UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-24-02

ATOMIC SAFETY AND LICENSING BOARD

Before the Licensing Board:

G. Paul Bollwerk, III, Chair
Nicholas G. Trikouros
Dr. Craig M. White

In the Matter of:	Docket No. 40-8943-MLA
CROW BUTTE RESOURCES, INC.	ASLBP No. 07-859-03-MLA-BD01
(North Trend Expansion Project)	February 29, 2024

MEMORANDUM AND ORDER
(Granting Motion to Withdraw Application Without Prejudice
and Terminating Proceeding)

On December 29, 2023, Crow Butte Resources, Inc., (CBR) filed a motion to withdraw its pending application to amend its existing 10 C.F.R. Part 40 source materials license to authorize CBR to conduct in situ uranium recovery (ISR) operations for the North Trend Expansion Area (NTEA), without prejudice to the submission of a new application seeking authorization for NTEA ISR operations.[1] In an answer dated January 10, 2024, Consolidated Intervenors assert that any grant of CBR's withdrawal request (1) should be with prejudice, so as to preclude CBR from submitting a new NTEA license amendment application; or (2) if without prejudice, must include conditions to ensure any new application includes up-to-date information and is in compliance with then-existing Nuclear Regulatory Commission (NRC) regulations and policies.[2]

[1] See Motion to Withdraw License Amendment Application (Dec. 29, 2023) at 3–4 [hereinafter CBR Withdrawal Motion].

[2] Consolidated Intervenors' Answer to Crow Butte Motion to Withdraw License Amendment Application (Jan. 10, 2024) at 1–2 [hereinafter Consolidated Intervenors Answer].

For the reasons detailed below, we grant CBR's request to withdraw its NTEA-associated license amendment application without prejudice and terminate this proceeding.

I. BACKGROUND

This long-standing proceeding began in 2007 when CBR applied for NRC authorization to conduct ISR operations within the NTEA, which is located in Dawes County, Nebraska, about one-half mile north of the City of Crawford.[3] In response to a September 2007 hearing opportunity notice posted on the NRC's public website, various organizations and individuals, including Consolidated Intervenors,[4] submitted hearing requests, and this Licensing Board was established in December 2007 to rule on those intervention petitions.[5] In a May 2008 ruling, the Board granted the hearing requests of Consolidated Intervenors, with a single contention

[3] See Letter from Stephen P. Collins, President, CBR, to Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs (FSME), NRC, at 1 (May 30, 2007) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML071550057); CBR, 1 Application for Amendment of USNRC Source Materials License SUA-1534, [NTEA], Environmental Report [(ER)] at 3.1-2 (May 30, 2007) (ADAMS Accession No. ML071870300) [hereinafter ER]. As was the case with CBR's already-licensed Marsland Expansion Area (MEA), CBR's request for authorization to conduct ISR operations at the NTEA was submitted as an amendment to CBR's current license covering ISR operations at its existing central uranium processing facility and the surrounding area, located just to the southeast of Crawford, Nebraska. See Crow Butte Resources, Inc. (Marsland Expansion Area), LBP-19-2, 89 NRC 18, 30 & n.1 (2019), petition for review denied, CLI-20-1, 91 NRC 79, (2020).

[4] Consolidated Intervenors consist of the Western Nebraska Resources Council (WNRC), Debra White Plume, and Owe Aku/Bring Back the Way.

[5] See [CBR]; Establishment of Atomic Safety and Licensing Board, 72 Fed. Reg. 71,448, 71,448 (Dec. 17, 2007). In the intervening years, the original members of the Board have been replaced by the Board's current members. See [CBR] (North Trend Expansion Project); Notice of Atomic Safety and Licensing Board Reconstitution, 76 Fed. Reg. 22,231, 22,231 (Apr. 21, 2015); [CBR] (North Trend Expansion Project); Notice of Atomic Safety and Licensing Board Reconstitution, 83 Fed. Reg. 29,144, 29,144 (June 22, 2018); Notice of Atomic Safety and Licensing Board Reconstitution: [CBR] (North Trend Expansion Project), 84 Fed. Reg. 55,339, 55,339 (Oct. 16. 2019).

ultimately admitted for litigation.[6] Additionally, the Board granted 10 C.F.R. § 2.315(c) interested governmental entity status to the Oglala Sioux Tribe (OST) and the Oglala Delegation of the Great Sioux Nation Treaty Council (Treaty Council), allowing both OST and the Treaty Council to participate in this proceeding as well.[7]

Thereafter, in a series of conferences with the parties, the Board sought to establish a schedule for this proceeding but postponed that effort in recognition of ongoing NRC Staff work to complete and issue its safety and environmental review documents for the NTEA license amendment application.[8] Further, as an aid to this scheduling effort, in March 2009 the Board directed that the NRC Staff submit monthly reports on the status of its efforts regarding those review documents. See March 2009 Board Order at 1.

These monthly reports continued until January 2016 when the NRC Staff advised the Board in a December 2015 letter that the Staff had acceded to a CBR request to suspend its review of the NTEA application so that the Staff could prioritize review of CBR's also-pending license amendment application for the nearby MEA ISR project.[9] In response to that letter, the Board suspended the Staff's monthly status reports on its still-ongoing NTEA environmental

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[6] See LBP-08-6, 67 NRC 241, 344 (2008), aff'd in part and rev'd in part, CLI-09-12, 69 NRC 535, 573 (2009).

[7] See LBP-09-12, 69 NRC 11, 52 (2009), rev'd on other grounds, CLI-09-12, 69 NRC at 573; LBP-08-6, 67 NRC at 344.

[8] See, e.g., Licensing Board Order (Confirming Matters Addressed at March 4, 2009, Telephone Conference) (Mar. 5, 2009) at 1 (unpublished) [hereinafter March 2009 Board Order]; Licensing Board Order (Confirming Matters Addressed at July 7, 2009, Scheduling Conference) (July 8, 2009) at 1–2 (unpublished); Licensing Board Order (Confirming Matters Addressed at September 17, 2013, Telephone Conference) (Sept. 26, 2013) at 1 (unpublished); see also 10 C.F.R. § 2.332(d) (while presiding officer may allow evidentiary hearing on safety issues to proceed prior to issuance of NRC Staff's safety evaluation, evidentiary hearing on environmental impact statement (EIS)-associated issues may not begin until Staff's EIS is issued).

