

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: Monday, January 10, 2022

Work Order No.: NRC-1802

Pages 3061-3101

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 STATUS CONFERENCE

7 -----x

8 In the Matter of: :

9 CROW BUTTE RESOURCES, : Docket No.

10 INC. : 40-8943

11 (License Renewal for : ASLBP No.

12 the In Situ Leach : 08-867-02-OLA-BD01

13 Facility, Crawford, :

14 Nebraska) :

15 -----x

16 Monday, January 10, 2022

17
18 Videoconference19
20 BEFORE:

21 MICHAEL M. GIBSON, Chair

22 GARY S. ARNOLD, Administrative Judge

23 G. PAUL BOLLWERK, III, Administrative Judge

24

25

1 APPEARANCES:

2 On Behalf of Crow Butte Resources, Inc.:

3 DAVID R. LEWIS, ESQ.

4 of: Pillsbury Winthrop Shaw Pittman LLP

5 1200 17th Street, N.W.

6 Washington, D.C. 20036

7 202-663-8474

8 david.lewis@pillsburylaw.com

9
10 On Behalf of the Oglala Sioux Tribe:

11 ANDREW REID, ESQ.

12 of: The Ved Nanda Center for International &

13 Comparative Law

14 1075 Waite Drive

15 Boulder, Colorado 80303

16 303-437-0280

17 lawyerreid@gmail.com

18
19 On Behalf of the Consolidated Interveners:

20 THOMAS BALLANCO, ESQ.

21 945 Taraval Avenue

22 San Francisco, California 94116

23 650-296-9782

24 harmonicengineering@gmail.com

25

1 On Behalf of the Nuclear Regulatory Commission:

2 MARCIA J. SIMON, ESQ.

3 LORRAINE BAER, ESQ.

4 of: U.S. Nuclear Regulatory Commission

5 Office of the General Counsel

6 Mail Stop - O-15D21

7 Washington, D.C. 20555-0001

8 301-287-9176 (Simon)

9 marcia.simon@nrc.gov

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1:05 p.m.

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

Court Reporter, you're on the line with us, is that correct?

COURT REPORTER: Yes, Your Honor, I'm here.

CHAIRMAN GIBSON: Very well. We are here this afternoon on the renewal of a license for the in situ leach mining operation of Crow Butte Resources, Docket No. 40-8943.

After the initial decision issued by this Board was affirmed by the Nuclear Regulatory Commission this fall, we set this matter for status conference. I believe this is now our seventh status conference.

And with me on the Board are Judges Bollwerk and Arnold. And as you can probably tell, the three of us are still appearing virtually.

Also along with us are our law clerks, Brooke Taylor and Allison Wood. You may note that Ian Curry is no longer with us. He has gone on to another position.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I would now like to have announcements of
2 counsel, first from Crow Butte.

3 MR. LEWIS: Thank you, Judge Gibson. This
4 is David Lewis, Law Firm of Pillsbury Winthrop Shaw
5 Pittman, representing Crow Butte Resources.

6 CHAIRMAN GIBSON: Thank you, Mr. Lewis.
7 For the NRC staff?

8 MS. SIMON: Good afternoon, Judge Gibson.
9 This is Marcia Simon for the NRC staff, and my co-
10 counsel, Lorraine Baer, is also on the call.

11 CHAIRMAN GIBSON: Thank you, Ms. Simon.
12 And for Consolidated Interveners?

13 MR. BALLANCO: Good afternoon, Your Honor.
14 Tom Ballanco for Consolidated Interveners.

15 CHAIRMAN GIBSON: Okay. Thank you, Mr.
16 Ballanco.

17 And for the Oglala Sioux Tribe?

18 MR. REID: Good afternoon. Andrew Reid,
19 for the Oglala Sioux Tribe.

20 CHAIRMAN GIBSON: Thank you, Mr. Reid.

21 As I've noted at the beginning of every
22 argument, conference, and hearing that we've held in
23 this matter, because artifacts and historic sites are
24 central to this proceeding, it is important that all
25 of us be mindful that, insofar as our discussions

1 during this status conference may implicate either the
2 nature or the location of any of these cultural
3 resources, please flag that for us and we will simply
4 set discussion of that topic aside until the end of
5 this status conference, when we can exclude the public
6 and proceed into a non-public format to address those
7 matters.

8 Likewise, as I noted in our previous
9 status conferences since the Commission's decision,
10 this Board's job here is not in any way to supervise
11 the performance of the NRC staff, but, rather, monitor
12 the progress that the staff is making in addressing
13 the cultural resources issues that we adjudicated
14 previously and that are addressed in our initial
15 decision.

16 Before we allow Ms. Simon to address us on
17 the progress of the cultural resources issues, Judge
18 Bollwerk and Judge Arnold, is there anything else we
19 need to cover at this time?

20 JUDGE BOLLWERK: Not from me at this
21 point.

22 JUDGE ARNOLD: I have nothing.

23 CHAIRMAN GIBSON: Very well. Then, Ms.
24 Simon, you may proceed.

25 PRESENTATION ON BEHALF OF NRC STAFF

1 MS. SIMON: Thank you again, Judge Gibson,
2 and good afternoon, everyone.

3 So as everyone is well aware, I think, the
4 field investigation of the Crow Butte facility license
5 area began on November 1st, 2021, and ended with a
6 final visit by tribal elders on December 8th, 2021.
7 The first day of the survey was actually an onsite
8 meeting. So the actual surveying began on November
9 2nd.

