

July 23, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION TO SUBMIT
REVISED REBUTTAL TESTIMONY AND NEW EXHIBIT

In accordance with 10 C.F.R. § 2.323 and the Atomic Safety and Licensing Board's (Board) scheduling order dated March 25, 2015, the staff of the U.S. Nuclear Regulatory Commission (Staff) files this motion to submit a revised version of its rebuttal testimony (Ex. NRC-076) and to submit an Errata to the Staff's Environmental Assessment (EA) as a new exhibit.¹

The Staff published the EA on October 24, 2014, and submitted its rebuttal testimony in this proceeding on June 8, 2015. The Staff has discovered that language in the EA inaccurately reflects the language in CBR's National Pollutant Discharge Elimination System (NPDES) permit NE0130613 (Ex. CBR-043), and that a portion of the Staff's rebuttal testimony reflects the inaccurate language in the EA. The Staff has prepared an Errata to the EA, and has notified

¹ As required pursuant to 10 C.F.R. § 2.323(b), Staff counsel has consulted with counsel for Crow Butte Resources (CBR), the Oglala Sioux Tribe (OST), and Consolidated Intervenor (CI). Counsel for CBR has indicated that CBR has no objection to the Staff's requests. Counsel for CI has indicated that CI do not object to the filing of the Errata as a new exhibit, but CI do object to the filing of revised rebuttal testimony unless CI's witness, Ms. McLean, is given a reasonable opportunity to provide rebuttal testimony to the Staff's revised testimony. Counsel for OST did not respond to Staff Counsel's consultation e-mail.

the Board and parties of its availability in a separate filing.² As discussed below, to ensure a clear and accurate record in this license renewal proceeding, the Staff requests that the Board allow the Staff to submit revised rebuttal testimony and to submit the Errata to the EA as a new exhibit.

As described in the Affidavit of Nathan Goodman submitted with this Motion,³ the inaccurate language in the EA is a drafting error which does not affect the analysis or conclusions in the EA. Specifically, page 12 of the EA states, “Land application after wet weather events will not be utilized by CBR since it is not included in the current NPDES permit No. NE0130613 from the State of Nebraska.” CBR’s NPDES permit states, however, that “[l]and application . . . shall only be permitted during and immediately after wet weather events.”⁴ Consequently, the Staff has issued an Errata to the EA to correct the relevant portion of the statement on page 12 of the EA to read as follows: “Land application except during and immediately after wet weather events will not be utilized by CBR”

The inaccurate statement on page 12 of the EA is reflected in the Staff’s rebuttal testimony, in the first sentence of the second paragraph of the Staff’s response A.12.3:⁵

Moreover, Dr. McLean has not established that a pathway exists by which the land application of treated process wastewater under dry conditions will cause the significant adverse impacts to human beings and wildlife that she describes (land application after wet weather events is not allowed under CBR’s NDEQ permit) (Ex. NRC-010 at 12). In fact, Dr. McLean identifies other pathways by which the heavy metals she discusses have been known to cause impacts to the environment, including impacts from uranium acting in concert with calcium ions generated by ISR mining generally “as well as in runoff waters of the Rocky Mountains over old uranium open pit mines” (Ex. INT-048 at 10) and “legal dumping”

² Letter from Emily Monteith, Counsel for the NRC Staff, to the Licensing Board (July 23, 2015).

³ Affidavit of Nathan Goodman Concerning Factual Error in Environmental Assessment and Rebuttal Testimony (July 23, 2015).

⁴ Ex. CBR-043 at 3.

⁵ Ex. NRC-076 at 76.

of arsenic “into commercial fertilizers from mining and ore smelting waste since 1976” (Ex. INT-048 at 14).

To correct the reflected inaccuracy, the Staff proposes to revise the above paragraph by striking the first sentence of the paragraph and the first two words of the following sentence, as indicated below:

~~Moreover, Dr. McLean has not established that a pathway exists by which the land application of treated process wastewater under dry conditions will cause the significant adverse impacts to human beings and wildlife that she describes (land application after wet weather events is not allowed under GBR’s NDEQ permit) (Ex. NRC-010 at 12).~~ In fact, Dr. McLean identifies other pathways by which the heavy metals she discusses have been known to cause impacts to the environment, including impacts from uranium acting in concert with calcium ions generated by ISR mining generally “as well as in runoff waters of the Rocky Mountains over old uranium open pit mines” (Ex. INT-048 at 10) and “legal dumping” of arsenic “into commercial fertilizers from mining and ore smelting waste since 1976” (Ex. INT-048 at 14).

The above revision has been made in the Staff’s revised rebuttal testimony, which is being filed with this motion as Staff Exhibit NRC-076-R. Exhibit NRC-076-R also includes a new affidavit from Nathan Goodman, the Staff’s witness on Contention 12, attesting to the content of the revised rebuttal testimony for Contention 12.

The original version of the EA in the NRC’s Agencywide Documents Access and Management System (ADAMS) (ADAMS Accession No. ML14288A517) has been revised to incorporate the Errata, and retains the same accession number. Instead of submitting a revised version of the EA as an exhibit, the Staff proposes retaining the version of the EA that was already submitted (Ex. NRC-010) and submitting the Errata as a separate, new exhibit (Ex. NRC-092) for the hearing. This would allow the retention of accurate citations to the EA in all parties’ testimony.⁶ Accordingly, new Staff Exhibit NRC-092, the Errata, is also filed with this motion. Finally, the Staff is filing with this motion a revised exhibit list and the previously-

⁶ Because the EA has been cited frequently in all parties’ testimony, it would be unduly burdensome for the parties to be asked to revise their testimony to incorporate a revised exhibit number for the EA.

referenced affidavit of Nathan Goodman, which attests to the circumstances of error in the EA and states that the revision in the Errata does not alter the Staff's analyses or conclusions in the EA.

In conclusion, for the reasons discussed above, the Staff respectfully requests that the Board grant this motion.

Respectfully submitted,

/Signed (electronically) by/

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