[9] See Letter from David M. Cylkowski, NRC Staff Counsel, to Licensing Board at 1 (Dec. 24, 2015).

review process, albeit with a direction that the Staff advise the Board when the MEA proceeding was completed.[10]

Subsequently, the NRC Staff informed the Board in a May 2018 letter that the Staff's licensing review of the MEA application was completed but that the suspension of its NTEA environmental review continued based on an April 2018 CBR request citing the "'significantly depressed'" uranium market.[11] The Board then issued a May 2018 order reinstituting the requirement that the Staff file periodic reports on the status of its environmental review of the NTEA application, albeit now on a quarterly basis beginning in July 2018. See May 2018 Board Order at 2. Through July 2023, these status reports continued to indicate that the Staff's NTEA environmental review process remained suspended.[12]

Then, in a September 15, 2023 issuance, the Board advised the parties and interested governmental entities that, in lieu of the NRC Staff's October 2023 quarterly status report, it intended to hold a virtual prehearing conference to explore, among other things, the continued interest of Consolidated Intervenors in pursuing this litigation and the continued degree of

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[10] See Licensing Board Memorandum and Order (Regarding NRC Staff License Review Scheduling Status Reports) (Jan. 12, 2016) at 1–2 (unpublished). As the Board noted in this issuance, the NRC Staff's final safety evaluation report (SER) for the NTEA application was made publicly available in July 2013. See id. at 2 n.1 (citing FSME, NRC, [SER], License Amendment for the [CBR NTEA] ISR Facility, Dawes County, Nebraska, Materials License No. SUA-1534 (July 2013) (ADAMS Accession No. ML110820512) [hereinafter NTEA SER]).

[11] Licensing Board Memorandum and Order (Reinstituting NRC Staff Status Reporting Requirement in Response to Applicant-Requested Suspension of Licensing Review Process) (May 7, 2018) at 1–2 (unpublished) (citing Letter from David M. Cylkowski, NRC Staff Counsel, to Licensing Board at 1 (May 2, 2018), and quoting Letter from Walter Nelson, SHEQ Coordinator, Cameco Resources, Crow Butte Operation, to Director, Office of Nuclear Material Safety and Safeguards (NMSS), NRC at 1 (Apr. 4, 2018) (ADAMS Accession No. ML18102A537)) [hereinafter May 2018 Board Order].

[12] See, e.g., Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1 (July 2, 2018); Letter from Travis Jones, NRC Staff Counsel, to Licensing Board at 1 (July 3, 2023).

CBR's concern about the "significantly depressed" uranium market.[13] The conference ultimately was scheduled for, and held on, October 3, 2023.[14]

At the October 3 conference, Consolidated Intervenors expressed their interest in continuing this adjudication.[15] CBR, on the other hand, stated that while it was not asking that the suspension of the NRC Staff's NTEA application review be lifted, it would provide an update by the end of the 2023 calendar year if recent "'[uranium] market changes do substantially change [CBR's] position as to the [NTEA].'" October 2023 Board Order at 2 (quoting Tr. at 811 (Leidich)). And for its part, the NRC Staff indicated that, given the length of time since the NTEA application was first submitted to the NRC, during any reinstated application review process, which could take in excess of a year, there would need to be updates to the CBR application. See id. at 2–3. Additionally, the Staff confirmed that it planned to issue a draft environmental assessment or EIS for public comment during a resumed review process, followed by a final environmental review document. See id. at 3. After considering all the participants' positions, the Board entered an October 26, 2023 directive continuing the Staff's quarterly status reports beginning in January 2024. See id.

By letter dated December 18, 2023, CBR advised the Board that (1) CBR had sent an attached December 18, 2023 letter to the NRC Staff seeking to withdraw the NTEA license amendment application; and (2) pursuant to 10 C.F.R. §§ 2.107(a) and 2.323(a), by December 29, 2023, CBR expected to file with the Board a motion to withdraw the NTEA

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[13] See Licensing Board Memorandum and Order (Scheduling Prehearing Conference) (Sept. 15, 2023) at 1–3 & nn.4–5 (unpublished).

[14] See Licensing Board Memorandum and Order (Scheduling Prehearing Conference; Providing Information Technology and Administrative Information) (Sept. 26, 2023) at 1 (unpublished); Tr. at 779–833.

[15] Licensing Board Memorandum and Order (Confirming Matters Addressed at October 3, 2023 Prehearing Conference and Continuing NRC Staff Status Reporting Requirement) (Oct. 26, 2023) at 2 (unpublished) [hereinafter October 2023 Board Order].

application without prejudice.[16] Subsequently, on December 29, 2023, CBR filed the now-pending motion to withdraw the NTEA application without prejudice. See CBR Withdrawal Motion at 1. In this motion, CBR recites that, in response to its 10 C.F.R. § 2.323(b) inquiries to ascertain the participants' positions regarding its withdrawal request, (1) the NRC Staff and section 2.315(c) interested governmental entities OST and the Treaty Council indicated they do not oppose CBR's withdrawal request; and (2) Consolidated Intervenors stated that the withdrawal motion should be granted "with prejudice" because the NTEA application "is outdated" and "relates to the expansion of a facility that is itself in remediation." Id.

Thereafter, in a January 2, 2024 order the Board established a schedule for written responses to CBR's withdrawal motion.[17] Neither the NRC Staff nor the section 2.315(c) interested governmental entities made a responsive filing. Consolidated Intervenors, however, filed a January 10, 2024 answer arguing that Board approval of CBR's withdrawal request should be either (1) with prejudice to any future CBR attempt to submit a license application seeking to conduct ISR recovery operations at the NTEA because circumstances over the past sixteen years have made the current CBR application "outdated"; or (2) without prejudice, but only if conditions are included to (a) bar the resubmission of an "identical" application, and (b) require CBR to submit an application that complies "with updated NRC rules, regulations and policies concerning Tribal Consultation, compliance with Trust Responsibility, Climate Change, Environmental Justice" and contains "updated scientific and site[-]specific information concerning the proposed site." Consolidated Intervenors Answer at 1–2. Neither CBR nor any of the other participants sought permission from the Board to file a reply to Consolidated Intervenors' answer. See 10 C.F.R. § 2.323(c).

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[16] See Letter from Anne R. Leidich, CBR Counsel, to Licensing Board at 1 (Dec. 18, 2023); id. attach. 1, at 1 (Letter from Tate Hagman, Manager, Restoration, CBR, to Director, NMSS, NRC, at 1 (Dec. 18, 2023)).

[17] See Licensing Board Memorandum and Order (Establishing Schedule for Responses to Motion to Withdraw Application) (Jan. 2, 2024) at 2 (unpublished).