10 A Staff Project Manager was onsite between
11 November 1st and November 5th and, also, between
12 November 14th and 19th. The staff's contractor, Mr.
13 Spangler, was onsite for the entire three-week period
14 of November 1st through the 19th.

15 As mentioned in the January 3rd, 2022
16 status report, the tribe's contractor, Quality
17 Services, Incorporated, or QSI, requested additional
18 field work days, and that additional field work began
19 on November 29th and was completed on December 2nd.
20 And there was also an additional final field visit by
21 tribal elders on December 8th, and that, again,
22 concluded the field investigation.

23 During the weeks that the staff was
24 onsite, the Project Managers and Mr. Spangler walked
25 the site with the survey crew, at the crew's

1 invitation. And the staff and Mr. Spangler
2 appreciated the opportunity to walk the site with the
3 crew, and they found it to be a collegial and
4 collaborative effort. And Mr. Spangler also
5 highlighted the professionalism and competence of the
6 Tribal Cultural Specialist.

7 The staff also appreciates Crow Butte
8 Resources' efforts in terms of the logistics involved
9 in carrying out the field work, including coordination
10 with landowners; providing an escort for the survey
11 crew and for tribal elders, and providing other
12 support, as needed; and also, accommodating the extra
13 survey days beyond what was originally planned.

14 As noted in the January 3rd update,
15 following its standard practice, the staff prepared a
16 trip report describing the field investigation, and
17 that report is publicly available in ADAMS. The
18 purpose of the trip report is to document the staff's
19 activities and the activities of its contractor while
20 on travel.

21 Following the completion of the field work
22 on December 15th, 2021, the staff emailed Mr. Brings
23 and Mr. Salway of the Tribe, and also, Mr. Rom and Mr.
24 Weston at Quality Services, with proposed due dates
25 for the Draft and Final Survey Reports. The survey

1 methodology states that a draft will be provided to
2 the NRC, so the contractor can ensure that the report
3 contains sufficient information to allow the staff to
4 fulfill its NHPA and NEPA obligations. And because
5 the methodology did not specify a date for submitting
6 the draft, the staff proposed January 24th, 2022, as
7 a due date. And the staff also proposed a Final
8 Report due date of February 7th, 2022, in line with
9 the 60 days following field investigation completion
10 that was in the survey methodology.

11 Also in the December 15th email, and also
12 in the follow-up email on December 30th, the staff
13 requested feedback on those target dates and offered
14 to set up a meeting to discuss them. Last Wednesday,
15 on January 5th, the staff received an email from Mr.
16 Reid indicating that Mr. Rom had requested a one-month
17 extension of the target date for submitting the Draft
18 Survey Report. And Mr. Reid actually suggested
19 perhaps extending it two months to be conservative.

20 So, the staff responded and proposed that
21 the draft be submitted by close of business on Friday,
22 March 4th, 2022, which is about five and a half weeks
23 from the originally proposed date of January 24. And
24 the staff also proposed the target date of March 21st
25 for submitting the Final Report.

1 And on Friday, January 7th, Mr. Reid
2 responded that Mr. Rom and the Tribe said that the
3 March 4th due date for the Draft Survey Report should
4 work for them.

5 So, that's where things stand right now.
6 And I'm happy to answer any questions.

7 CHAIRMAN GIBSON: Thank you, Ms. Simon.

8 Judge Bollwerk, Judge Arnold, is there
9 anything that you want to ask Ms. Simon before we
10 allow other counsel to respond?

11 JUDGE ARNOLD: I have no questions.

12 CHAIRMAN GIBSON: Judge Bollwerk?

13 JUDGE BOLLWERK: Just a couple of things.

14 I know that the staff was onsite for at
15 least one of the tribal elder visits. Can you give us
16 any insight into how the staff felt that went?

17 MS. SIMON: Yes, Judge Bollwerk. Staff,
18 actually, did not accompany the elders. The elders
19 had an escort from Crow Butte to take them around to
20 where they wanted to go. And Mr. Weston of Quality
21 Services accompanied them, but they chose not to have
22 the staff with them. But my understanding is, though,
23 that they were able to see what they wanted to see.

24 JUDGE BOLLWERK: Right. And let me just
25 mention that I guess the trip report is the ADAMS

1 Accession No. ML21355A145.

2 I guess you expressed already that the
3 staff was, basically, satisfied, and your contractor
4 was satisfied, with how the field investigation went,
5 from what they observed?

6 MS. SIMON: Yes.

7 JUDGE BOLLWERK: And so now, in terms of
8 the dates that you just gave us, the March 4th, 2022
9 is the date for your contractor to receive the Draft
10 Report from, I guess, the Tribe or Quality Services.
11 Have I got that correct?

12 MS. SIMON: That's correct.

13 JUDGE BOLLWERK: And how long do you
14 anticipate you're going to take to get it back to them
15 with any comments?

16 MS. SIMON: So, Mr. Spangler, actually, he
17 will be out of town the week of February 28th. So, he
18 has plans to start reviewing that on March 7th, and he
19 said he's planning to turn it around within a couple
20 of days. The review is going to be a cursory review.
21 It's not an in-depth review, but it's, again, to
22 ensure that there's sufficient information to allow
23 the staff to fulfill the NHPA and NEPA obligations.

24 JUDGE BOLLWERK: All right. Do you have
25 any information about what's going on with the

1 interview process, the oral interview process?

