrc.gov

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On Behalf of the Oglala Sioux Tribe

Andrew Reid, Esq.

Ved Nanda Center for International and
Comparative Law

1075 Waite Drive

Boulder, CO 80303

303-437-0280

lawyerreid@gmail.com

On Behalf of Consolidated Intervenors

David C. Frankel, Esq.

1430 Haines Avenue

#108-372

Rapid City, SD 57701

916-250-0215

arm.legal@gmail.com

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

1:35 p.m.

JUDGE GIBSON: Good afternoon. This is Judge Gibson with the Atomic Safety and Licensing Board Panel.

Is the court reporter on the line with us?

(No audible response.)

JUDGE GIBSON: Okay. Thank you.

We're here this afternoon on the renewal of the license for an in situ leach mining operation of Crow Butte Resources, Docket No. 40-8943.

After the initial decision issued by this Board in this matter was affirmed by the Nuclear Regulatory Commission in the fall of 2020, we set this matter for a status conference. We have since had a number of them. In fact this is I believe now our eighth status conference.

With me on the Board are Judges Bollwerk and Arnold. And as you can probably tell the three if us are still appearing virtually, though we remain hopeful that before too much longer we can appear in person together. Also with us on this call are our law clerks Brooke Taylor and Allison Wood, whom you heard from earlier.

I would now like to have the announcements

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 of counsel, first from Crow Butte.

2 MR. LEWIS: Good morning. This is David
3 Lewis from the law firm Pillsbury Winthrop Shaw
4 Pittman representing Crow Butte Resources. Also on
5 the teleconference is my colleague Anne Leidich from
6 the same firm.

7 JUDGE GIBSON: Thank you, Mr. Lewis.

8 For the NRC staff?

9 MS. SIMON: Good afternoon, everyone.
10 This is Marcia Simon from the staff. With me is co-
11 counsel Lorraine Baer, and also listening in is our
12 project manager Jean Trefethen.

13 JUDGE GIBSON: Very well. Thank you, Ms.
14 Simon.

15 For the Oglala Sioux Tribe?

16 MR. REID: Good afternoon. This is Andrew
17 Reid for the Oglala Sioux Tribe.

18 JUDGE GIBSON: Thank you, Mr. Reid.

19 And for Consolidated Interveners?

20 MR. FRANKEL: Hello, this is David Frankel
21 for Consolidated Interveners.

22 JUDGE GIBSON: Thank you. And, Mr.
23 Frankel, I understand that Mr. Ballanco will not be
24 with us today. Is that correct, sir?

25 MR. FRANKEL: Yes, Judge, that's correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE GIBSON: Okay. Thank you so much.

2 As I have tried to note at the beginning
3 of every argument, conference, and hearing that we've
4 held in this matter since 2008, because artifacts and
5 historic sites are central in this proceeding, it is
6 important that all of us be mindful that insofar as
7 our discussions during this status conference might
8 implicate either the nature or the location of any of
9 these cultural resources, I would ask that you please
10 flag that for us and we will simply set a discussion
11 about that topic aside until the end of this status
12 conference when we can exclude the public and we can
13 proceed into a non-public format to address those
14 matters.

15 Likewise, as I noted in our previous
16 status conferences, but bears repeating, since the
17 Commission's decision this Board's job here is not in
18 any way to supervise the performance of the NRC staff,
19 but rather to monitor the progress that the staff is
20 making to address the cultural resources issues that
21 we adjudicated previously and that are addressed in
22 our initial decision.

23 Before we proceed, Judge Arnold and Judge
24 Bollwerk, do either of you have anything you want to
25 say at this time?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE BOLLWERK: Nothing from me. Thank
2 you.

3 JUDGE GIBSON: Judge Arnold, do you have
4 anything you need to raise at this time?

5 JUDGE ARNOLD: Sorry. Nothing from me.

6 JUDGE GIBSON: Okay. Thank you.

7 Very well. Then I guess, Ms. Simon, why
8 don't you proceed and give us at least a thumbnail
9 summary of where we are at this point in time?

10 MS. SIMON: Okay. Thank you, Judge
11 Gibson.

12 So back in January at our last status
13 conference I informed you that the NRC staff and the
14 Oglala Sioux Tribe had agreed on an extension of the
15 date to submit the draft report on the Cultural
16 Resources Survey, and the due date was March 4th.

17 As described in our April status update,
18 the tribe was not able to submit the draft report on
19 March 4th as previously agreed upon. On March 7th
20 when the staff inquired about the report status, Mr.
21 Reid informed the staff that the draft report still
22 had to be reviewed and approved by the Tribal Council
23 before it could be delivered to the NRC. And
24 subsequently Mr. Reid notified the staff that the
25 report had been placed on the council's meeting agenda

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 for March 29th. And following that meeting he
2 informed us that the draft report had been approved
3 and he provided the report to the staff on April 1st.

4 As described in our May status update,
5 after the staff's contractor Mr. Spangler reviewed the
6 report, the staff sent an email to the Tribe on April
7 12th seeking clarification on one item and requesting
8 some of the supporting documents. And on April 21st
9 Mr. Reid provided the supporting documents and
10 informed the staff that the Tribe's contractor,
11 Quality Services, Incorporated, was revising the
12 report to address the staff's clarification question.
13 And the following day Mr. Reid submitted the revised
14 version of the report. So that was April 22nd.

15 Also as noted in the May update, both the
16 original and revised reports have been placed in ADAMS
17 as non-public documents and staff counsel has provided
18 the un-redacted report to counsel for Crow Butte
19 Resources under the protective order for the
20 proceeding.

21 And finally, anticipating that the Board
22 is probably interested in the staff's schedule going
23 forward, the staff plans to send the draft
24 environmental assessment supplement to the Tribe at
25 the end of this month and to provide the Tribe with 30

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 days to respond with written comments. And the
2 Tribe's comments would then be due by the end of June
3 based on that timing.

4 The staff will then prepare the draft EA
5 supplement that would be issued for public review and
6 comment. The staff plans to issue the draft EA
7 supplement for public comment in late July or early
8 August and to allow a 30-day public comment period.

9 And then finally, the staff would prepare
10 the final EA supplement and the staff plans to issue
11 that in late September or early October.

12 JUDGE GIBSON: Very well. You did
13 anticipate some of our questions, Ms. Simon.

14 Let me just ask, Judge Bollwerk, did you
15 have any questions you wanted to ask Ms. Simon?

16 JUDGE BOLLWERK: Does night follow day?

17 JUDGE GIBSON: (Laughter.)

18 JUDGE BOLLWERK: This is Judge Bollwerk.
19 So let me go ahead. I appreciate the update on the
20 schedule. And so I guess in January you'd indicated
21 that hoped that you could basically absorb some of the
22 additional time that it was taking to finish up all
23 the exchange of the reports. And it looks like now
24 you've actually absorbed that into the final schedule.
25 It's pretty much like the one that you provided

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 earlier with the 30-day review by the Tribe starting
2 on -- in the end of May 2022, the end of this month.