II. ANALYSIS

A. Standards Governing License Application Withdrawal Motions

Consistent with 10 C.F.R. § 2.107(a), when a hearing petition challenging a license application has been granted and a notice of hearing has been issued, the licensing board presiding over the adjudicatory proceeding has jurisdiction to determine the disposition of a subsequent request to withdraw that application.[18] As the filing of a license application is usually voluntary, an applicant's decision to withdraw its application "is generally considered a business judgment, the soundness of which is not a matter for licensing board consideration."[19] Nonetheless, licensing board approval of a license application withdrawal request is subject to any appropriate conditions the board may impose.[20] This includes a determination whether to approve the withdrawal request with or without prejudice to the submission of a future application. See Bellefonte, LBP-16-1, 83 NRC at 104.

In making such a decision, agency caselaw indicates that if a resolution of the health, safety, and environmental issues associated with an application has not been reached, a withdrawal "without prejudice" generally is appropriate, signifying the lack of a merits disposition and permitting the application to be refiled.[21] Indeed, owing to the "severe sanction" imposed on

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[18] See Public Serv. Co. of Ind., Inc. & Wabash Valley Power Ass'n, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), LBP-86-37, 24 NRC 719, 723–24 (1988) (citing 10 C.F.R. § 2.107(a) in concluding that in the absence of a notice of hearing issued after an intervention petition is granted, a licensing board lacks jurisdiction to consider whether to impose conditions on a motion to terminate an operating license proceeding).

[19] Tennessee Valley Auth. (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-16-1, 83 NRC 97, 104 (2016) (citing Pacific Gas & Elec. Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 51 (1983)).

[20] See Philadelphia Elec. Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 974 (1981); U.S. Dep't of Energy (High-Level Waste Repository), LBP-10-11, 71 NRC 609, 624 (2010), aff'd by an equally divided Commission, CLI-11-7, 74 NRC 212 (2011).

[21] See Fulton, ALAB-657, 14 NRC at 973; Bellefonte, LBP-16-1, 83 NRC at 104.

the applicant by eliminating the possibility of resubmitting an application, "it is highly unusual" to grant a "with prejudice" withdrawal absent a showing of "substantial prejudice to the opposing party or to the public interest in general."[22] If, however, a licensing board determines there has been an adequate showing of harm to a party or the public interest in general associated with permitting the application to be refiled, the board can grant a withdrawal "with prejudice," precluding the application from being refiled, or may impose such other conditions as it deems appropriate. See Bellefonte, LBP-16-1, 83 NRC at 104.

But "conclusory statements and generalized concerns" will not meet a proponent's burden of describing the possible deficiency that could be remedied through a requested condition.[23] Moreover, "the record must support any findings concerning the conduct and the harm" purportedly supporting such a condition. Fulton, ALAB-657, 14 NRC at 974. While a licensing board thus has significant leeway in defining the circumstances under which an application can be withdrawn, any conditions imposed, including granting withdrawal with prejudice to the submission of a new application, "must bear a rational relationship to the conduct and legal harm at which they are aimed." Id.

Finally, the withdrawal of a license application, whether with or without prejudice, effectively moots any adjudicatory proceeding regarding that application.[24]

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[22] Puerto Rico Elec. Power Auth. (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1133 (1981); see Fulton, ALAB-657, 14 NRC at 974 (stating prohibiting an applicant from refiling "is a particularly harsh and punitive term imposed upon withdrawal").

[23] Sequoyah Fuels Corp., CLI-95-2, 41 NRC 179, 192–93 (1995).

[24] See Bellefonte, LBP-16-1, 83 NRC at 103 (citing Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-00-9, 51 NRC 293, 294 (2000)).

B. Parties' Positions Regarding CBR's Withdrawal Motion

1. CBR's Withdrawal Motion

Citing the Atomic Safety and Licensing Appeal Board decisions in Fulton and North Coast,[25] CBR maintains that this NRC precedent establishes that a "with prejudice" dismissal, being "particularly harsh and punitive," is not appropriate in the absence of a showing of "substantial prejudice to the opposing party or to the public interest in general."[26] Further, according to CBR, such a showing cannot be demonstrated here because there has not been "any decision on the merits" of Consolidated Intervenors' admitted contention challenging the NTEA application. CBR Withdrawal Motion at 3. CBR states as well that it "does not want to expend additional resources to complete licensing" and so "has no plans to re-file an application for the site." Id. CBR thus concludes that this proceeding should be dismissed "without imposing terms or conditions on this withdrawal," making it "without prejudice" to CBR's submission of a future NTEA application. Id. at 4.

2. Consolidated Intervenors' Answer

Consolidated Intervenors ask that the Board dismiss the NTEA application with prejudice or, alternatively, impose reasonable conditions for resubmitting an application if the Board dismisses without prejudice. See Consolidated Intervenors Answer at 9–15. In support of their withdrawal "with prejudice" claim, Consolidated Intervenors assert that CBR has failed to provide "any citation to the record" demonstrating that it will suffer any negative impacts from a

[25] Given the prominence attached by CBR and Consolidated Intervenors to these two Appeal Board decisions, we note that while the Atomic Safety and Licensing Appeal Panel was abolished in 1991, the decisions of its Appeal Boards continue to be binding precedent to the degree they concern a regulation or regulatory matter that has not been revised or otherwise materially altered. See Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-11, 40 NRC 55, 59 n.2 (1994).

[26] CBR Withdrawal Motion at 3 (quoting Fulton, ALAB-657, 14 NRC at 974; North Coast, ALAB-662, 14 NRC at 1132). Although CBR's motion references the Fulton proceeding in support of these two quotations, see id. at 3 nn.11, 13, the second quotation in fact comes from the North Coast decision.

"with prejudice" dismissal so as to meet CBR's burden to justify a "without prejudice" determination. Id. at 9. Instead, Consolidated Intervenors argue that CBR has stated only that "it has no intention to re-file an application for the NTEA," distinguishing this case from the Appeal Board decisions in Fulton and North Coast in which a "with prejudice" dismissal was identified as an impermissibly harsh and punitive sanction. Id. at. 9–10 (citing North Coast, ALAB-662, 14 NRC at 1132). Because CBR "expressly" intends not to re-file its application, Consolidated Intervenors contend that the "magnitude of the harshness" accruing to CBR from a "with prejudice" dismissal is "nil." Id. Consequently, a showing of even a "scintilla of public harm" is sufficient, according to Consolidated Intervenors, to warrant a Board ruling dismissing the CBR application with prejudice. Id. at 9–10; see id. at 12 ("Since CBR has no intention of refiling the license amendment application, a ruling 'with prejudice' would not be particularly harsh or severe in this proceeding . . . .").