2 MS. SIMON: I don't.

3 JUDGE BOLLWERK: All right. And then,
4 let's turn for a second to the staff's actual EA
5 Supplement. So, we're now looking at a date of March
6 21st for the EA Supplement. And you gave us a
7 schedule -- and we've referred to this before, I guess
8 in the last prehearing conference -- back in March of
9 2021, March 5th, which is ADAMS Accession No.
10 ML21061A261, which showed that, once you receive the
11 Final Survey Report, it would be about two months when
12 the staff, then, would provide a draft of the EA to
13 the Tribe for their review for 30 days. Is that still
14 an operative schedule in terms of with the new kickoff
15 date of March 21?

16 MS. SIMON: So, the original schedule that
17 you mentioned contemplated the Final Survey Report
18 being provided or completed by the end of February.
19 So, the extension, therefore, represents a three-week
20 delay. The staff is hoping to be able to absorb those
21 three weeks during the subsequent activities, to avoid
22 impacting the overall schedule. Whether they'll be
23 able to absorb all three weeks in that period of
24 providing the initial draft to the Tribe is not
25 certain, but they're going to try to adhere to the

1 overall schedule, to the extent possible.

2 JUDGE BOLLWERK: So, the schedule back in
3 March, then, called for the staff to provide their
4 Draft EA to the Tribe for a 30-day review period at
5 the end of April 2022. So, that's, essentially, what
6 you're still shooting for, then, approximately, or
7 not?

8 MS. SIMON: Yes. Yes, and as I said, if
9 possible. The staff may not be able to absorb all
10 three of those weeks there. So, if that maybe slips
11 by one week or two weeks, then, further down the line
12 in the time period after the Tribe is provided the 30-
13 day review, for example, the staff has several months
14 to prepare the next draft that will be submitted, that
15 will be provided to the public. And so, perhaps they
16 can, you know, make up another week there, if they
17 can't make up the three weeks in this initial
18 milestone.

19 JUDGE BOLLWERK: All right. And when do
20 you think the staff is going to have a better idea of
21 how your interaction with the Tribe's Draft Report is
22 going to impact the schedule in terms of whether you
23 can complete it by the end of April or not?

24 MS. SIMON: I'm not sure I understand --

25 JUDGE BOLLWERK: So, you're obviously

1 leaving yourself some wiggle room, and I'm trying to
2 figure out when you think things are going to
3 solidify, so that that wiggle room, I won't say
4 "disappears," but you have a more solid schedule? I
5 guess that's the best way to put it.

6 MS. SIMON: I don't know that I can answer
7 that. I think that, once the staff receives the
8 report, they'll be working diligently to get the EA
9 Supplement Draft completed and out. And I can't
10 really say.

11 JUDGE BOLLWERK: Okay. So, perhaps by the
12 Monthly Report on April 1st that we get, you'll have
13 something by then, you think?

14 MS. SIMON: Maybe.

15 JUDGE BOLLWERK: All right. Okay. And
16 then, just to follow this out, so assuming you are
17 able to hold to the April schedule, or something like
18 it, say into the middle of May, at that point, that's
19 when the document was supposed to go to the Tribe for
20 30 days for their comment. And then, I believe the
21 schedule provided for another two months for the staff
22 to actually issue the Draft EA. So, that was in July.

23 MS. SIMON: Okay.

24 JUDGE BOLLWERK: And I take it, subject to
25 whatever happens, you're still going to try keep to

1 that date as well, it sounds like?

2 MS. SIMON: Yes. And as I said, the staff
3 is going to make every effort to adhere to the initial
4 deadline of the end of April for getting the initial
5 draft out.

6 JUDGE BOLLWERK: And so, then, you were
7 going to publish the EA approximately, the Draft EA,
8 at the end of July, with 30 days for comment in The
9 Federal Register, with the hope to get the whole thing
10 out by October of 2022.

11 MS. SIMON: That's correct.

12 JUDGE BOLLWERK: So, I take it that's
13 still where you're at, subject to whatever difficulty
14 you run into?

15 MS. SIMON: That is correct.

16 JUDGE BOLLWERK: Okay. All right. Thank
17 you. I think that's all I have at this point for the
18 staff.

19 CHAIRMAN GIBSON: Thank you, Judge
20 Bollwerk.

21 Mr. Lewis, do you have any additional
22 comments you wish to make after what Ms. Simon just
23 told us?

24 PRESENTATION ON BEHALF OF CROW BUTTE RESOURCES

25 MR. LEWIS: Nothing specific. We have

1 been endeavoring to facilitate completion of the
2 survey and bring this process to a close, and
3 accommodating extensions where we could, but we hope
4 that people can stick to the schedule, so we can bring
5 this to completion.

6 CHAIRMAN GIBSON: Good. Thank you.

7 Mr. Reid, do you have any --

8 JUDGE BOLLWERK: Could I ask Mr. Lewis a
9 couple of questions before you move on?

10 CHAIRMAN GIBSON: Oh, I'm sorry, Judge
11 Bollwerk.

12 JUDGE BOLLWERK: That's all right.

13 CHAIRMAN GIBSON: Sure.

14 JUDGE BOLLWERK: So, Mr. Lewis, I just
15 wanted to get a sense. Did the process that you
16 worked out with the Tribe in terms of the payment of
17 fees, did that work out all right, from your
18 perspective?