3 By the way, I should say congratulations
4 to all of you. You seem to have gotten the paperwork
5 all done, at least the first portion of the paperwork
6 anyway. And I think that's a significant achievement
7 by all of you, so my congratulations on having
8 accomplished that.

9 Let me ask you one question. I guess when
10 the comments come in from the Tribe, assuming there
11 are some, following their 30-day opportunity to review
12 the draft EA cultural resources supplement, will those
13 comments be made public?

14 MS. SIMON: So the staff is planning to
15 create an appendix to the final EA supplement that
16 will include comments that are received from the Tribe
17 and from the public and with comment responses similar
18 to what the staff typically does in an EIS. And so in
19 this case for the public environmental assessment the
20 staff wants to do that as well.

21 I think before all of the Tribe's comments
22 are made public we would check with Mr. Reid to make
23 sure that there aren't any comments that the Tribe
24 would prefer to keep non-public.

25 JUDGE BOLLWERK: All right. And so as I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 understanding you then the -- when the -- assuming
2 some of the Tribe's public -- assuming some of the
3 Tribe's comments are going to be made public on the
4 draft EA cultural resources -- that would not happen
5 until the draft is actually issued then?

6 MS. SIMON: That will actually happen when
7 the final document is issued.

8 JUDGE BOLLWERK: The final is issued, I'm
9 sorry.

10 MS. SIMON: Correct.

11 JUDGE BOLLWERK: Thank you. Okay. So is
12 there any contemplation that those comments would be
13 circulated among the parties as part of the discovery
14 process prior to the final EA being issued?

15 MS. SIMON: The staff has not thought
16 about that. I think given the -- I guess the current
17 procedural posture we're in there is no hearing file
18 update. And so I don't know exactly how that would
19 happen.

20 JUDGE BOLLWERK: Okay. Well obviously
21 that's something you need to consider. I mean there's
22 things going back and forth.

23 So given the May 2nd monthly status report
24 indicating that the final survey was provided to Crow
25 Butte on April 29th, under the protective order

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 governing the proceeding what is the schedule and the
2 means by which Crow Butte would provide comments, if
3 any, to the staff on the document?

4 MS. SIMON: So I believe in the previous
5 status conference, or possibly the one before, there
6 was discussion about whether Crow Butte would be able
7 to look at the draft EA supplement at the same time
8 the Tribe did. And I guess to answer your question,
9 the staff hasn't decided exactly how it will get input
10 from Crow Butte. The staff will probably want to get
11 Crow Butte's views on potential impacts and mitigation
12 measures if necessary, but the staff has not decided
13 how it will do that, whether it will provide the draft
14 supplement to them or whether it would -- the staff
15 would ask for their input based on the fact that they
16 have access to the report.

17 JUDGE BOLLWERK: All right. But I take it
18 you don't contemplate any separate set of comments
19 coming in given that you've given them the final
20 survey report?

21 MS. SIMON: I'm not sure I understand.
22 Separate comments on what?

23 JUDGE BOLLWERK: On the survey report as
24 opposed to the draft EA.

25 MS. SIMON: Oh, I mean I suppose if they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 sent them in unsolicited, they could certainly do
2 that, but I think the staff's -- what the staff is
3 contemplating is more to think about whether the staff
4 would want to provide the draft EA supplement to Crow
5 Butte before the public issuance or whether the staff
6 would reach out to Crow Butte to seek their input
7 essentially seeking comments on the survey report.

8 JUDGE BOLLWERK: And I take it as you
9 indicated with respect to the Tribe if they provided
10 you any comments on the draft EA, those would be
11 included as part of the final EA supplement? Is that
12 correct?

13 MS. SIMON: Right, it would be an appendix
14 to the final EA supplement.

15 JUDGE BOLLWERK: Okay. And will the
16 Consolidated Interveners be provided a copy of the
17 non-public final survey report?

18 MS. SIMON: I did anticipate that you
19 might ask that. If Mr. Frankel or Mr. -- and/or Mr.
20 Ballanco would like to see the un-redacted report, we
21 certainly can provide it to them under the protective
22 order, just as we did for Crow Butte.

23 JUDGE BOLLWERK: All right.

24 MR. FRANKEL: Yes, please.

25 MS. SIMON: Okay. So I will get in touch

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 with Mr. Frankel and Mr. Ballanco after the conference
2 and make sure that we have the non-disclosure
3 declarations in place, and then we can provide that to
4 them.

5 JUDGE GIBSON: And I guess I asked you
6 this question with respect to Crow Butte and I'll ask
7 with respect to the Consolidated Interveners: Would
8 you anticipate receiving any comments from them on the
9 survey report as opposed to the draft EA when that's
10 published?

11 MS. SIMON: I wasn't anticipating it. I
12 think the reason the staff would ask Crow Butte is
13 that Crow Butte's the licensee. And so their views as
14 the licensee on whether they think their operations
15 would have any impacts or what kind of mitigation they
16 might be able to provide is what the staff would be
17 looking at. I think with all respect to Consolidated
18 Interveners, they're not in the same position.

19 JUDGE BOLLWERK: All right.

20 MR. FRANKEL: We'll make a judgment, Your
21 Honor. David Frankel for Consolidated Interveners.
22 If we deem appropriate to make comments on behalf of
23 our clients, we will do so. Thank you.

24 JUDGE BOLLWERK: All right. So just by
25 way of background, currently the entire final Tribal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Cultural Survey Report is protected from public
2 disclosure. By way of contrast, the 1987 Bozell and
3 Pepperell Cultural Resources Report for Crow Butte,
4 the Crow Butte site, was that -- that was an issue
5 earlier in this proceeding, had both a non-public
6 version and a public version, a redacted public
7 version as reflected in Exhibit CBR-27 and CBR-28 in
8 this proceeding.

9 What's the staff's plan for the final
10 Tribal Cultural Survey Report in terms of making the
11 report public, through redaction or otherwise?

12 MS. SIMON: The staff is planning to make
13 the report public. Mr. Reid made a request that the
14 -- because of software limitations on the Tribe's end
15 to ask whether the staff could take care of doing the
16 redactions and creating that version. And so we are
17 currently working with Mr. Reid to determine which
18 portions of the report need to be kept non-public.
19 And once that determination is completed, then the
20 staff will appropriately redact the report and place
21 it in public ADAMS.

22 JUDGE BOLLWERK: Do you have a general
23 schedule or a general time frame in mind?

24 MS. SIMON: No, the staff is trying to
25 focus first and foremost on getting the draft EA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 supplement prepared. I guess I would -- and also we
2 need to work with Mr. Reid. Mr. Reid notified me
3 today that he's planning to send us proposed
4 redactions. And so hopefully that won't take too
5 long. So it really depends on how long it takes to
6 get the proposed redactions squared away. And then
7 once we do that -- I don't think the actual redaction
8 will take too long, so maybe by the end of this month
9 might be a target.

