LEGAL BATTLES OVER THE CRAVEN CANYON URANIUM PROJECT
BLACK HILLS, NORTH AMERICA

BACKGROUND INFORMATION

For the reader to understand these documents and their Summaries, some background information is necessary. All these documents involve the legal battles over a horizontal shaft (adit) that Union Carbide Corporation proposes to dig in Craven Canyon in the southern Black Hills of western South Dakota. The proposed shaft would be about 3 meters by 4 meters by 600 meters, yielding 5,400 tons of uranium ore. The company also plans to store some of the ore in a nearby abandoned surface mine and to send the rest to be milled in neighboring Wyoming. The Craven Canyon area is semi-arid, receiving about .3 meter of rain a year, and the rugged canyon is sparsely vegetated with cactus, sage, pine, and bunch grasses. Wildlife frequent the area, and cattle also graze in the canyon. Besides recreation, the canyon is known mainly for the ancient Indian cliff drawings (pictographs) and etchings (petroglyphs) that line the site.

The Black Hills are a unique ecological zone that runs about one hundred miles north-to-south and fifty miles east-to-west and is known for great mineral wealth. Unlike the surrounding area, the Black Hills are tree-covered and are a water recharge area for the underground reservoirs of the Great Plains. Around the Black Hills, plains and prairies stretch for hundreds of miles to the east and to the edge of the Rocky Mountains to the west.

The site of Union Carbide's proposed shaft, like most of the Black Hills, is under the control of the National Forest Service, which is part of the United States governments' Department of Agriculture. But the Lakota (Sioux) Nation has been fighting for over 100 years to regain control of the Black Hills area, which is their birthplace and sacred to their people. Both the National Forest Service and the State of South Dakota ignore the Lakotas' treaty-based claim to the area, and the issue of control of the Black Hills has been in the courts for sixty years.

These documents and their accompanying Summaries cover four lawsuits involving the Craven Canyon project. All four center around the battle between Union Carbide Corporation, a diversified multi-

national firm with over $9 billion in sales in 1980, and the Black Hills Alliance, a non-profit environmental education group formed in 1979. The uniqueness of the Black Hills Alliance has been its attempt to unify Whites and Indians, traditional enemies, in the fight to preserve the area.

The four lawsuits cover two controversies, one involving the National Forest Service and one involving the State of South Dakota. Both controversies have gone on simultaneously, and neither is over yet. It is difficult to expect a foreign audience to understand the complex legal proceedings. Although every attempt has been made in the Summaries to simplify the language and legal concepts, the reader will have to accept some of the ways the proceedings occurred without necessarily understanding why they happened those particular ways.

The controversy involving the National Forest Service has gone through two legal stages. The first was the Black Hills Alliance's appeal of the local District Ranger's decision to let Union Carbide begin work. This appeal was taken to the Black Hills National Forest Supervisor, then to the Regional Forester in Denver, Colorado. After the Regional Forester's decision, the Black Hills Alliance filed suit in Federal court against the Forest Service officials who decided that Union Carbide should be allowed to begin work. These legal actions resulted from the fact that Craven Canyon is controlled by the National Forest Service.

The other controversy involved the State of South Dakota's Division of Conservation, which also has jurisdiction because it must give Union Carbide a permit before the Craven Canyon project starts. In July, 1979, Union Carbide was caught operating without that permit, and the project was shut down after barely starting. A hearing was then held before the Conservation Commission, which is part of the Division of Conservation, and the permit was granted. It is from that permit proceeding that the second set of legal actions arises. The first of the State lawsuits involved the Conservation Commission's decision to grant the permit, and the second involved the renewal of the permit.

Readers are encouraged to refer to the complete documents to gain more understanding of the legal principles, the events, and the system involved.

