

August 10, 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)	)	

PARTIES' JOINT RESPONSE TO THE BOARD'S JULY 31,  
2015 ORDER REGARDING REDACTION OF DOCUMENTS

On July 31, 2015, the Board issued an Order identifying several documents “that are not listed on any party’s exhibit list and that appear not to be publicly available.”<sup>1</sup> Because the Board stated that it may have occasion to use these documents during the upcoming hearing, the Board directed the parties to jointly, by August 10, 2015, “(1) advise the Board if any of the documents . . . contain material that should not be disclosed to the public, (2) state the law or privilege that prevents disclosure of such material to the public, and (3) produce to the Board and the parties public versions of such documents that redact any material that should not be disclosed to the public.”<sup>2</sup> After consulting with all parties to this proceeding, the U.S. Nuclear Regulatory Commission (NRC) Staff hereby submits this joint response to the Board’s Order.<sup>3</sup>

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<sup>1</sup> Order (Redaction of Documents) (July 31, 2015) (unpublished) (“July 31 Order”).

<sup>2</sup> *Id.*

<sup>3</sup> For reference, Attachment 1 to this response contains a table listing all of the documents that are being filed as attachments to this response.

I. Non-public documents in ADAMS

A. Transcripts from Section 106 meetings and teleconferences

The Board first identified six non-public transcripts of Section 106 consultation meetings or teleconferences.<sup>4</sup> The Staff initially characterized these transcripts as sensitive unclassified non-safeguards information (SUNSI) and made them non-public for two reasons: (1) the possibility that the meetings or teleconferences would contain sensitive information related to cultural resources, and (2) in discussions with consulting tribes prior to these meetings and teleconferences, the tribes requested that these types of meetings (i.e., government-to-government consultations) be made non-public, and the Staff agreed to that request.<sup>5</sup> The Staff has done the same for similar meetings in other in-situ recovery (ISR) licensing proceedings. After reviewing the transcripts following the Board's July 31 Order, the Staff has concluded that there is no sensitive information regarding cultural resources that would be protected from public disclosure under the National Historic Preservation Act (NHPA) or state law. Further, the Staff has not identified any other law or privilege that applies to any portion of the transcripts. However, the transcripts are characterized as SUNSI and were made non-public under internal NRC policy and pursuant to an agreement with consulting tribes. Therefore, in the Staff's view these documents should remain non-public. Because submitting these documents on the public electronic hearing docket (EHD) would create publicly available versions in ADAMS, these transcripts are being provided to the Board and parties' counsel as non-public information on the non-public EHD.

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<sup>4</sup> July 31 Order at 2.

<sup>5</sup> The Staff has provided the Affidavit of Nathan Goodman attesting to circumstances surrounding the characterization of these documents, as well as the review of these documents for sensitive cultural resources information.

B. Statements of Work related to Traditional Cultural Properties (TCP) Surveys (non-public documents in ADAMS)

The Board next identified two proposed Statements of Work (SOWs) related to Traditional Cultural Properties (TCP) survey development that are non-public documents in ADAMS.<sup>6</sup> The first—Crow Butte Resources' (CBR's) March 8, 2012 proposed SOW—contains no information protected from public disclosure by any law or privilege and may be made publicly available in its entirety.<sup>7</sup> The second document is the Makoche Wowapi September 27, 2012 Proposed SOW for the Dewey-Burdock site. Portions of this document contain proprietary cost information protected under 10 C.F.R. § 2.390(a)(4), but the remainder of the document does not contain information protected from public disclosure by any law or privilege. Therefore, the parties are submitting a publicly available version of this document with that cost information redacted.

II. Documents not in ADAMS

The Board further identified other documents that could not be found in ADAMS.<sup>8</sup> First, the Board identified “at least one updated Applicant Proposed Statement of Work” regarding the TCP survey of the CBR license renewal area.<sup>9</sup> The parties are submitting the five CBR documents cited in footnote 2 of the Board's Order, all of which have been determined by CBR's counsel not to contain proprietary information or any other information protected from disclosure by law or privilege. Therefore, the parties are submitting these five documents in their entirety.