10 JUDGE BOLLWERK: All right. So but it
11 does sound like the plan is to have something in the
12 public record before you issue the draft EA.
13 Obviously you're going to be referencing all kinds of
14 information from the report in it, so that would be
15 important.

16 MS. SIMON: Yes, absolutely before the
17 public draft is issued.

18 JUDGE BOLLWERK: Does the staff have to
19 provide the draft or final EA cultural resource
20 supplement for comment to any other federal, state,
21 local, or tribal Governmental entity for comment such
22 as the EPA, the Federal Environmental Protection
23 Agency, the Advisory Council on Historic Preservation,
24 the Nebraska State Historic Preservation Office, or
25 any tribal historic preservation office other than the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Oglala Sioux?

2 MS. SIMON: The only one I believe the
3 staff would consider providing it to would be the
4 Nebraska SHPO.

5 JUDGE BOLLWERK: All right. And that's
6 sent to them and they have the opportunity to comment
7 if they wish to?

8 MS. SIMON: That would be correct. And
9 I'm not sure what the staff's plan is in that regard.

10 JUDGE BOLLWERK: Anything that you're
11 aware of that might affect the staff's plan for a 30-
12 day public comment period for the draft EA supplement?

13 MS. SIMON: No, there's nothing I can
14 think of.

15 JUDGE BOLLWERK: All right. Those are my
16 questions at this point. Thank you very much. I
17 appreciate it.

18 MS. SIMON: You're welcome.

19 JUDGE GIBSON: Judge Arnold, do you have
20 any questions for Ms. Simon?

21 JUDGE ARNOLD: No, I have no questions.

22 JUDGE GIBSON: Okay. Thank you.

23 Let's start with you, Mr. Reid. Are there
24 any additions to what Ms. Simon said that you think
25 need to be made or did she cover the waterfront pretty

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 well?

2 MR. REID: I think she -- can you hear me
3 all right?

4 JUDGE GIBSON: Yes, we can hear you fine,
5 Mr. Reid.

6 MR. REID: That's great. I think she
7 covered it pretty well. I have a few -- I don't know
8 if they're additions or clarifications. I'll start
9 with the report.

10 There are a few changes that were made in
11 the revisions that -- they were I guess considered
12 clarifications. There were a few additional sites
13 added to the report. So the NRC staff essentially
14 received the report in -- when was that, on April 1st.
15 I believe that's right. And the revisions were pretty
16 minor, or the clarifications. So they've had since
17 that time -- and I'm glad that we've been able to
18 essentially keep to the earlier schedule.

19 I do apologize for the delay. We do have
20 to deal with governmental bodies and sometimes they
21 don't move on our schedule, but we were able to get it
22 through the Tribal Council, as well as the Land
23 Committee. And the approval was issued -- the final
24 approval was issued by the tribal president on the
25 report.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 I think you'll be pleased with the report.
2 It's an extensive report. I think it's unique in
3 terms of its scope in covering not only the National
4 Historic Preservation Act requirements, but also the
5 NEPA requirements for the intangible interests and the
6 other interests of the Tribe. So we view this as
7 somewhat of a model on how to proceed in other matters
8 so that we have both NEPA compliance and Historic
9 Preservation Act compliance. It involved a bit of our
10 training or working with the surveyors to -- not to do
11 -- obviously not to do the survey for them, but to
12 educate them in terms of the scope of the
13 responsibilities so that they included that within the
14 report.

15 And it took some effort. It took a lot of
16 work by the contractor, QSI. And I think generally we
17 are pleased with the report, although we -- and you'll
18 see in the report that we do certainly renew and
19 maintain our objection to the entire proceeding as
20 jurisdictional and treaty issues that we've raised
21 before. But that said, I think the NRC staff has been
22 very cooperative and very patient with us and I want
23 to thank them for that.

24 On the report itself there are actually
25 very few redactions. I think there's five, if I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 remember right, figures that showed the location of
2 specific sites that we needed to have redacted, that
3 were initially identified. And then I went through
4 the report and within the -- I think there are 32
5 sites that were identified, and so there's paragraphs
6 that give the exact locations of those sites within
7 the body of the report. And so it's only those parts
8 of that one paragraph. It's usually just a few words:
9 so many feet of so and so, and so forth, that were --
10 that I've suggested for redaction. I'll get that over
11 to the NRC today or tomorrow. I'm on the road right
12 now, but I'll get that to them as soon as I can. But
13 it's actually very few redactions.

14 So I think the redactions to the report
15 that the Tribe is requiring can be made within a
16 matter of probably less than an hour. Part of the
17 problem we have is I do not have the proper PDF
18 program in which to make the redactions. I understand
19 that -- and I was unable to get QSI to understand the
20 redactions that we needed because this is new to them.

21 And so I've asked the NRC staff to do it
22 and they're willing to do it. And I appreciate that.
23 They will get the redacted version over to us before
24 it actually goes out. But I see no reason why that
25 couldn't go out within a matter of days if the NRC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 staff can get to it. So that's -- and like I said, I
2 think it can be done in an hour.

3 The advantage of this I'd like to get a
4 redacted version of the report out. And again,
5 they're fairly minor redactions from the -- I can't
6 remember how many pages it is. It's a 160-page or so
7 report. The redactions are limited. And so I'm
8 hoping that the report will be sufficient for both
9 CBR, Crow Butte, and the Consolidated Interveners, as
10 well as the public and -- to use. And we can then
11 provide it as well to the Board to be used for
12 discussion without concerns about revealing
13 confidential information. So I think it would enable
14 all of us to engage freely in a discussion on this.

15 In terms of using the report on the
16 preparation of the supplemental environmental
17 assessment, again I think that what we're looking at,
18 as I understand it that the NRC staff will prepare a
19 draft draft, essentially a draft of the draft
20 environmental supplement, to provide that to the
21 Tribe. We will make comments before the draft goes
22 out. And this is in order to avoid disputes, to
23 settle matters that we can settle before the NRC staff
24 issues its own draft.

25 And it will go out -- if they agree with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 everything that it might resolve whatever objections
2 we might have other than the jurisdictional ones. But
3 if we can't resolve it, then at least it can go out
4 and we'll have an understanding that we simply cannot
5 agree on certain matters. And then will then appear
6 in the objections.

7 So I see that the initial exchange between
8 the NRC staff and the Tribe aren't necessarily, quote,
9 objections, but they're simply remarks that the Tribe
10 will have about certain -- if there are any, certain
11 discussions or whatever that are contained in the
12 draft that we believe might be able to be resolved or
13 that we want to give the NRC staff an opportunity to
14 resolve before the draft goes out for comment.

15 Once we've reached that point then the
16 draft goes out. And at that point it's my
17 understanding that CBR and Consolidated Interveners
18 will then get that draft along with the public and
19 we'll have an opportunity to comment.