Consolidated Intervenors then seek to establish the necessary measure of harm to themselves and the public interest in not dismissing the NTEA application with prejudice.[27] Referencing various declarations provided in support of their original intervention petitions along with a statement made by an OST tribal chief during a January 2018 prehearing conference,[28]

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[27] While contending that CBR has the burden of proof regarding its motion, Consolidated Intervenors also acknowledge that "to the extent they are viewed as the proponent of the 'with prejudice' ruling they would bear the burden of proof" for showing a basis exists for such a withdrawal condition. Consolidated Intervenors Answer at 2 & n.1 (citing 10 C.F.R. § 2.325).

[28] See Consolidated Intervenors Answer at 10 (citing Affidavit of Rita Long Visitor Holy Dance paras. 5–6, 9 (Feb. 22, 2008); Affidavit of Beatrice Long Visitor Holy Dance paras. 5–6, 10, 14 (Feb. 22, 2008); Affidavit of Harvey Whitewoman paras. 11, 13 (Feb. 19, 2008); Tr. at 179–80 (Chief Joe American Horse); Request for Hearing and/or Petition to Intervene [of WNRC], ex. A, at A-2, para. 3(b) (Nov. 12, 2007) (Statement of Buffalo Bruce (undated) [hereinafter Buffalo Bruce Statement]). The Board notes that in referencing the affidavit of Harvey Whitewoman, Consolidated Intervenors provided the ADAMS accession number for the affidavit of Flordemayo. The correct ADAMS accession number for the Harvey Whitewoman affidavit is ML080660097. We observe as well that while the statements of Rita Long Visitor Holy Dance, Beatrice Long Visitor Holy Dance, and Harvey Whitewoman were sworn, those of Buffalo Bruce and Chief Joe American Horse were not, the latter being in the nature of a 10 C.F.R. § 2.315(a) limited appearance statement.

the elements of their showing of harm include (1) the heightened public stress and anxiety associated with possibly having to again oppose a new NTEA application given (a) the Lakota people's view that "water is sacred" so that "any action that might adulterate the water should be avoided," and (b) the "cost prohibitive" expense of such opposition given the poverty in the local area near the NTEA and on OST's South Dakota Pine Ridge Reservation; and (2) "the negative [e]ffect on [the] property values" of those in the City of Crawford or near the NTEA's perimeter "created by the specter of mining the NTEA." Id. at 10–11.

Additionally, Consolidated Intervenors maintain that since the 1981 Fulton decision and the start of this proceeding in 2007, the NRC's understanding of environmental justice and proper dealings with indigenous peoples has evolved, culminating in NRC's 2017 adoption of its Tribal Policy Statement in which the NRC recognizes that it "has a Trust Responsibility to protect Tribal treaty rights, lands, assets and resources as well as a duty to carry out the mandates of Federal law with respect to Indian Tribes."[29] From this, Consolidated Intervenors assert that the Board is "obligated to consider the viewpoints of indigenous people who have filed testimony in this proceeding with respect to their interests, rights and treaty benefits." Id. at 11. They also note that it is not just the prospect of a second proceeding that causes them hardship, but the "prospect of respecting the rights of and performing additional obligations owed to indigenous people concerning their view on the sacredness of the water as a form of living spirit of God." Id. at 12. Finally, Consolidated Intervenors declare that any action that may harm the earth, including "perceived threats to their environment may be viewed [by Native Americans] as direct threats to their health, culture and spiritual well-being."[30]

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[29] Id. at 11 (citing Tribal Policy Statement, 82 Fed. Reg. 2402, 2404–05 (Jan. 9, 2017) (definition of "Trust Responsibility") [hereinafter NRC Tribal Policy Statement]); see id. at 5 (citing NMSS, NRC, NUREG-2173, Tribal Protocol Manual (rev. 1 July 2018) (ADAMS Accession No. ML18214A663) [hereinafter NRC Tribal Protocol Manual]).

[30] Id. at 12 (quoting FSME, NRC, Tribal Protocol Manual at 10 (drft. Sept. 2012) (ADAMS Accession No. ML12261A423)). In the current final version of the agency's Tribal

Based on these factual and legal arguments, Consolidated Intervenors conclude that "[i]n the balance of equity" the Board should grant CBR's withdrawal motion with prejudice. Id. Such a determination is required because a "with prejudice" withdrawal is not "particularly hard or severe" for CBR, especially in light of CBR's stated intention not to refile an NTEA application, while a "without prejudice" ruling "would provide no relief" to the people living in the vicinity of the NTEA. Id.

Alternatively, Consolidated Intervenors ask that if the Board dismisses the pending application without prejudice, the Board should impose conditions for resubmitting an NTEA application that would (1) bar submission of an application "identical" to the NTEA license amendment application; (2) require CBR to demonstrate compliance with "then[-]current federal law and NRC policies concerning climate change, environmental justice, [and] respect for the rights of and consultation with indigenous people including [OST]"; and (3) compel CBR to include "updated site[-]specific data and information concerning water use, water availability and shortages" around the area of the NTEA. Id. at 12–13. More specifically, Consolidated Intervenors assert that "[f]urther reasonable conditions based on the record" should be required by the Board such that a new NTEA application must (1) "demonstrate that mining in the NTEA will not impact any water wells in or adjacent to the NTEA";[31] (2) demonstrate that the commercial value of the uranium concentrations at the NTEA exceeds the value of water that

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Protocol Manual, this statement has been revised to read "[t]hreats to the environment are often viewed as direct threats to Tribal health, culture, and spiritual well-being." NRC Tribal Protocol Manual at 15.

[31] Consolidated Intervenors Answer at 13 (citing Letter from Dr. Steven A. Fischbein, Program Manager, Neb. Dep't of Env't Quality (NDEQ), to Stephen P. Collins, President, CBR, unnumbered encl. at 16 (Nov. 8. 2007) ([CBR] Petition for Aquifer Exemption: [NTEA], Technical Review of Aquifer Exemption Petition Dated August 15, 2007) (ADAMS Accession Nos. ML081090240 and ML073300399) [hereinafter NDEQ Aquifer Technical Review]. This document, which was identified as "Exhibit B" at the Board's January 2008 prehearing conference, subsequently was accepted by the Board for consideration in the context of ruling on the hearing petitioners' contention admissibility claims. See LBP-08-6, 67 NRC at 260, aff'd, CLI-09-12, 69 NRC at 548–52.