19 MR. LEWIS: Yes.

20 JUDGE BOLLWERK: So, there's no problems
21 with that?

22 And maybe Ms. Simon could comment on this.
23 My understanding is that Crow Butte and the
24 Consolidated Interveners, as the other parties to this
25 proceeding, their opportunity to comment on the Draft

1 Environmental Assessment will come as part of a public
2 comment period, is that correct, if they wish to do
3 so?

4 MS. SIMON: Is that question for me, Judge
5 Bollwerk?

6 JUDGE BOLLWERK: Yes.

7 MS. SIMON: Okay. We talked about Crow
8 Butte's opportunity to comment, I believe, in maybe
9 the last teleconference. And I think the staff was
10 not 100 percent sure about how that would work. Yes,
11 I think the short answer, I think the discussion then
12 was about whether Crow Butte would get an opportunity
13 to comment before the public comment period. And I
14 think the staff has said it would probably be during
15 the public comment period. So, I think that is
16 correct, yes.

17 JUDGE BOLLWERK: And the same thing would
18 apply to Consolidated Interveners?

19 MS. SIMON: Yes.

20 JUDGE BOLLWERK: So, basically, the Tribe
21 is the one that has an opportunity to comment on the
22 Draft Report, when that comes out, when you provide
23 that to them?

24 MS. SIMON: Yes.

25 JUDGE BOLLWERK: The Draft EA. Sorry, I

1 shouldn't use the word "report" that way.

2 MS. SIMON: Yes, the EA Supplement.

3 JUDGE BOLLWERK: Right.

4 MR. LEWIS: So, Judge Bollwerk, can I
5 address that?

6 JUDGE BOLLWERK: Yes, please.

7 MR. LEWIS: It was a sort of open issue in
8 our last teleconference, and we went back and talked
9 about it a little bit. It may make sense for Crow
10 Butte Resources to be able to look at the Draft
11 Environmental Assessment Supplement prior to its being
12 published in The Federal Register.

13 One of the considerations that we were
14 thinking about afterwards is that EA Supplement will
15 probably address mitigation, and if it's going to
16 address mitigation, it probably needs some input from
17 Crow Butte Resources before it goes out. And we would
18 not want to intrude on whatever government-to-
19 government consultation there is between the staff and
20 the Tribe, but maybe there needs to be some separate
21 discussion with the staff and Crow Butte Resources, if
22 there is going to be a discussion of mitigation, as
23 mitigation necessarily involves Crow Butte Resources
24 and what their plans would be.

25 JUDGE BOLLWERK: Right. Ms. Simon, do you

1 want to say anything subsequent to that?

2 MR. LEWIS: We have not discussed it with
3 the staff yet. I'm sorry.

4 JUDGE BOLLWERK: Oh, go ahead.

5 MR. LEWIS: No, I was saying I have not
6 discussed this with Marcia Simon or the staff yet.

7 JUDGE BOLLWERK: Well, I'll give her an
8 opportunity to say something now. Or, if she prefers,
9 she can defer the response.

10 MS. SIMON: Yes, I'm actually waiting to
11 let the staff give me some input on this.

12 JUDGE BOLLWERK: Okay.

13 MS. SIMON: But I think one option would
14 be that there can be discussions about mitigation
15 measures with Crow Butte outside of the actual
16 publication of the Draft EA. So, if it's necessary to
17 discuss it, there could be -- the staff could have
18 discussions with them while they're preparing the
19 Draft EA, for example. So, I'm sure we can work
20 something out. We can talk to, I can talk to Mr.
21 Lewis, and we can see down the road.

22 JUDGE BOLLWERK: All right.

23 Mr. Lewis, anything else you wanted to
24 say? I have one other question for you, but --

25 MR. LEWIS: No, that was it on that topic.

1 JUDGE BOLLWERK: All right.

2 Recognizing that I think you were there to
3 sort of make sure that health and safety, and those
4 sorts of things, were taken care of in terms of Crow
5 Butte's participation, did you have any comments you
6 want or any information you want to bring to the
7 Board's attention about how the field survey went or
8 the elder visits?

9 MR. LEWIS: Our sense is that the visits
10 went well. We were trying to be as non-intrusive as
11 possible. While we formed the escorts that we needed
12 to, we tried to stay in the background. And
13 therefore, we don't have a lot of information about
14 the specifics of what was found.

15 JUDGE BOLLWERK: All right. All right.
16 Thank you very much.

17 That's it for me, Judge Gibson, at this
18 point.

19 CHAIRMAN GIBSON: Okay. Thank you, Judge
20 Bollwerk.

21 Now, Mr. Reid, you have an opportunity to
22 add anything you wish to say of what Mr. Lewis and Ms.
23 Simon have said.

24 PRESENTATION ON BEHALF OF THE OGLALA SIOUX TRIBE

25 MR. REID: All right. Can you hear me all

1 right?

2 CHAIRMAN GIBSON: We can hear you just
3 fine, Mr. Reid.

4 MR. REID: All right. Thank you. I
5 apologize about the earlier audio. It's happened once
6 before, but I'm sorry about that.

7 CHAIRMAN GIBSON: We can hear you loud and
8 clear, Mr. Reid.

9 MR. REID: Okay. Great. Great.

10 On the issue about the status of the
11 interviews, it's my understanding that they were done
12 last week and should have been completed, or almost
13 completed. Most of them are being done by QSI staff.
14 And I wasn't able to get in touch with them before the
15 conference today, but I received an update last week
16 about that.