20 They will have -- because we plan on
21 agreeing to the issuance of the report to the public
22 and CBR and Consolidated Interveners soon, they will
23 certainly have that report to work from prior to the
24 issuance of the supplement. And so they'll have quite
25 a bit of time to review that. The supplement will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 obviously be based on that report and the NRC staff's
2 analysis of that report and their use of that report,
3 and so it's really the treatment of that report that
4 will form the basis of any agreements or disputes that
5 may exist between the parties.

6 And so it's not like the NRC -- the Crow
7 Butte or the Consolidated Interveners will be
8 surprised or have to wait until -- and I'm concerned
9 about that because as an attorney that deals with
10 these -- been dealing with these issues for many
11 decades one thing that's pretty common for us is that
12 we get a copy of a document, a draft document from the
13 agency where the -- let's say the applicant has been
14 working on that document for months or even years
15 prior to us even getting the document and then we have
16 a very short period of time to analyze -- contact our
17 experts, analyze the document and make responses. By
18 getting the report out early it will hopefully
19 circumvent that and give the parties enough time to do
20 a fair analysis of the report and then be prepared to
21 deal with the supplemental EIS -- or EA.

22 So I guess the point I'm trying to make is
23 this is a little bit unusual because we're not
24 involved as much in an adversarial process, as I think
25 most of us are familiar with, that we've been able to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 work together. And I'm proud of that, that the
2 parties have been cooperative and we've gotten this
3 far that way. I'm hoping that we can continue in this
4 relationship and avoid any issues that we can resolve
5 without giving up the issues that are important to us
6 that we have legitimate and substantive disputes on.
7 But hopefully we can avoid any of the things that we
8 can't resolve before the draft goes out.

9 And once the draft goes out we'll have the
10 major objections, we'll have the real objections
11 between the parties that can focus what happens after
12 that. And does give us an opportunity, although
13 certainly on the jurisdictional one I don't think we
14 can resolve that, but on all the other issues it gives
15 us the opportunity to potentially resolve those issues
16 and -- which will streamline, obviously streamline the
17 Agency's handling of the preparation of the EA and
18 then subsequently the Board's review of the EA. So I
19 guess that's commenting on the report.

20 And I guess it kind of responds to our
21 review of the redaction schedule and what needs to be
22 done on that and the provision of the report. So I
23 think I've addressed all of those.

24 We have asked that the supplemental
25 documents that are being provided -- it's my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 understanding that the supporting -- and these are the
2 on-the-ground site documents that are prepared and
3 presented to the Agency by the QSI -- that those would
4 be kept confidential, and we've asked that those be.
5 So the report will be released, but not the supporting
6 documents. I think that's where we're at at this
7 point.

8 JUDGE GIBSON: Thank you, Mr. Reid.

9 Judge Bollwerk, do you have any questions
10 for Mr. Reid?

11 JUDGE BOLLWERK: Bearing in mind Judge
12 Gibson's initial caveat that we shouldn't really be
13 discussing anything that needs to be done off the
14 record; and I don't want to do that; I don't want to
15 go off the record, is there anything that you're
16 comfortable at this point sharing with the Board about
17 the results of the report or any mitigation
18 recommendations? If you're not, I certainly will
19 defer to you, sir.

20 MR. REID: Well, we have some specific
21 mitigation recommendations that are in the report.
22 There are very few of them. I think there's just a
23 handful. But there's a few sites that we believe need
24 to be protected. Also there are a couple of sites
25 that were identified as past areas that were occupied

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 or used by Crazy Horse, Chief Crazy Horse and Chief
2 Red Cloud, and other areas like that that have
3 historical -- the intangible historical value to the
4 Tribe.

5 But the one thing I can say about these
6 areas is that I believe all of them are outside the
7 area that's been disturbed by the well fields. And so
8 we're not talking about -- this should not impact Crow
9 Butte's operation, I guess is what I'm saying, and
10 their ability to continue their reclamation of the
11 area. So I guess that's what I can provide. I don't
12 think it's going to be an issue as to whether or not
13 this is going to impact or interfere with any of Crow
14 Butte's operations.

15 JUDGE BOLLWERK: All right. Thank you.
16 Just to step back for a second, I mean you've been
17 through the process. Were there any issues that the
18 Tribe had with how the survey was conducted, either
19 good, bad, or indifferent that you'd want to share
20 with the Board?

21 MR. REID: Yes. No, I'm happy to do that.
22 Going forward the one thing I would note is that --
23 and I think that the experts that prepared these
24 reports for -- both for the Agency and for the
25 parties; and that would include the environmental

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 organizations as well as the Tribes -- they're trained
2 and used to preparing the National Historic
3 Preservation Act surveys. So what we engaged here is
4 extending the scope of that to include all of the
5 interests of the Tribe under NEPA. And so it's been
6 a little bit of a process in terms of helping them to
7 understand what their survey responsibility is for.

8 And to give you a specific example,
9 normally they might interview some of the elders and
10 these tribal historians to get a history to benefit
11 their ability to go out and do an accurate Historic
12 Preservation Act survey. They would not have a
13 special focus in or section on analyzing the historic
14 interests and the intangible interests of that area,
15 the cultural interests of that area. And so that's
16 been balanced. Now it's a balance between both the
17 archeological survey and the cultural survey. So I
18 believe we now have a true cultural survey in this
19 document, which makes it somewhat unique.

20 The other thing that's been done is that
21 they -- as part of that cultural survey they looked at
22 the fauna and the flora, the plants primarily that
23 were used for medicine and ceremonial uses by the
24 Native people involved here and were able to identify
25 those plants and include them in their report. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that's a significant -- and an equal balance.

2 So they might have for example a site
3 where they discover a buffalo skull and then they
4 might have a site where they locate certain plants
5 that have significant or important medicinal value to
6 the Native people, or a spiritual value. And those
7 are treated equally and identified in the report. So
8 I think that that's been an education process for them
9 as well as a -- hopefully for a future.

10 And I don't know if this something. I'm
11 assuming that this -- and I know that it's already
12 happened. There are other -- the tribal historic
13 preservation officers do meet and they share
14 information and so forth. And what we've been doing
15 here a Crow Butte has been shared with some of them,
16 and there's been discussions going back and forth
17 about using what we've done here as somewhat of a
18 model to help educate not only the contractors, but
19 also the tribal historic preservation officers
20 themselves, because generally they've kept them --
21 their surveys as well to the on-the-ground
22 archeological surveys that they normally do. And now
23 they're seeing the value in extending those to the
24 historic and cultural interests of the Tribe. And so
25 they fully integrate the information that they get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 from the spiritual leaders and from the elders and
2 historians into their survey.

3 JUDGE BOLLWERK: All right. Did the
4 weather cause you any problems?

5 MR. REID: It --

6 JUDGE BOLLWERK: -- (audio interference)
7 best in November and December, but --

8 MR. REID: It was not the best time of
9 year, but -- and I have to compliment and congratulate
10 the QSI. And I think NRC staff is aware of this as
11 well. Crow Butte had their -- had I think at least
12 one representative out there during that time. It was
13 very difficult during that time of year, but they got
14 it done. And hopefully the Board appreciates the
15 effort that the contractor made in order to comply
16 with its schedule.