would be unusable as a result of approval of the application for mining, see id. at 13 (citing NDEQ Aquifer Technical Review at 5); (3) provide sufficient detail so the application "enables the NRC to be able to demonstrate compliance with then[-]applicable NRC rules, regulations, guidance and policy including those concerning climate change, environmental justice, tribal consultations, and Trust Responsibility";[32] (4) "demonstrate that it contains updated site[-]specific data and updated scientific information and published research as of the date of re-application," id. (citing NDEQ Aquifer Technical Review at 8); and (5) contain "sufficient detail and information" to enable NRC to comply with its obligations under applicable federal statutes, treaties, and international covenants.[33]

C. Licensing Board Determination Regarding CBR's Withdrawal Motion

1. Consolidated Intervenors' Claim that CBR's Withdrawal Motion Should Be Granted "With Prejudice" to the Submission of Any Future NTEA-Associated License Amendment Application

In ruling on the efficacy of Consolidated Intervenors' challenge to CBR's "without prejudice" license amendment application withdrawal request,[34] we begin by acknowledging that as the proponent of an order seeking dismissal of this proceeding without prejudice, CBR has

[32] See Consolidated Intervenors Answer at 13 (citing LR Leung & LW Vail, Pac. Nw. Nat. Lab., PNNL-24868, Potential Impacts of Accelerated Climate Change (May 2016) (ADAMS Accession No. ML16208A282); Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040 (Aug. 24, 2004); NRC Tribal Policy Statement; NRC Tribal Protocol Manual; David Ball, et al., BOEM 2015-047, A Guidance Document for Characterizing Tribal Cultural Landscapes (Nov. 30, 2015) (ADAMS Accession No. ML19058A360)).

[33] See Consolidated Intervenors Answer at 13–14 (citing Request for Hearing and/or Petition to Intervene [of Debra White Plume, Director, Owe Aku, Bring Back the Way] (Nov. 12, 2007); Tr. at 179–80 (Chief Joe American Horse) (making 10 C.F.R. § 2.315(a)-like limited appearance statement at January 2018 prehearing conference); Tr. at 182–84 (Chief Oliver Red Cloud) (same).

[34] Because a notice of hearing was issued in this proceeding, see Atomic Safety and Licensing Board Panel; Before the Licensing Board: G. Paul Bollwerk, III, Chair, Nicholas G. Trikouros, Dr. Craig M. White; In the Matter of: [CBR] (North Trend Expansion Project); Memorandum and Order (Notice of Hearing), 88 Fed. Reg. 88,989, 88,989 (Dec. 26, 2023), in accord with section 2.107(a) the Board has jurisdiction to issue an initial ruling regarding CBR's withdrawal motion.

the burden of proof. See 10 C.F.R. § 2.325. And although CBR's submission intended to meet its initial burden is terse, we nonetheless conclude that with that presentation CBR has met its burden.

CBR is correct that at this juncture, terminating this case will not involve any merits disposition regarding Consolidated Intervenors' challenge to the NTEA application, a central consideration in granting a "without prejudice" withdrawal. See Fulton, ALAB-657, 14 NRC at 973; North Coast, ALAB-662, 14 NRC at 1133. Additionally, we find unpersuasive Consolidated Intervenors' attempt to attribute to CBR's "no plans" statement the mantle of finality they assert supports their claim that CBR will suffer no harm from a "with prejudice" withdrawal. CBR's request for a "without prejudice" withdrawal that would allow an NTEA application to be resubmitted was made in the face of Consolidated Intervenors' unambiguous objection to such a disposition prior to CBR's submission of its pending motion. See supra p. 6. Therefore, in our view, CBR's "no plans" statement can hardly constitute a binding affirmation of its final and irrevocable intention never to change its plans or file an application for NTEA ISR operations authorization at some point in the future, which is the gravamen of Consolidated Intervenors "no harm" argument.[35]

[35] Other CBR representations suggest this as well. See Tr. at 810 ("[CBR] still has long[-]term interest in the NTEA, but it's not prepared to make a definitive decision on the expansion today.") (Leidich); Tr. at 812 (indicating the NTEA, along with the rest of the CBR property, has "some value to [CBR] over the long term") (Leidich). Also with respect to CBR's "no plans" statement, relative to the discussion at the October 2023 status conference about the apparently rising uranium market, see Tr. at 809–12, it might be argued that the withdrawal of CBR's NTEA application is additional evidence of its intent to abandon the NTEA permanently. We find this unavailing, however, as contrary to the general precept that in considering a withdrawal motion, a licensing board will not second-guess an applicant's business judgment, at least in the absence of a showing of bad faith. See Bellefonte, LBP-16-1, 83 NRC at 104; see also North Coast, ALAB-662, 14 NRC at 1138 (indicating that when facts regarding reactor application withdrawal do not show an applicant bent on hiding its intentions from the Commission, the decision to proceed is best left to the applicant and its consideration of the range of energy options without the "artificial exclusion" of the proposed site by imposing a "with prejudice" withdrawal). Moreover, such an "abandonment" view does not account for the fact that, notwithstanding the seemingly rising "spot" or short-term supply price of uranium, a CBR decision to continue with the application currently could depend on a number of factors,

We also are not persuaded by Consolidated Intervenors' attempt to distinguish the Fulton and North Coast Appeal Board determinations about the generally harsh and punitive nature of "with prejudice" withdrawals on the basis of CBR's "no plans" statement. See CBR Withdrawal Motion at 3–4. In Fulton, ALAB-657, 14 NRC at 974–79, the Appeal Board considered whether a withdrawal with prejudice was appropriate for a pending nuclear power plant construction permit application. The Appeal Board concluded that notwithstanding the lack of any "firm plan" by the applicant to pursue reactor construction in the future, mandating a "with prejudice" withdrawal would impose a "particularly harsh and punitive term" by effectively precluding the applicant from using the site at issue for any future reactor facility. Id. at 974. To be sure, the Appeal Board's Fulton proceeding ruling was made in the context of determining whether the agency's construction permit regulations required a "firm plan" for future construction in order to sustain an applicant's request that the agency undertake an early site review to determine site suitability for reactor construction. See id. at 974–77. Nonetheless, its holding is instructive here given the Appeal Board's conclusion that the apparent lack of planning alone did not in any way undercut the precept that granting a withdrawal with prejudice imposes significant harm on the applicant.