17 And the only extension that I can imagine
18 that would be required to occur would be if there were
19 some information that was obtained in those interviews
20 that would require Mr. Weston to go back out to the
21 site. Thus far, it doesn't appear to be an issue. I
22 haven't heard any word about needing to go back. I
23 think I would have heard it, if necessary, because
24 we'd have to make arrangements with Crow Butte on
25 that, and it hasn't occurred. So, I think we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pretty close to being done. We're certainly at the
2 report preparation stage.

3 And on that, the negotiation, or the
4 communications -- I shouldn't say negotiations --
5 communications are going well. And in regards to the
6 Tribe's review of the data, that would be the data
7 both from the ground survey and from the interviews in
8 terms of what needs to be kept confidential from any
9 disclosure; what needs to be disclosed to Quality
10 Services; and what needs to be disclosed -- or what
11 can be disclosed to Crow Butte, and then what can be
12 disclosed to the public.

13 So I guess there will essentially be three
14 versions. One is an unredacted version. The second
15 one would be a version with perhaps the details, for
16 example, of the spiritual issues or issues that may be
17 of great significance, (audio interference) cannot be
18 disclosed to Crow Butte, and then -- but they would
19 still disclose, obviously, the locations of the sites
20 because they need (audio interference) as well as to
21 the NRC staff. And then the third version would be
22 one that would be the one that, for example, would
23 redact the location of the sites, so it can be
24 disclosed to the public.

25 So that process is starting now, and the

1 Tribe will get that information. It's being conducted
2 by Mr. Salway and Mr. Brings and the tribal elders,
3 the Spiritual Advisor. And they're getting that
4 information to Mr. Rom and Mr. Weston, Reuben Weston,
5 so that they can prepare the report in that light.
6 Hopefully, there won't be any delay, once the report
7 is prepared on that issue.

8 So, I guess the point I'm trying to make
9 is, at the time that the report is submitted to the
10 NRC staff, the issues of confidentiality from the
11 Tribe's point of view should be taken care of.

12 On the issue of trying to work out the
13 review in a way -- and my whole goal, and I hope the
14 Board has been aware of that, my whole goal, as
15 counsel for the Tribe, has been trying to avoid
16 further litigation over this, and trying to work with
17 the other parties in this matter. And I have to admit
18 that, somewhat to my surprise, we've been able to work
19 through these issues and accomplish them with a great
20 degree of professionalism and cooperation between the
21 parties.

22 In regard to the mitigation --

23 CHAIRMAN GIBSON: Let me just say, Mr.
24 Reid --

25 MR. REID: Yes. Yes.

1 CHAIRMAN GIBSON: -- that the Board is
2 aware of that, and we want to commend all of you for
3 working together as you have. I realize that you all
4 have truly legitimate differences of opinion about
5 things, and yet, you all have been able to find a way
6 to work together. And I think you all need to be
7 commended for that, all of you.

8 MR. REID: Yes.

9 CHAIRMAN GIBSON: So the Board is very
10 appreciative of that fact and aware of it.

11 MR. REID: Thank you. And I would,
12 particularly, say that both Ms. Simon and Mr. Lewis
13 have been (audio interference). And we're talking
14 about the end of 40 years of litigation.

15 On the mitigation measures, I think what
16 Ms. Simon mentioned I think is a workable solution to
17 this issue. I think that, if it turns out that, from
18 the preparation of the Draft Report -- and this can be
19 done before it's even submitted to the NRC staff -- if
20 there are some significant mitigation measures that
21 need to be taken, from the Tribe's point of view, I
22 will represent to the Board that I'm willing to bring
23 those to Ms. Simon and Mr. Lewis for discussion to see
24 if we can resolve those issues prior to the issuance
25 of the report.

1 So, for example, if there's certain sites
2 that need to be avoided where there's existing mining
3 activity or, for example, because of whatever historic
4 or spiritual requirements, certainly areas have to be
5 avoided, or at certain times of the year activity in
6 those areas has to be avoided, which is common in some
7 areas, like, for example, Bear Butte and Devils Tower,
8 I don't expect that to be the case, but if it does
9 happen to be -- just using those as examples -- I'm
10 perfectly willing to approach Mr. Lewis and let him
11 know and see if we can't work out something that
12 resolves this; that we don't end up with a Draft
13 Report and Supplemental EA that raises issues that can
14 be resolved before the final documents are issued.
15 So, that's my take on that.

16 I think the March 4th date, from what I
17 hear from Quality Services and from the Tribe, is a
18 workable date to get that, the Draft Report, or to get
19 the report over to the NRC staff. And then, we'll
20 continue working as we have to try to get this (audio
21 interference), so we can create precedents for how to
22 work through these issues between tribes and the
23 federal government and the developer. At least that's
24 how we view this, anyway; we're setting some
25 precedents here on how to work these things out, so

1 that we always don't end up in court.

2 Thank you.

3 CHAIRMAN GIBSON: Thank you, Mr. Reid.

4 Judge Bollwerk or Judge Arnold, do you all
5 have anything you wish to ask Mr. Reid before we go on
6 to Mr. Ballanco?

7 JUDGE ARNOLD: I have nothing.

8 JUDGE BOLLWERK: All right. Let me just,
9 then, make sure in my own mind I have a couple of
10 things clear.

11 It sounds like, from what we've heard from
12 the staff and from Crow Butte, that they are
13 satisfied, from their perspective, as to how the field
14 investigation went and the elder visits were
15 conducted. Is that the Tribe's general feeling as
16 well?