17 And the other thing I would comment on is
18 that -- the value of having the applicant pay for the
19 survey. And that's one of the -- obviously, and I
20 know you know this from the other --

21 JUDGE BOLLWERK: Powertech?

22 MR. REID: Yes, from Powertech. That
23 that's a big issue. And having sufficient funds in
24 order to do an adequate survey resolves a lot of
25 issues, a lot of issues. And so the ability of having

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the Tribe work out with the applicant the payment for
2 the cost of the survey avoided an awful lot of issues
3 and potential future litigation. So that's something
4 also that I think might make this survey somewhat
5 unique and perhaps a model. Thank you.

6 JUDGE BOLLWERK: So from your perspective
7 the reimbursement arrangement worked the way it was
8 supposed to, or was envisioned, I take it?

9 MR. REID: Yes, as far as -- thus far.

10 JUDGE BOLLWERK: All right.

11 MR. LEWIS: We'll see what happens going
12 forward, but so far we're in good shape.

13 JUDGE BOLLWERK: All right. Thank you.

14 That's all I have. Thank you.

15 JUDGE GIBSON: Thank you, Judge Bollwerk.

16 Judge Arnold, do you have any questions
17 for Mr. Reid?

18 JUDGE BOLLWERK: I do not have any
19 questions.

20 JUDGE GIBSON: Okay. Very well.

21 Mr. Lewis, would you like to say anything
22 additionally to what we've heard from Mr. Reid or Ms.
23 Simon?

24 MR. LEWIS: Just a couple of points. We
25 understand that our opportunity to comment on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 draft EA will be the version that is published for
2 public comment, that we're not going to have a chance
3 to comment on what I'll call the preliminary draft,
4 the one that's sent to the Tribe. That's consistent
5 with our understanding.

6 And there hasn't been any discussion and
7 it's not been our intent at this point to submit any
8 comments on the survey report. That is the Tribe's
9 survey report. It doesn't mean we agree with
10 everything in there. Obviously we don't agree with
11 some of the jurisdictional arguments that they're
12 preserving, but there's -- it is their document and
13 it's unnecessary for us to weigh in and say we
14 disagree with this or that.

15 I think it would be helpful for CBR and
16 the NRC staff at some point to have a discussion
17 before they publish their -- before they prepare their
18 draft EA, their preliminary draft EA just on the
19 mitigation issue because I think there are some things
20 that can get ironed out. And it may be worth airing
21 those sooner rather than after the draft EA is
22 published for public comment.

23 There are some recommendations in there,
24 and I won't refer to the sites by description, but I
25 guess it's -- the numbers are CB-16, CB-17, and CB-21

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 where there are certain buffer recommendations. We
2 don't think we really have precise locations of those
3 sites in order to understand what those buffer areas
4 would be and where exactly they are. That would be
5 useful to get more specific information so we can
6 actually evaluate that. Ultimately the mitigation
7 that needs to be discussed in the EA is the mitigation
8 that Crow Butte will implement, therefore our input at
9 some point in time I think is important and
10 essential.

11 JUDGE GIBSON: Thank you. Thank you, Mr.
12 Lewis. You know, it is interesting that at the high
13 concept level there can be some principles involved
14 that may be very important to the parties, but when
15 you actually get down to talking about specific places
16 at a specific site and the possibility that they might
17 not actually impact your business or your business
18 might not impact the Tribe's concerns is really
19 important because sometimes it allows us to sidestep
20 some of those large principles that we don't
21 necessarily need to be mired in. So I appreciate what
22 you're saying.

23 Judge Bollwerk, is there anything you had
24 for Mr. Lewis?

25 JUDGE BOLLWERK: Just a couple things.

1 You mentioned discussions with the staff, which sounds
2 like the potential for a meeting as opposed to a
3 document exchange. Is that something you would
4 contemplate would be on the record, off the record?
5 And Ms. Simon obviously can have a chance to weigh in
6 on that as well depending on obviously what you say.

7 MR. LEWIS: I really had not thought about
8 that. I don't know whether the staff would ask us for
9 written positions. I mean there are discussions that
10 occur between CBR personnel and the project manager
11 and it might simply be that level of discussion rather
12 than a meeting.

13 JUDGE BOLLWERK: All right. Let me also
14 offer -- I offered Mr. Reid and opportunity to comment
15 on sort of the survey process and how things worked
16 out from his perspective. Anything you want to say in
17 that regard?

18 MR. LEWIS: (No audible response.)

19 JUDGE GIBSON: Mr. Lewis? I think Judge
20 Bollwerk directed his question to you.

21 MR. LEWIS: I'm sorry. I thought it was
22 directed to Mr. Reid. Could you repeat your question,
23 please, Judge.

24 JUDGE BOLLWERK: I'm sorry. Did I do that
25 again? Never mind. We'll try it again.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 So offered Mr. Reid an opportunity to
2 comment the -- how the survey process went from his
3 perspective and I want to give you the same
4 opportunity, Mr. Lewis, if there's anything you want
5 to say about how it went from Crow Butte's
6 perspective.

7 MR. LEWIS: No, overall I think it was
8 successful. We're happy it's accomplished. I mean
9 there were some hiccups in the schedule because of
10 weather and other concerns, but overall we got the job
11 done. So I'm not aware of any major complaint.

12 JUDGE BOLLWERK: All right. And you were
13 satisfied with the way the reimbursement arrangement
14 worked out?

15 MR. LEWIS: Yes. I mean, it was our
16 bargain deal. I suspect we overpaid a little bit, but
17 Mr. Reid might disagree, but be that as it may.

18 JUDGE BOLLWERK: Okay. I'm not hearing a
19 lot of buyer's remorse, so if that's the way to
20 describe it. So, okay.

21 I think that's all I have. Thank you.

22 JUDGE GIBSON: Judge Arnold, did you have
23 any questions for Mr. Lewis?

24 JUDGE ARNOLD: No, I did not.

25 JUDGE GIBSON: Okay. Mr. Frankel, you've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 heard these three folks describe the process so far.
2 I've realized that you've been a little bit out of it
3 in terms of the nitty-gritty of what they've been
4 doing, but are there any specific comments that you
5 wish to make at this time about what's been said?

6 MR. FRANKEL: Yes, Your Honor. David
7 Frankel for Consolidated Interveners. I have a small
8 number of comments.

9 We haven't been out of it; we've been
10 tracking it carefully.

11 JUDGE GIBSON: I didn't mean that in a
12 pejorative way, Mr. Frankel, I assure.

13 MR. FRANKEL: I understand, Judge.
14 Appreciate that.

15 For one I want to confirm that both Mr.
16 Ballanco and myself are signatories to the appropriate
17 non-disclosure agreement and we are within and
18 governed by the protective order in this case and as
19 a result we are legally permitted to be made privy to
20 these confidential documents without restriction.
21 Number one.