Finally, the Board identified “at least one Tribe Proposed Statement of Work” regarding the TCP survey of the CBR license renewal area, citing an email from the NRC Staff regarding

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<sup>6</sup> July 31 Order at 2.

<sup>7</sup> In addition, the Staff will be changing the designation of this document in ADAMS to “publicly available.”

<sup>8</sup> July 31 Order at 2.

<sup>9</sup> *Id.*

an August 9, 2012 consultation teleconference with several attachments.<sup>10</sup> The Staff has reviewed those attachments and found no proposed SOW from a Tribe or Tribes regarding the TCP survey of the CBR license renewal area. However, the Staff did identify another proposed SOW from CBR associated with that email. CBR's counsel has determined that this document contains no proprietary information or other information protected from disclosure by law or privilege. Therefore, that document is being provided in its entirety.<sup>11</sup>

Respectfully submitted,

**/Signed (electronically) by/**  
Marcia J. Simon  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-1261  
[marcia.simon@nrc.gov](mailto:marcia.simon@nrc.gov)

Dated at Rockville, Maryland  
this 10th day of August, 2015.

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<sup>10</sup> *Id.* n.3.

<sup>11</sup> In the Staff's email, this document was in Microsoft Word format and the figures referenced in the document were provided as separate files. In this filing, a PDF version of the document is being provided that contains the SOW and all of the figures combined into one file.

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Facility, Crawford, Nebraska)	)	

AFFIDAVIT OF NATHAN E. GOODMAN CONCERNING DOCUMENTS RELATED  
TO SECTION 106 CONSULTATION AND TRADITIONAL CULTURAL PROPERTIES  
SURVEYS

I, Nathan E. Goodman, do hereby state as follows:

1. I am employed as a Project Manager in the Division of Fuel Cycle Safety and Environmental Review in the U.S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards. I serve as a project manager for the environmental review of the Crow Butte Resources, Inc. (CBR) application to renew its license to operate an in-situ leach uranium recovery (ISR) facility. As part of my responsibilities, I have managed the NRC's consultation efforts with several Native American Tribes under the National Historic Preservation Act (NHPA).

2. I have read and am familiar with the Board's Order of July 31, 2015 in this proceeding, directing the parties to produce public versions of certain non-public documents identified by the Board. As part of the NRC Staff's effort to respond to this Order, I have reviewed the six transcripts of Section 106 consultation meetings or teleconferences identified by the Board, and the Makoche Wawopi Proposed Statement of Work for the Dewey-Burdock project. My review of these documents found no sensitive information regarding cultural resources that would be protected from public disclosure under the NHPA or state law.

3. The meeting and teleconference transcripts were initially characterized by the NRC Staff as sensitive unclassified non-safeguards information (SUNSI) and made non-public. This decision was made for two reasons: (1) there was a possibility that the consultation meetings and teleconferences could contain sensitive information related to cultural resources (i.e., location), and (2) in my discussions with consulting Tribes prior to these meeting and teleconferences, the Tribes requested that this type of meeting (i.e., government-to-government consultations) be made non-public, and the NRC Staff agreed to the Tribes' request. It is my understanding that the NRC Staff has made the same agreement with consulting Tribes in other ISR licensing proceedings.

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

**/Executed in Accord with 10 CFR 2.304(d)/**

Nathan E. Goodman  
U.S. Nuclear Regulatory Commission  
Mail Stop T-4B16  
Washington, DC 20555-0001  
(301) 415-0221  
[Nathan.Goodman@nrc.gov](mailto:Nathan.Goodman@nrc.gov)

Executed in Rockville, MD  
this 10th day of August, 2015

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "PARTIES' JOINT RESPONSE TO THE BOARD'S JULY 31, 2015 ORDER REGARDING REDACTION OF DOCUMENTS" in the above-captioned proceeding, and Attachments 1 and 8-15 thereto, have been served this 10th day of August, 2015, via the NRC's Electronic Information Exchange ("EIE"), and via e-mail to David Frankel and Thomas Ballanco, counsel for Consolidated Intervenor, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

**Signed (electronically) by**

Marcia J. Simon  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-1261  
[marcia.simon@nrc.gov](mailto:marcia.simon@nrc.gov)