17 MR. REID: Within the circumstances that
18 we find ourselves. Obviously, the Tribe disputes the
19 jurisdiction of the federal government over the areas
20 and believes that the federal government and Crow
21 Butte are trespassers upon the territory of the Oceti
22 Sakowin and the Oglala Lakota Nation. And within
23 that context, I believe we're satisfied with the
24 cooperation (audio interference) the NRC.

25 And I'm not aware of any significant

1 problems other than one incident when one of the
2 surveyors was injured, and that seems to have (audio
3 interference).

4 Also, I should mention that one of the
5 reasons for the delay -- I just want to make sure it's
6 part of the record -- because it was unexpected, both
7 Mr. Rom and most of his staff contracted COVID in
8 December. And so, there had to be delays.
9 Particularly, there has to be a one- or two-week
10 isolation, for example. You can't have somebody with
11 COVID going out to interview people or go out to
12 (audio interference).

13 Thank you.

14 JUDGE BOLLWERK: Well, I think, as Judge
15 Gibson expressed, that it's remarkable in some
16 respects that you all have gotten this done in the
17 timeframe you did, given the weather problems which
18 you could have had, which, apparently, did result in
19 some instances, but not as severe as they could have
20 been, as well as the fact that this is all happening
21 during the COVID pandemic. So, the point is, as Judge
22 Gibson indicated, expressed his appreciation to all of
23 you for working together and getting this one up to
24 this point the way you have.

25 And I hope the individual injured is all

1 right. I read that in the report. I was a little
2 concerned, but it sounds like, hopefully, he is not
3 having any problem.

4 MR. REID: That's my understanding.

5 JUDGE BOLLWERK: So the March 4th date, it
6 sounds like at that point you will be providing to the
7 staff -- and this is what I want to make sure I
8 understand -- an unredacted version of the report for
9 their review to their contractor. Is that also the
10 point that you would begin to bring up the question
11 about mitigation?

12 MR. REID: No, we would hope to do that
13 before that, if we can. So, for example, we don't
14 want to present the NRC staff with mitigation measures
15 that -- I think it's pretty easy to figure out which
16 ones would raise red flags with the project, with the
17 activities that are occurring. And so, if we see any
18 of those red flags, I can see raising those with Crow
19 Butte, letting them know, for example, that there's a
20 site that needs to get -- let's say we find a site
21 that we identify as a gravesite that needs to get
22 studied further, and all activity has to cease around
23 that area. That is something that I would hope to
24 bring up to Crow Butte before the report is ready, to
25 find out whether or not there's going to an issue

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there, and whether or not we can -- because the report
2 is going to include mitigation measures that the Tribe
3 wishes to see implemented. And if one of those
4 measures are clearly measures that might interfere
5 with the completion of the Crow Butte activities, then
6 I would want to bring that (audio interference)
7 issues --

8 JUDGE BOLLWERK: All right.

9 MR. REID: -- prior to March 4.

10 JUDGE BOLLWERK: Okay.

11 CHAIRMAN GIBSON: Just a second, Judge
12 Bollwerk.

13 Mr. Reid, just to be clear, though, what
14 you just said was a hypothetical possibility and not
15 anything that you're anticipating at this time, is
16 that correct?

17 MR. REID: That's correct.

18 CHAIRMAN GIBSON: Okay.

19 MR. REID: I have no information that
20 there are any gravesites out there that need to be
21 excluded.

22 CHAIRMAN GIBSON: Okay, okay. Thank you.

23 Go on, Judge Bollwerk. Thank you.

24 JUDGE BOLLWERK: And then, Ms. Simon
25 indicated she felt that their contractor would need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 several days, not a long period of time, to look at
2 the report, once it comes into his hands on March 4th.
3 And this, hopefully, would allow you to issue the
4 report or provide the staff with the Final Report by
5 the 21st of March. Does that sound feasible to you in
6 terms of what she's talking about, what she mentioned?

7 MR. REID: At this point, yes.

8 JUDGE BOLLWERK: All right.

9 MR. REID: And there's been some dispute
10 between the Tribe and the NRC staff as to whether or
11 not those are our target dates or other dates. And
12 we've been able to resolve those so far. So, I hope
13 that, in the spirit of cooperation, that that will
14 continue.

15 JUDGE BOLLWERK: All right. And anything
16 that you wanted to say about, I guess, the Tribe's
17 opportunity to comment on the Draft Environmental
18 Assessment, as Ms. Simon described it to me?

19 MR. REID: No, it sounds -- we're still
20 good with that.

21 JUDGE BOLLWERK: All right. All right.
22 That's all I have, Judge Gibson. Thank you.

23 Oh, let me -- I'm sorry, one other
24 question.

25 I'll go to your first, then, It sounds

1 like, then, that you're not concerned at this point
2 that there's any kind of confidential or sensitive
3 information that's not adequately protected by the
4 Board's current Protective Order?

5 MR. REID: I believe that's correct, yes.

6 JUDGE BOLLWERK: All right.

7 Let me just go to Ms. Simon. Any concerns
8 you have about that?

9 MS. SIMON: No, Your Honor.

10 JUDGE BOLLWERK: Mr. Reid?

11 MR. REID: No, I think we're good with
12 that. Thank you.

13 JUDGE BOLLWERK: Oh, I'm sorry. Mr.
14 Lewis? I apologize.

15 MR. LEWIS: We're satisfied with the
16 Protective Order.

17 JUDGE BOLLWERK: Okay. Thank you.

18 All right. That's all I have at this
19 point. Thank you.

20 CHAIRMAN GIBSON: Thank you, Judge
21 Bollwerk.

22 Mr. Ballanco, is there anything that you
23 wish to add to what the rest of these folks have said?

24 PRESENTATION ON BEHALF OF
25 THE CONSOLIDATED INTERVENERS

1 MR. BALLANCO: Thank you, Your Honor. I
2 have nothing too different from what's already been
3 said.

4 I also am pleased and impressed that we
5 are already at this point. I think that is a great
6 step, and I do commend Crow Butte, the staff, and, of
7 course, the Tribe, for getting us to this point.