North Coast likewise does not support Consolidated Intervenors' argument that CBR's "no plans" statement establishes that CBR will face no harm from a "with prejudice" withdrawal. There, faced with an intervenor's allegation that a utility seeking withdrawal of its construction permit application had improperly hidden its intention to abandon the project, the Appeal Board concluded that the applicant's statement that it was indefinitely postponing the project was sufficient to counter any assertion of substantial harm to the public interest arising from the applicant's conduct. See North Coast, ALAB-662, 14 NRC at 1135. In finding this claim

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including whether there is a market for long-term uranium supply contracts sufficient to provide an adequate return on investment and the increased cost of mining over the past several years, see Tr. at 811 (Leidich), some or all of which might change in the future.

wanting as support for a "with prejudice" withdrawal, the North Coast Appeal Board recognized, just as the Appeal Board had in Fulton, that a withdrawal with prejudice would entail the facility site's "artificial exclusion" from reinstituting the project, a decision that, in the first instance, was best left in the hands of the applicant as it assessed whether the facility would be necessary to meet local energy needs. Id. at 1138.

In the absence of a merits disposition associated with the NTEA application, and in accord with the Fulton and North Coast Appeal Board decisions, we conclude that CBR has met its threshold burden relative to its "without prejudice" withdrawal request. Consequently, to justify placing a "with prejudice" condition on the dismissal of CBR's application, Consolidated Intervenors must demonstrate substantial harm to them or the public interest that is of "comparable magnitude" to the punitive harm to CBR that would result from imposing such a restraining term. See North Coast, ALAB-662, 14 NRC at 1132 (citing Fulton, ALAB-657, 14 NRC at 974).

On this score, as we noted above, see supra pp. 10–11, Consolidated Intervenors posit several assertions about impacts to them and the public interest they contend justify a "with prejudice" dismissal.[36] But in reviewing those claims, we must bear in mind the Commission's

[36] As we noted above, see supra p. 6, in voicing their objection to CBR filing its withdrawal motion, Consolidated Intervenors declared that a "with prejudice" withdrawal was justified because the CBR application "relates to the expansion of a facility that is itself in remediation." CBR Withdrawal Motion at 1. While it is true that following the conclusion of uranium extraction activities, groundwater restoration currently is under way at the main CBR site, it also is the case that CBR has indicated it wants to retain that site's yellowcake processing capabilities for use in connection with any available satellite expansion areas. See FSME, NRC, [SER], License Renewal of the [CBR] ISR Facility Dawes County, Nebraska, Materials License No. SUA-1534, at 1–2 (Aug. 2014) (ADAMS Accession No. ML14149A433); NTEA SER at 7. And in fact, CBR's current license provides for continued yellowcake processing at its main site as well as ISR uranium extraction activities at CBR's licensed MEA site. See Materials License, [CBR] License No. SUA-1534, Amend. No. 5, at 10–11, 18–20 (Mar. 4, 2021) (license conditions 10.2.1 (main facility drying and packaging operations) and 11.3–12 (MEA pre-operational and operational requirements)) (ADAMS Accession No. ML20324A073) [hereinafter CBR License]. Nothing before us suggests that CBR will not seek to maintain continued authorization for yellowcake processing at its main facility and for

exhortation that "conclusory statements and generalized concerns" will not meet Consolidated Intervenors' burden of showing the requisite impact to them or the public interest necessary to support the imposition of a "with prejudice" withdrawal. See Sequoyah Fuels Corp., CLI-95-2, 41 NRC at 193.

One substantial harm identified by Consolidated Intervenors is the potential anxiety and stress associated with the possibility of a future NTEA-associated license amendment application. See Consolidated Intervenors Answer at 10. According to Consolidated Intervenors, because the poverty of the local area would make further opposition to NTEA operation cost prohibitive, a "with prejudice" dismissal is warranted. See id. Yet, as both the North Coast and Fulton decisions make clear, "the possibility of future litigation–with its expenses and uncertainties–is precisely the consequence of any dismissal without prejudice . . . [and] does not provide a basis for departing from the usual rule that a dismissal should be without prejudice." North Coast, ALAB-662, 14 NRC at 1135; see Fulton, ALAB-657, 14 NRC at 979. Even more to the point, notwithstanding the economic circumstances attendant to the local area, Consolidated Intervenors have been able to pursue this litigation with its associated costs, including retaining and continuing to be represented by counsel, throughout this proceeding's fifteen-year pendency.[37] Therefore, as a showing of future harm to Consolidated

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MEA ISR operations under its existing license that, while expiring in November 2024, can be renewed.

[37] We observe as well that there has been no claim of harm to Consolidated Intervenors and the public interest based on their already-accrued expenses in this proceeding. As the discussion in section I above indicates, while this case has been pending for some time, there were no serious evidentiary hearing preparations over the last ten years owing to CBR's request to suspend the NRC Staff's environmental review process. Thus, to a large degree, it appears this proceeding "hardly got off the ground" so as to entail the type of significant resource expenditures by Consolidated Intervenors that might warrant some kind of withdrawal condition regarding reimbursement. North Coast, ALAB-662, 14 NRC at 1135 & n.11. The lack of any claim for reimbursement of costs and expenses also means we need not reach the issue of a licensing board's ability to award such fees relative to a withdrawal request, an issue that involves some uncertainty, particularly as it applies to a reimbursement condition imposed on an applicant. See 5 U.S.C. § 504 note (referencing Pub. L. 102-377, title V, § 502, 106 Stat. 1342

Intervenors or the public interest, we conclude this claim lacks sufficient supporting information and so falls into the category of "[m]ere allegations" that the Fulton decision instructs would be wanting as grounds for imposing a "with prejudice" withdrawal. Fulton, ALAB-657, 14 NRC at 979.

Another negative impact emphasized by Consolidated Intervenors is the purported effect on local property values created by the continued "specter of mining the NTEA." Consolidated Intervenors Answer at 10. This claim falls short for the same reason assigned to a similar complaint in the Fulton proceeding, i.e., a lack of sufficient supporting information showing a cognizable claim of substantial injury. There, the Appeal Board questioned the adequacy of the support for a property values-based concern identified by an intervenor group, none of whose members had property in the reactor facility exclusion zone in which property values allegedly would be negatively affected. See Fulton, ALAB-657, 14 NRC at 979 n.15. Similarly here, the statement referenced by Consolidated Intervenors as supporting this claim describes a concern about an adverse (although indeterminate) effect upon a petitioner's property values resulting from "an approval of the amendment." Buffalo Bruce Statement at A-2, para. (3)(b). As a current harm, this would be foreclosed by CBR's withdrawal of its application. And as a potential future harm, based on the record before us we are unwilling to infer that a general concern about harm to property values creates a cognizable claim of substantial injury,

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(1992), barring the use of NRC appropriated funds to pay the expenses of, or otherwise compensate, intervenors in agency adjudications or rulemakings); 10 C.F.R. § 12.101 (agency licensing adjudications are excluded from the litigation cost reimbursement provisions of the Equal Access to Justice Act, 5 U.S.C. § 504). Compare Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 52–53 (1999) (finding applicant reimbursement of costs and expenses could be imposed by licensing board as a condition of withdrawal), with Pacific Gas & Elec. Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 54 (1983) (holding that Commission is without equitable powers or authority from enabling legislation to impose party's costs and expenses), and Northern Ind. Pub. Serv. Co. (Bailly Generation Station, Nuclear-1), LBP-82-29, 15 NRC 762, 766–68 (1982) (indicating that because Commission has not adopted a policy that goes beyond the American rule that litigants bear their own attorneys' fees and expenses, licensing board has no authority to impose a withdrawal condition awarding such reimbursement).

especially when the purported harm is footed in the mere possibility that there could be such harm if at some juncture a new NTEA application were submitted. Again, we consider this to be within the category of "[m]ere allegations," like those found wanting in Fulton as insufficient to impose a "with prejudice" withdrawal. Fulton, ALAB-657, 14 NRC at 979.