22 Number two, in response to Ms. Simon, I
23 want to clarify that my clients do have standing in
24 this case. We had to litigate very hard through
25 appeals process to prove it. Therefore, we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 parties in the case, not second-class parties, but
2 actual parties and we should be treated that way and
3 not excluded.

4 And by way of observation I would note
5 that every time in this case and the related cases and
6 similar cases where the NRC or Crow Butte or any
7 applicant or licensee has attempted to exclude
8 Consolidated Interveners they have been rebuffed and
9 has caused delay and litigation and costs for all the
10 parties.

11 Therefore, I would respectfully suggest
12 that transparency would be a much better guide stone
13 for the NRC and CBR concerning the sharing of
14 documents at the earliest possible opportunity and we
15 would appreciate receiving a copy of the un-redacted
16 former report as soon as possible within the ordinary
17 course of business.

18 Of course we will receive those and
19 protect and maintain the confidentiality of same
20 within the protective order, but until we see that we
21 really don't have an ability to appreciate how much
22 time to allocate to this matter, whether or not
23 comments are appropriate for our clients. And I would
24 further point out that unlike the Tribe, our clients
25 include non-tribal members of the public who also have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 a discrete legal interest under NEPA and the National
2 Historic Preservation Act as to non-tribal historical
3 artifacts.

4 Therefore, it is essential that we be
5 given an opportunity to review the un-redacted report
6 in a timely fashion and to comment on it, if
7 appropriate, which does not mean that we will have any
8 comments. It means that we need to see it and
9 evaluate it. Mr. Ballanco and I need to discuss it
10 and then after conferring we can have an understanding
11 whether we have any comments, which we may or may not.

12 So those are my comments. I appreciate
13 the opportunity to make them. And besides that I do
14 comment all parties in this process as well as the
15 consultants. It's been a difficult long road and we
16 appreciate the work that's been done. Thank you.

17 JUDGE GIBSON: Yes, Mr. Frankel, you and
18 I have been involved in this case since 2008, so I
19 know that it has been 14 years. Fourteen glorious
20 years of course, but it's been great.

21 Let me ask, Judge Bollwerk, did you have
22 any questions for Mr. Frankel?

23 JUDGE BOLLWERK: No, I don't. Thank you.

24 JUDGE GIBSON: Judge Arnold, did you have
25 any questions for Mr. Frankel?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE ARNOLD: No.

2 JUDGE GIBSON: Okay. Very well.

3 All right. Ms. Simon, let me get back to
4 you. Is there anything that Mr. Lewis, Mr. Frankel,
5 or Mr. Reid has said to which you feel you need to
6 clarify the record or make any additional comments?

7 MS. SIMON: There are a couple of things.
8 Thank you, Judge Gibson.

9 So first for Mr. Reid I have a very
10 specific question. He did mention that he provided
11 the site forms from the survey which are -- and he
12 requested that those be kept non-public. The Tribe
13 also provided a copy of a tribal ordinance that was
14 cited in the report. And the staff was not familiar
15 with that ordinance, and so therefore requested a
16 copy.

17 And I just want to -- it's -- Mr. Reid did
18 not mention anything about that ordinance being non-
19 public and the staff had planned to place it in public
20 ADAMS, although it hasn't yet. And so I just want to
21 ask Mr. Reid to clarify the status of that document
22 for me, please.

23 JUDGE GIBSON: Mr. Reid?

24 MR. REID: Yes, a couple things. The
25 ordinance is public record, so I didn't mean to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 include that. It's the site forms that were prepared
2 by QSI that I think are -- compose -- they're site
3 forms that are actually used for the surveys by the
4 Nebraska Historic Preservation Office. So they're
5 those forms that are specifically done for that
6 purpose. And then he had other -- the surveyors for
7 QSI had also prepared certain forms on the eligibility
8 of sites under the National Historic Preservation Act.
9 And those were a lesser number of forms, but those
10 also were there.

11 And if I may while I'm commenting just
12 cover it quickly so we don't have to go back to it, I
13 obviously don't have any problems with anyone that's
14 signed the non-disclosure agreement who's a party to
15 the litigation obviously to see these documents. I
16 certainly think Consolidated Interveners has a right
17 to it.

18 Counsel, my main concern would be; and
19 this goes for Crow Butte primarily, but also for all
20 parties, is that if the un-redacted report is shared,
21 that the parties are careful that it not go beyond
22 those that are involved in the litigation or have a
23 specific purpose for that to have signed non-
24 disclosure agreements.

25 And we're mostly concerned about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 protecting the site locations. Normally we wouldn't
2 want to release any of this, but Crow Butte needs to
3 know where those sites are located; and I think Mr.
4 Lewis indicated that, the specific locations, so that
5 they can avoid those and also respond to if we
6 requesting mitigation measures respond to that. So
7 they need to know that, but it should not go to any
8 other Crow Butte employee that has no real use for
9 that information. We don't want that information to
10 get out to the general public.

11 And as close as I am to the council and to
12 the parties for the Consolidated Interveners, our
13 issue there is -- for example the Consolidated
14 Interveners is composed both of concerned members of
15 the Tribe, but they're also concerned
16 environmentalists, and sometimes those two interests
17 don't match. And so we don't want -- again the -- I
18 do see the need for the council, for Consolidated
19 Interveners to see the un-redacted report and to also
20 see the supporting documents, but we need to be
21 careful about how it goes out past that.

22 And I'm unaware of anyone who's a member
23 of -- and I speak specifically of the named parties in
24 Consolidated Interveners that has issued a non-
25 disclosure agreement, but the issuance of the non-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 disclosure agreement doesn't mean that you
2 automatically qualify to see this information. It
3 only means that if you get it that you're limited on
4 how you can use it. And I would -- and maybe we need
5 an order from the Board, but we -- I would want to
6 make sure that anyone who gets the information
7 actually has a need for that information. I don't
8 want it to go to people who don't have a need for it.
9 So that's my main concern on that.

10 But anyway, I don't know if that muddies
11 the water or clarifies it, but --

12 MR. FRANKEL: Your Honor, could I --

13 MR. REID: -- as I said, my main concern
14 is being able to protect those sites.

15 MR. FRANKEL: Could I reply to Mr. Reid
16 real quick?

17 JUDGE GIBSON: Yes, Mr. Frankel.

18 MR. FRANKEL: David Frankel for
19 Consolidated Interveners. Mr. Reid, no problem. The
20 only people that will see the un-redacted report and
21 supporting documents are Mr. Ballanco and myself. The
22 only other parties -- we had Mr. -- Dr. Lou Redman was
23 our archeologist. Sadly he passed away in 2021. And
24 Debra White Plume was also a party to the non-
25 disclosure agreement. Sadly she passed away also. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 there's just Mr. Ballanco and myself as far as parties
2 and counsels -- or individuals that would have access
3 to this information. And we're contractually,
4 ethically, legally bound to respect the agreements we
5 signed. We have and we will. So I would like to
6 allay any concerns that you would have regarding any
7 potential leakage from our office. It would simply
8 not happen.