8 As far as Consolidated Interveners'
9 review, in answer to Judge Bollwerk's question, we're
10 fine, assuming -- we've run into difficulties in other
11 cases before about being precluded, should we have
12 some issue that we thought worthy of making, adding to
13 our intervention. But, in this case, I don't
14 anticipate us deviating from what the Tribe may
15 conclude in this. While I do want to acknowledge that
16 possibility exists, I don't expect that to happen.
17 So, we're fine with commenting when the Draft EA is
18 published.

19 CHAIRMAN GIBSON: Thank you, Mr. Ballanco.

20 Judge Bollwerk, Judge Arnold, do you have
21 anything for Mr. Ballanco?

22 JUDGE BOLLWERK: I don't think I have
23 anything, no.

24 JUDGE ARNOLD: I have nothing.

25 CHAIRMAN GIBSON: Okay.

1 JUDGE BOLLWERK: I should say, you're
2 satisfied that there's no protective information
3 that's being endangered here; that things seem to be
4 all right in that regard?

5 MR. BALLANCO: They do, Your Honor.

6 JUDGE BOLLWERK: All right. Thank you.

7 JUDGE BOLLWERK: Okay. Let's just go
8 through one more time just to be sure that we didn't
9 miss anything.

10 Ms. Simon, is there anything else that you
11 wish to say at this point?

12 MS. SIMON: I don't think so, Judge
13 Gibson. I think the staff is good. Thank you.

14 CHAIRMAN GIBSON: Mr. Lewis?

15 MR. LEWIS: No, nothing further. Thank
16 you.

17 CHAIRMAN GIBSON: Mr. Reid?

18 Mr. Reid, you're muted.

19 MR. REID: I'm sorry.

20 One quick comment in regard to Mr.
21 Ballanco's comments.

22 The Consolidated Intervenors is a group of
23 both environmental and Native parties that have
24 interest in the area. And for obvious reasons, the
25 Tribe can't release its draft to the Consolidated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Interveners, but we are cognizant and aware that there
2 are Lakota and tribal members who are interested in
3 this, and have been for decades, and have interest and
4 concerns. So, we would like to be able to work that
5 out.

6 One of the suggestions I have -- and I'm
7 assuming there wouldn't be any objection -- is that
8 there will be a version of the report that will be
9 available to the public with all the redactions, and
10 so forth. And that can be used and released by the
11 NRC staff. I assume it will have an accession number
12 and will be part of the record.

13 That report we can certainly get to Mr.
14 Ballanco and Mr. Graco (phonetic) for Consolidated
15 Interveners prior to the issuance of the Supplemental
16 EA, Draft Supplemental EA. And in that way, we might
17 be able to iron out some of those issues, if there are
18 any between the Tribe and Consolidated Interveners,
19 before the Supplemental EA comes out. And so -- and
20 we can confer with, if there are any issues like that,
21 we can try to work them out, the same way I would work
22 out issues with Crow Butte or a mitigation, for
23 example. These are things we can do outside the
24 formal process. And as long as we're not disclosing
25 information that may be confidential, I will represent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to the Board that I will be in communications with Mr.
2 Ballanco and (audio interference).

3 CHAIRMAN GIBSON: You cut out just at the
4 very end, Mr. Reid.

5 MR. REID: We'll try to work out those
6 issues, if they occur.

7 CHAIRMAN GIBSON: Okay. Thank you.

8 Ms. Simon, just real quickly, does that
9 sound acceptable to you?

10 MS. SIMON: Yes, and maybe I can clarify;
11 this is a good time to clarify.

12 My understanding is, from Mr. Reid is,
13 that there will be three tiers, if you will, of the
14 report. So, there will be a report that the Tribe is
15 preparing that will only be for the Tribe and will not
16 be given to the staff. What will be given to the
17 staff will be a non-public version that contains
18 information such as the locations of sites.

19 And the Tribe also will be preparing, will
20 be redacting information from that version to create
21 a public, what they consider to be acceptable to
22 release to the public.

23 So, maybe I could ask Mr. Reid if that's
24 a correct understanding?

25 MR. REID: That's correct. There may

1 actually be another version, and I'll have to work
2 this out with the Tribe, whether or not they could do
3 that. But I would assume that the NRC staff would
4 want -- let's say, if there is a site location that
5 needs to be discussed, that the NRC staff will need --
6 and this is one thing I believe Mr. Spangler will look
7 at, whether or not there's enough detail in that, so
8 that the staff can make a determination of its own as
9 to how to handle that site. If we just give the site
10 location and say this is a site of interest without
11 any detail, then that could be an issue.

12 Now it could be -- and I'll work this out
13 with the Tribe -- it could be that there could be
14 situations where the (audio interference) was
15 releasing the details to the NRC staff under the
16 existing Confidentiality Agreement, but not willing to
17 have that information go to Crow Butte because of
18 confidentiality concerns. I don't think that should
19 be an issue if we're releasing it to the NCR staff, I
20 would imagine. As long as it's subject to the
21 confidentiality, the Protective Order, then I think we
22 should do it.