Finally, Consolidated Intervenors posited two separately expressed, but seemingly related claims that supposedly support a "with prejudice" withdrawal condition. One concerns the tribal view that water is sacred and that any action adulterating water should be avoided as enhancing the potential anxiety and stress associated with the possibility of a future NTEA license amendment application. See Consolidated Intervenors Answer at 10. The other concerns the more broad-ranging assertion that tribal interests must be viewed as "legitimate" and given "careful consideration." Id. at 11. Consolidated Intervenors find support for this claim in what they describe as the agency's recently evolved legal and policy declarations regarding "environmental justice and the rights and interests of indigenous people," and more specifically the agency's "Trust Responsibility to protect Tribal treaty rights, lands, assets and resources as well as a duty to carry out the mandates of Federal law with respect to Indian Tribes" as outlined in the NRC's Tribal Policy Statement. Id. According to Consolidated Intervenors, this requires agency respect for "the rights of and . . . additional obligations owed to indigenous people," including "their view of the sacredness of the water as a form of living spirit of God," id. at 12, and in particular here obligates the Board "to provide deference to the views of Native American petitions, affidavits and testimony in this proceeding," especially when unrebutted, and require that applicant CBR "refrain from actions that would interfere with hunting, fishing, gathering and trapping activities by Tribal members," id. at 4–5.

While we acknowledge the importance of Board respect for and careful consideration of tribal views, including those about the sacredness of water and the scope of the agency's Trust Responsibility, that does not permit us to set aside the established legal precepts that govern the agency's Atomic Energy Act (AEA)-mandated adjudicatory process. As the Commission

observed in addressing a similar claim raised by then-intervening party OST in a licensing proceeding regarding authorization for ISR operations at CBR's Crawford-vicinity MEA:

> The Tribe is correct that as an agency of the federal government, the NRC owes a fiduciary duty to the Native American tribes affected by its decisions. But unless there is a specific duty that has been placed on us with respect to Native American tribes, we discharge this duty by compliance with the AEA and [the National Environmental Policy Act (NEPA)]. The Tribe is not entitled to greater rights than it would otherwise have under those statutes as an interested party.[38]

In this instance, we likewise are unable to conclude that these assertions about tribal views on the sacredness of water and the NRC's Trust Responsibility toward Native American tribes allow us to look past Consolidated Intervenors' failure to proffer "a colorable claim of substantial prejudice" to their interests or to the public interest that is required to justify imposing a "with prejudice" withdrawal condition. North Coast, ALAB-662, 14 NRC at 1135.

Accordingly, because Consolidated Intervenors have not made the requisite showing,[39] in approving CBR's motion to withdraw its license amendment application we cannot impose a condition that such withdrawal is "with prejudice."

2. Consolidated Intervenors' Claim That Granting CBR's Withdrawal Motion "Without Prejudice" Requires Imposing Conditions Ensuring Any Future NTEA-Associated License Amendment Application Demonstrates Compliance with Then-Existing NRC Requirements and Policies

Thus having concluded that CBR's withdrawal request should be granted "without prejudice," we turn to Consolidated Intervenors' assertion that such a grant should be

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[38] Marsland, CLI-20-1, 91 NRC at 101 (footnotes omitted).

[39] We recognize that a challenge to a motion seeking withdrawal "without prejudice" can "trigger further inquiry" in the form of additional pleadings or an oral hearing. Fulton, ALAB-657, 14 NRC at 978 n.12. It has been recognized as well that the "threshold standard" for requiring such an inquiry "should be related to the substantive standard that a [challenge] of that kind must satisfy." North Coast, ALAB-662, 14 NRC at 1133. For the same reasons Consolidated Intervenors have failed to make the requisite showing of prejudice to their interests or the public interest needed to support the entry of a withdrawal "with prejudice," we also conclude they have not made a showing "of sufficient weight and moment to cause reasonable minds to inquire further" so as to warrant a further inquiry into their claims. Id. at 1134.

conditioned (1) to bar CBR from submitting a future NTEA license amendment application "identical" to its current application; and (2) to require that any new application "demonstrates compliance with then[-]current federal law and NRC policies concerning climate change, environmental justice, respect for the rights of and consultation with indigenous people[,] including [OST,] and updated site[-]specific data and information concerning water use, water availability and shortages in and around the City of Crawford and Dawes County." Consolidated Intervenors Answer at 12–13. As it turns out, however, the substance of their request will, for all essential purposes, be fulfilled simply by the operation of the agency's license review process.

Because of the extended period during which the NRC Staff's review of the NTEA application was suspended, the Staff recognized during the October 2023 status conference that CBR undoubtedly would be required to update or supplement both the safety and environmental portions of its application to reflect current circumstances regarding the NTEA site and CBR's proposed operations.[40] See Tr. at 815–16 (Simon). This concern about the timeliness and sufficiency of CBR-provided information is consistent with the Staff's approach generally regarding the adequacy of an application's information to support the Staff's safety and environmental reviews.[41] Accordingly, and notwithstanding Consolidated Intervenors' claim

[40] Consolidated Intervenors expressed a concern about a later application being "identical" to CBR's current licensing request. Consolidated Intervenors Answer at 12. Considering this Staff recognition that CBR in all likelihood would have to provide more current information in support of its existing NTEA application, as a practical matter this claim about a future is not an instance demonstrating "substantial prejudice to an opposing party or to the public interest in general" so as to warrant imposing a condition barring a duplicate NTEA application. North Coast, ALAB-662, 14 NRC at 1133.