9 JUDGE GIBSON: Thank you, Mr. Frankel. I
10 would rather than complicate this -- I'll let you
11 respond in just a second, Mr. Lewis. But rather than
12 complicate this NDA issue, I would suggest that
13 perhaps the best thing to do would be for Mr. Lewis to
14 have a chance to look at this. Perhaps if he has any
15 concerns, to discuss it with Mr. -- with the other
16 counsel and to try to reach -- if there's anything
17 that needs to be added to the confidentiality
18 agreement, the protective order, the non-disclosure
19 agreement, anything like that, you all try to work
20 that out between yourselves. And only then will you
21 need to involve the Board.

22 I think the Board feels that you all have
23 made incredible progress among yourselves in these as
24 we've gone on through this process. We've been very
25 impressed with your ability to work together. And if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 we ask you to start submitting documents to us, people
2 end up posturing and then we may end up getting into
3 a place where we have a conflict that would otherwise
4 not exist.

5 So with that, Mr. Lewis, I'll let you
6 reply as well to this issue.

7 MR. LEWIS: I'm not aware of a need to
8 amend the protective agreement. I think we've
9 discussed it before and feel it is adequate to protect
10 the documents and we fully intend to preserve the
11 confidentiality of the documents that we receive under
12 it. The distribution of those documents is very
13 limited. It's really only limited to three people
14 within CBR who have -- are either responsible for
15 environmental protection or need to make decisions
16 about operations and how they'll avoid impacting
17 resources. So we're compliant with that protective
18 order and I have not heard of any concern about its
19 adequacy at this point in time. So our view is it
20 works.

21 JUDGE GIBSON: Yes. Well, that certainly
22 has been the Board's impression to this point in time.
23 And again, perhaps Mr. Reid is aware of something that
24 escaped us, but I do think you all have worked very
25 well on this I would hope you could continue to.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 So rather than make this into something
2 that it's not, Mr. Reid, in the event that you see a
3 potential problem developing, I would encourage you to
4 work with Mr. Lewis, Mr. Frankel, and Ms. Simon to
5 make sure that whatever those concerns are are worked
6 out. And barring that, if that just can't work, then
7 I would suggest that you approach the Board. Is that
8 acceptable to you, Mr. Reid?

9 MR. REID: Yes, part of the problem is
10 once the cat's out of the bag, you can't put it back
11 in. So I think probably the best -- and I appreciate
12 the information from Mr. Frankel. And I don't have
13 any problems releasing the information to counsel. I
14 think what we simply need to know is who's going to
15 get the report --

16 JUDGE GIBSON: Sure.

17 MR. REID: -- ahead of time. And then
18 maybe let us know a week or so, or a few days, or give
19 us some prior notice so that we can say well, we --
20 what's the -- what's that -- why does that person need
21 that report? So if Mr. Spangler, for example, is
22 going to get the report, then that's understandable.
23 If there's an officer or an employee at Crow Butte
24 that's going to get it, it would be nice to know who
25 they are, what their position is, and how they're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 going to use the report and that they understand
2 they're not to release the report to anybody else.

3 That's all we request. And I think if we know -- if
4 we have some control over who actually gets the
5 report, then I think that would resolve the problem.

6 JUDGE GIBSON: Mr. Reid, I believe that
7 Mr. Lewis just said there were only three people that
8 would see this at Crow Butte. I assume --

9 MR. REID: Right, but I don't know who
10 they are.

11 JUDGE GIBSON: -- you know who those
12 people are?

13 MR. REID: I do not know who they are.

14 JUDGE GIBSON: Okay. All right. Well, in
15 any event I assume they are signatories, that they're
16 aware of this and that they would protect the
17 confidentiality because this is an important issue.
18 It's one that I have highlighted at every single
19 proceeding that we've had in this matter. I think all
20 of us are aware of the sensitivity of this.

21 And if Mr. Lewis can tell you who those
22 folks are -- he doesn't have to tell -- do it right
23 now. But he can tell you, you all can communicate.
24 I encourage you all to communicate. All I'm saying is
25 you all have been able to work at everything so far.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 I encourage you to continue to do that. And if you
2 just can't, then let's come back to the Board and we
3 can make some change.

4 Ms. Simon, I believe you were in the
5 middle of saying something when we got off on this
6 lateral arabesque.

7 MS. SIMON: (Laughter.) Yes, thank you,
8 Judge Gibson. So that was my question.

9 And for Mr. Reid, with respect to Mr.
10 Lewis' comment that Crow Butte might require more
11 specific information on the locations of some of the
12 sites, that is something that did occur to the staff,
13 that that issue might come up.

14 And so I will coordinate with Mr. Reid and
15 see if we can get the -- I don't know exactly what
16 it's called, geospatial data or whatever it is that
17 Quality Services has. And perhaps I'll ask Mr.
18 Spangler since he probably knows the terminology
19 better than I do and we'll see if we can get that
20 information to the staff, and then from the staff to
21 Mr. Lewis under the protective order just so -- even
22 if it's just for those specific few sites so that Crow
23 Butte can understand the extent of them. So that's my
24 comment for what Mr. Lewis said.

25 And finally for Mr. Frankel, I just want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to let him know that I did not intend to imply that
2 his clients are somehow second-class. I think that
3 throughout our status conferences, probably Mr.
4 Ballanco more so than Mr. Frankel, but Mr. Ballanco
5 has often said that the Consolidated Interveners are
6 following the Tribe's lead. And I think that has at
7 least given me the impression that -- not that they're
8 second-class, but they are following the Tribe's lead
9 with respect to the whole survey process. And
10 certainly we will figure out the appropriate way to
11 get Mr. Frankel the report as soon as we can.

12 We did have issues between Mr. Reid and
13 sending large documents directly into the NRC.
14 There's a limit on size. I don't know if that limit
15 applies to outgoing documents. So if that's the case,
16 we may have to figure out a work-around such as having
17 Mr. Spangler send it to him, but we will do that as
18 soon as we can.

19 And as far as providing comments on it, my
20 earlier statements were made because the staff usually
21 does not solicit comments on a document like this.
22 But certainly anyone at any time can provide their
23 comments on anything to the NRC. And so if Mr.
24 Frankel would like to provide any comments on a survey
25 report -- it is the Tribe's survey report, so perhaps

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 he'd also like to provide them to Mr. Reid as well,
2 but any comments he would like to provide on behalf of
3 his client to the NRC with relation to that report are
4 certainly welcome. And with that, I think I'm done.