--Background and Summaries Prepared by
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SUMMARY - STATE GOVERNMENT ACTION ONE

DR. JAMES C. ZANDER, DEBORAH GROSSER, BRUCE BORNSTEIN, MARGARET BORNSTEIN, RON EASTEP, AND THE BLACK HILLS ALLIANCE, Petitioners,

-versus-

SOUTH DAKOTA STATE CONSERVATION COMMISSION, SOUTH DAKOTA DIVISION OF CONSERVATION, AND UNION CARBIDE CORPORATION, Respondents,

IN THE MATTER OF THE APPLICATION OF UNION CARBIDE CORPORATION FOR AN EXPLORATION PERMIT IN CRAVEN CANYON, FALL RIVER COUNTY.

Although documents were prepared earlier, this case arose from a meeting on September 6, 1979. The meeting was the South Dakota Conservation Commission's monthly assembly that considered Union Carbide Corporation's exploration permit for its Craven Canyon project. At the beginning of the meeting, the attorneys for the Black Hills Alliance and five individuals served the Conservation Commission and Union Carbide with two petitions and two motions.

The first motion requested that a hearing examiner gather evidence for the permit process. The second asked that the permit hearing be held in the Black Hills, instead of in the State capital, Pierre, which is 400 kilometers from Craven Canyon.

The two petitions were closely related. The first asked that the meeting be held as a contested case, so that there would be adversaries and the permit issue could be argued with cross-examination of witnesses and compelled production of documents. In the alternative, if the meeting was already considered a contested case proceeding, the petition asked that the Black Hills Alliance (BHA) and the five individuals be allowed to take part in the proceedings as one set of adversaries. The petitioners also asked to be able to submit briefs, Findings of Fact and Conclusions of Law on the issues.

The second petition simply asked that the first petition be heard before the Conservation Commission went on with other business and that the meeting procedures be those of a contested case. The petitions raised a number of issues, including allegations that the Commission lacked authority to grant an exploration permit because Union Carbide Corporation (UCC) really planned to mine, and that UCC sought to abuse state laws by calling their project exploration. The BHA called the company's application for a permit, its reclamation plan, the notice of the meeting, the inspection of the project site, the bond for clean-up of the project, and the wildlife and archeological surveys for the project inadequate.

The organization also contended that UCC had not notified all affected surface landowners or plugged its drill holes properly, and that it had exercised bad faith and disregard for the law and environment to the extent that the permit should be denied. Among the other assertions, petitioners also said that they had to be given a fair hearing and due process of law before a permit could be granted.

The transcript of the Conservation Commission's meeting shows that these petitions and motions caught the Commissioners off-guard and that they were not trained to deal with legal matters. The first half of the meeting was extremely confused as people tried to figure out what to do first and jumped from issue to issue without resolution. The BHA attorneys objected to almost everything the UCC attorney said, and the UCC attorney objected to much of what the BHA and other petitioners said.

Finally, the Commission ruled that the motions and petitions by the Black Hills Alliance, et al., had not been filed in time and decided not to vote on whether to have a hearing examiner. There was a long, involved discussion about whether the project was mining or exploration and about what that meant.

One of the BHA's attorneys then filed a Notice of Appeal of the Commission's decision to deny the motions and petitions with the Sixth Circuit (State) Court, located in Pierre, and served the Notice on the Conservation Commission and UCC. She then announced that the meeting should be adjourned, but the Commissioners called the permit question to a vote. The other BHA attorney stated that there was more testimony, but the Commission said that calling the question to a vote ended all debate. The Commission then recommended that Union Carbide be granted a State exploration permit for its Craven Canyon project.

Five days after the Conservation Commission meeting, the Black Hills Alliance asked the Circuit Court to stop all Conservation Commission actions until the appeal of the permit decision was heard. The Assistant State Attorney General, acting for the Commission, asked that the BHA's suit be dismissed because no appeal could be done until the Commission's decision was final. In support of that contention, she filed a memorandum saying that there would be no irreparable harm to petitioners, because a stay on UCC's project was already in effect.