[41] See NMSS, NRC, NUREG-1569, Standard Review Plan for In Situ Leach Uranium Extraction License Applications at iii (June 2003) ("An applicant for a . . . commercial-scale license, or for the renewal or amendment of an existing license, is required to provide detailed information on the facilities, equipment, and procedures used and an [ER] that discusses the effects of proposed operations on the health and safety of the public and on the environment.") (ADAMS Accession No. ML032250177) [hereinafter ISR Standard Review Plan]; see also Office of Nuclear Regulatory Research, NRC, Regulatory Guide 3.46, Standard Format and Content of License Applications, Including [ERs], for In Situ Uranium Solution Mining at vii (1982) ("Each subject should be treated in sufficient depth and with sufficient documentation to permit the

that a withdrawal condition is necessary to ensure that any new NTEA application contains "sufficient detail and information to enable NRC" to ensure compliance with applicable statutory and regulatory provisions,[42] both an applicant in submitting its licensing request and the NRC Staff in undertaking its licensing evaluation, already are obligated to use their best efforts to ensure that the substance and seasonableness of the application's information are sufficient to address the various applicable AEA, NEPA, and other statutory and associated regulatory requirements that govern and inform the agency's safety and environmental reviews.[43]

Commission to independently evaluate the information presented." (footnote omitted)) (ADAMS Accession No. ML003739441).

[42] Consolidated Intervenors Answer at 13–14. In this regard, Consolidated Intervenors seek withdrawal conditions based on NDEQ aquifer exemption-associated requests for CBR showings regarding (1) NTEA mining's impact on adjacent water wells; and (2) NTEA-mined uranium's commercial value relative to the value of unusable water caused by the mining operation. See Consolidated Intervenors Answer at 13 (citing NDEQ Aquifer Technical Review at 5, 16). These demands, however, fail to recognize that, notwithstanding whatever relevance NDEQ's requests for aquifer exemption-related information and CBR's responses might have to the admission and litigation of an aquifer mixing/water quality-based contention, see supra note 31, the focus of the agency's licensing review otherwise is limited to whether CBR has obtained such an exemption from the appropriate federal and state agencies. See ISR Standard Review Plan at 6-5 ("In addition to the NRC license, the [Environmental Protection Agency (EPA)] Authorized States issue underground injection control permits for in situ leaching operations, after the EPA grants an exemption from ground-water protection provisions for the portion of the aquifer undergoing uranium extraction (the exploited ore zone in an aquifer). . . . The EPA Authorized State may impose ground-water restoration requirements that are more stringent than the delegated federal program. . . . The [NRC] reviewer is advised to closely coordinate the NRC licensing review activities with the underground injection control permitting programs of EPA Authorized States to avoid unnecessary duplication of effort."); id. at 10-1 ("The reviewer should determine that the applicant has satisfied all license, permit, and other approvals of construction and operations that are required by federal, state, local, and regional authorities with jurisdiction for the protection of the environment. Types of licenses or permits may include but are not limited to . . . (vi) aquifer exemption.").

[43] See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 627 (1973) (indicating agency regulatory staff has continuing responsibility and duty under the AEA to ensure applicants and licensees comply with applicable requirements "both on paper and in reality"); see also ISR Standard Review Plan, app. B (Relationship of 10 CFR Part 40, Appendix A Requirements to Standard Review Plan Sections) (table outlining correlation between Part 40, Appendix A criterion, which were written for conventional uranium recovery facilities, and NUREG-1569 standard review plan provisions providing guidance on information to be included in ISR facility applications); NMSS, NRC, NUREG-1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs at 1-1 (Aug. 2003) ("This document is primarily intended to serve as guidance to NMSS staff to meet

In sum, imposing Consolidated Intervenors' requested conditions on any new NTEA application would afford no relief from any purported prejudice to themselves or the public interest. Accordingly, we see no basis for including such strictures as a specification of CBR's withdrawal.

III. CONCLUSION

Having determined that (1) applicant CBR has provided sufficient justification to support its request to withdraw its pending NTEA license amendment application "without prejudice"; and (2) Consolidated Intervenors have failed to meet their burden of establishing that (a) applicant CBR's license amendment application withdrawal request should be granted "with prejudice," or (b) additional conditions should be attached to such a withdrawal, in the exercise of its authority under 10 C.F.R. § 2.107(a), the Licensing Board grants CBR's December 29, 2023 motion to withdraw its pending NTEA license amendment application without prejudice, thereby concluding this adjudicatory proceeding.

For the foregoing reasons, it is this twenty-ninth day of February 2024, ORDERED that:

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the requirements established by legislation and regulations. . . . In a similar manner, applicants and licensees are encouraged, but not required, to use Chapter 6[, which discusses information that should be considered for inclusion in an ER,] when preparing [ERs] for submission to the NRC.") (ADAM Accession No. ML032450279).

We would add that in claiming the need for withdrawal conditions mandating that any new NTEA application contain information that in scope, detail, and timeliness is sufficient to adequately address all then-current federal laws and NRC policies, Consolidated Intervenors apparently discount the precept that, absent a showing of bad faith (which has not been demonstrated here), it is presumed that the Staff and an applicant will honor their regulatory responsibilities. See Strata Energy, Inc. (Ross In Situ Recovery Uranium Project), LBP-15-3, 81 NRC 65, 132 (2015) (citing GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000)), petition for review denied, CLI-16-13, 83 NRC 566 (2016), petition for review denied, Natural Res. Def. Council v. NRC, 879 F.3d 1202 (D.C. Cir. 2018)).

A. The December 29, 2023 motion of applicant Crow Butte Resources, Inc., to withdraw its May 30, 2007 application to amend its 10 C.F.R. Part 40 source material license to authorize CBR to conduct ISR operations on the NTEA is granted without prejudice to CBR filing another license application seeking such authority and this proceeding is terminated.

B. In accordance with 10 C.F.R. § 2.341(a)(2), this memorandum and order will constitute a final decision of the Commission 120 days from the date of issuance, i.e., on Friday, June 28, 2024, unless a petition for review is filed in accordance with 10 C.F.R. § 2.341(b)(1) or the Commission directs otherwise. Any petition for review must be filed within twenty-five (25) days after service of this memorandum and order. Answers supporting or opposing Commission review must be filed within twenty-five (25) days after service of a petition for review. A petition for review and any answers must conform to the requirements of 10 C.F.R. § 2.341(b)(2)–(3).

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

/RA/

Dr. Craig M. White
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 29, 2024

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943-MLA
	)	
In-situ leach Uranium Recovery Facility, Crawford, Nebraska	)	
	)	
(License Amendment for the North Trend Expansion Area)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Granting Motion to Withdraw Application Without Prejudice and Terminating Proceeding) (LBP-24-02)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 29th day of February 2024.