5 JUDGE GIBSON: Thank you, Ms. Simon.

6 MR. FRANKEL: David Frankel. Just thank
7 you, Ms. --

8 JUDGE GIBSON: Yes, Mr. Frankel?

9 MR. FRANKEL: -- thank you, Ms. Simon, for
10 clarifying. I appreciate your comment and we'll
11 coordinate with you to receive the report due to file
12 size in whatever way we can with the technology. But
13 thank you for clarifying your comments. I appreciate
14 that.

15 JUDGE GIBSON: Very well. Judge Bollwerk,
16 is there anything else that you need to raise?

17 JUDGE BOLLWERK: I just wanted to ask --
18 I offered Mr. Lewis and Mr. Reid an opportunity to
19 comment on how the site survey went and I wondered if
20 the staff has any comments that they want to make
21 about the site survey: how it was conducted, things
22 that they felt went well or didn't go well, or however
23 you'd like to let us know.

24 MS. SIMON: Sure, I could just make a
25 brief comment. I think that in -- perhaps in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 staff's trip summary of the report they may have made
2 a mention of this, but I think the staff was very
3 happy with the working relationships that they forged
4 with the members of the survey crew. I know Mr.
5 Spangler specifically pointed out that he was very
6 impressed with their professionalism and their
7 knowledge and he enjoyed the conversations he had with
8 them.

9 And I think that the staff was also very
10 happy that they were permitted to be kind of equal
11 participants where both the staff project managers and
12 Mr. Spangler were invited to walk along with the
13 surveyors and do the surveying. So that was a good
14 rapport building exercise. So I think the staff found
15 that very -- a very positive experience.

16 Obviously there were ups and downs in
17 terms of schedule and getting the survey started. And
18 then the unavoidable issues with weather and a couple
19 of says with 40-mile-an-hour winds and like really low
20 wind chills, so I applaud everyone who participated
21 for their determination in getting it done. And just
22 that it was able to work out with COVID and with the
23 scheduling in November and December. I think it's
24 just really, really a great thing. I think the staff
25 was very happy that everyone was able to carry it out.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE BOLLWERK: All right. Thank you
2 very much. Appreciate that.

3 Judge Arnold, did you have anything else
4 you needed to address with any of the parties?

5 JUDGE ARNOLD: I have nothing, no.

6 JUDGE GIBSON: Okay.

7 Ms. Simon, I'm curious, just sort of as a
8 mechanical matter, when the final EA supplement is
9 completed, does it then go to some office within the
10 NRC that issues licenses for uranium mining
11 operations?

12 MS. SIMON: No, to my knowledge it gets --
13 what the staff will do is they'll publish a notice of
14 availability in the Federal Register, but it doesn't
15 -- within the NRC it doesn't get sent to any
16 particular office that I'm aware of.

17 JUDGE GIBSON: So is there some official
18 within the NRC that approves or disapproves the
19 renewal post -- once this final EA supplement is done?

20 MS. SIMON: Well, the renewal -- the
21 renewed license is in effect right now --

22 JUDGE GIBSON: Right.

23 MS. SIMON: -- is my understanding, so I
24 don't think that there's any kind of additional
25 blessing or signature required. I will -- I guess if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 you give me just a minute, I'll double check with the
2 project manager, if you'd like.

3 JUDGE GIBSON: Sure.

4 MS. SIMON: Okay.

5 JUDGE GIBSON: It's fine. It's been 15
6 years and I know we've gotten -- I just was curious
7 exactly what happened, what happens, because I didn't
8 know if somebody goes in and approves it.

9 (Pause.)

10 MS. SIMON: Yes, the staff has confirmed
11 there's no special process --

12 JUDGE GIBSON: Okay.

13 MS. SIMON: -- until the next license
14 renewal would happen.

15 JUDGE GIBSON: Okay. Well, I was just
16 curious. There were some comments that were made by
17 one of the commissioners in some opinions recently
18 about this issue, sort of a what-are-you-going-to-do-
19 when-you -- once you actually get one of these
20 environmental documents, then what do you do? And it
21 didn't sound like there was anything that was done.
22 So I was just curious about whether there was some
23 mechanical process that I was unaware of.

24 Okay. Well, let me -- I just wanted to
25 alert all of you that as we near the preparation of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the draft and final supplemental environmental
2 assessments that we plan to issue a scheduling order
3 that will provide that any new or amended contentions
4 must be filed within 30 days after the publication of
5 the final EA supplement, that the staff and Crow Butte
6 will need to file their answers to any of those new or
7 amended contentions within 25 days thereafter, and
8 that any replies to those answers will need to be
9 filed within 7 days after the answers are filed.

10 And with that, unless there's anything
11 further for this Board to resolve today, I want to
12 note the superb support that we have received from
13 Andrew Welkie, whom we got back from the Commission
14 after he went out to the West to oversee their live
15 conference out there with -- I believe on the Navajo
16 Reservation.

17 And I also want to recognize Sara Culler,
18 who's our administrative assistant, our two clerks
19 that have been helping immensely with this.

20 And finally I would ask that all counsel
21 remain on the line in case the court reporter needs
22 any clarification with something that was said that
23 wasn't clear.

24 Mr. Reid, are you holding your hand up?
25 Do you need to make another comment?

1 MR. REID: Yes, and I'll keep it --

2 JUDGE GIBSON: I'm sorry.

3 MR. REID: No, that's okay.

4 JUDGE GIBSON: I didn't mean -- I just --
5 I assumed wrongly that we were done. I should never
6 assume.

7 MR. REID: Yes, I tend to always have
8 something else to say, and I apologize.

9 This is in regard to Judge Bollwerk's
10 question about the -- how the survey went. One thing
11 I didn't mention that I think is extremely important;
12 and I wanted to share this with the Board because I
13 think it's important in all these proceedings, is that
14 one thing that was crucial; and I think it's something
15 that should be highlighted in how this is proceeded,
16 is that the survey was done by members of the Tribe
17 who were fluent in Lakota and understood Lakota
18 traditions. And when you read the report I think
19 you'll see how important that was. That was key to
20 the success of the survey, also the success of the
21 Tribe being able to accept the survey.

22 So I think in the future you might want to
23 consider the importance of that fact, that if you're
24 assessing Native traditions and cultural interests
25 that it's the Native people themselves that are in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 best position to do that and the importance of having
2 fluent speakers to be involved in that so that they
3 can communicate with the cultural experts and the
4 historians and the spiritual leaders.

5 That's all. I just wanted to -- I left
6 that out and I can't emphasize how important that was.
7 It was crucial to the success of the report. Thank
8 you.

9 JUDGE GIBSON: Okay. Well, thank you, Mr.
10 Reid.

11 And with that, I believe that Judge
12 Arnold, Bollwerk, and I are going to sign off, but
13 like I said, if you all would just stay on the line a
14 little bit longer in case the court reporter has any
15 questions.

16 Thank you. We are adjourned.

17 (Whereupon, the above-entitled matter went
18 off the record at 2:43 p.m.)

19

20

21

22

23

24

25