23 But I just wanted to mention there may be
24 situations where the Tribe feels like it's okay to
25 release it under the Protective Order to the NRC

1 staff, but we have to have a discussion for whether or
2 not it can be released to (audio interference).

3 I don't know if that makes any sense to
4 you (audio interference). I do think we -- and again,
5 I'm speculating. And one of the reasons I'm
6 speculating is to create a record before these issues
7 arise as to how we might handle them, and it would be
8 outside the proceedings. And I think we can resolve
9 any of these issues, but I don't foresee it as being
10 a problem. But I do think that we have less, quite
11 frankly, less confidence that the material would stay
12 confidential the further it (audio interference).

13 To the extent that we have to reveal
14 information to the government, so that they can
15 exercise their NEPA and National Historic Preservation
16 Act responsibilities, that's a different issue than
17 whether or not it can be submitted to Crow Butte
18 (audio interference) site. And so it may be (audio
19 interference) -- we recognize that that detail has to
20 be released to the NRC, but it's not necessary for the
21 activities of Crow Butte.

22 Thank you.

23 CHAIRMAN GIBSON: Okay. Now, with that
24 clarification, Ms. Simon --

25 MS. SIMON: This is -- sorry, Judge --

1 CHAIRMAN GIBSON: -- could you please let
2 us know if that sounds okay to you?

3 MS. SIMON: Yes. I just wanted to say,
4 from the staff's perspective, I think what the staff
5 is looking for is the information on the locations and
6 significance of these sites that the Tribe is
7 comfortable providing to the staff, so the staff can
8 use that as input into the EA Supplement. And I think
9 we can work out -- we can keep whatever the Tribe
10 provides to the staff non-public initially -- and we
11 can work out any of redactions that are needed.

12 And we can work out -- I think we talked
13 in the previous, the most recent status conference,
14 about Crow Butte's need to have information about
15 locations of sites, if there's any mitigation needed.
16 So, that would be one area where Crow Butte might need
17 information.

18 But I think, among the parties, we can
19 work out acceptable levels of redaction for the
20 information that various folks are going to receive,
21 and then, ultimately, a level of redaction that
22 everyone is comfortable with for a public version that
23 can be placed in public ADAMS.

24 CHAIRMAN GIBSON: Okay. Very well.

25 Now let's circle back to Mr. Ballanco.

1 Does that all sound acceptable to you, sir?

2 MR. BALLANCO: That does, Your Honor.

3 Thank you.

4 CHAIRMAN GIBSON: Okay. Very good. Okay.

5 JUDGE BOLLWERK: What about Mr. Reid, I
6 guess?

7 CHAIRMAN GIBSON: Mr. Lewis?

8 JUDGE BOLLWERK: Yes, he's right, what
9 about Mr. Lewis? I'm sorry, I don't know why I'm
10 doing that. Mr. Lewis?

11 MR. LEWIS: I think our understanding has
12 been that we would receive the middle version of the
13 report that is confidential and protected under the
14 Protective Order, that identifies the sites and their
15 locations, so that we can protect sites that need it.
16 I think to protect it, we need to know what we're
17 protecting; and also, that we have this available for
18 future licensing proceedings where we may again be
19 addressing traditional cultural properties at the
20 site, again, in a way that protects that information.

21 I don't think that we should assume that
22 we have any sort of dispute at this point, but I think
23 it is our expectation that we will know what it is at
24 these locations and where those locations are, so that
25 we can, one, protect them, and to factor them into our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 licensing decisions going forward.

2 CHAIRMAN GIBSON: Okay. I like the way
3 you put that, as you can't protect something if you
4 don't know what needs to be protected. I think that's
5 an excellent point, and it is to everyone's benefit
6 that these sites be protected. And so, we want to do
7 everything we can, on behalf of everyone, that that
8 happens.

9 JUDGE BOLLWERK: It's also my hope the
10 Board's not going to have to get in the middle of
11 sorting this out. So, I hope you can work it out
12 among yourselves. I think that would be a good thing
13 to do. We will, if we need it.

14 CHAIRMAN GIBSON: And so far, you all have
15 shown a remarkable capacity for working together. And
16 again, we are most encouraged by that.

17 Okay. With that, is there anything else
18 that we need to discuss at this point?

19 Hearing none, I think we're about ready to
20 recess. I do want to make a couple of final comments
21 because we, again, have had superb technical support.
22 This conference, this is our seventh one. It's been
23 incredible the way this has worked, and our technical
24 support, in Andrew Welkie, has just done a superb job.
25 And I want to make a note of that.

1 And Sarah Culler, our Administrative
2 Assistant, has been working as well to make sure this
3 matter goes well.

4 Our two law clerks are getting a baptism
5 by fire on this, but they're doing a great job.

6 And lastly, I would like for everyone to
7 remain on the line in case the court reporter needs
8 any clarification on what was said.

9 I have to make one correction. I said
10 that the Commission ruled last fall. The Commission
11 ruled, it wasn't just last fall; it was the fall
12 before last in 2020. So, I apologize for that
13 mistake. But, hopefully, we can make a note of that
14 on the record.

15 With that, I believe we stand adjourned
16 until our next opportunity to meet with you.

17 Good day.

18 (Whereupon, the above-entitled matter went
19 off the record at 1:53 p.m.)
20
21
22
23
24
25