She also said that public policy dictated that people should not be able to walk in on a hearing.

On October 3, Judge Robert A. Miller dismissed the BHA's appeal, but he said that the organization could appeal later and could file proposed Findings of Fact and Conclusions of Law before the permit was granted. On October 4, the day the Commission's decision on the permit became final, the BHA and five individuals filed a Notice of Appeal of the decision.

The Commission's Findings of Fact and Conclusions of Law came out three days later, after UCC and the BHA had both offered proposed Findings and Conclusions. The Findings of Fact included listings of what the reclamation plan included and said that it was adequate. The Findings also said that the notice of its meeting had been published; that the company's plans were consistent with applicable standards; that UCC had agreed with archeological recommendations; and that the BHA motions and petitions had covered many issues not scheduled at the meeting.

The Conclusions of Law included statements that the contested case laws had been complied with; that UCC's papers fulfilled the requirements for getting an exploration permit; and that the BHA motions and petitions were not filed in time and should be denied. The Notice of the Commission's decision stated that the Commission had used UCC's proposed Findings and Conclusions, with some amendments.

The appeal filed by the BHA, et al., had been filed in the Seventh Circuit Court, which covers Craven Canyon, but on November 7, 1979, Union Carbide asked the court to move the case to Hughes County, where Pierre is located. The company made that request because the evidence from the hearing was in Hughes County and because the attorneys for the State and Union Carbide lived closer to Pierre than to Craven Canyon. The company also said that because the Black Hills Alliance had filed its earlier, dismissed appeal in Hughes County, hearing this appeal there would promote judicial economy. The State agreed with UCC, and the judge moved the case (venue) from Rapid City to Pierre on November 21.

Although other things were also happening, we will follow the issue of the place of trial before considering other events. First,

on December 18, the BHA petitioned the State Supreme Court for permission to appeal the location (venue) decision.

The petition began by alleging that the petitioners' substantial rights were affected by the decision. The petition questioned the factors that had been considered in granting the change of venue; whether the location of the earlier appeal should be considered choice of venue for the later action; and whether good cause for the change had been shown. The petitioners argued that uranium mining was a life-and-death matter to southern Black Hills residents and that Craven Canyon was public land, so the hearings should be easily accessible in order to serve justice.

The State responded by saying that the location of the case would not affect the outcome, and that the request for change of venue was partly because of the political nature of the issues. The State also refuted the BHA's positions and alleged that the organization was almost "forum shopping" and should be denied a hearing in the State Supreme Court.

Union Carbide answered by saying that the question to be considered by the Supreme Court was whether the Seventh Circuit Court had abused its discretion by granting the change of venue. The company also agreed with the State's arguments and said the BHA wanted to delay and to create public controversy.

The BHA's appeal of the venue decision was denied by the Supreme Court on January 11, 1980. The Court gave no opinion on the subject. In the meantime, another legal battle had begun when the Black Hills Alliance, et al., filed another motion. This document asked for an extension of the automatic ten-day stay on UCC's project until the appeal of the Conservation Commission's action was decided.

In support of that motion, a brief was filed by the BHA on December 31, 1979. The organization also asked that the stay be granted without it having to file a bond. The brief started by noting that the State had said it would not be hurt by a stay, so the document spoke only to UCC. The BHA argued that, under the circumstances, a waiver of bond was proper because it would assure the group access to judicial review, which was important in environmental cases where laws were designed to be invoked by citizens. In addition, the organization said, courts had not required bond in similar situations.

If a bond was required, the BHA asked that the amount be minimal. It stated that the petitioners were not wealthy and that the company would only have small losses from the delay of its Craven Canyon project because its capital would be applied elsewhere pending the result of the suit.

Also on December 31, Union Carbide filed a brief in which it stated that the BHA had not given the court sufficient reason to extend the stay, nor had it shown that its case was likely to succeed or that there would be environmental harm from the project. If a stay was granted, UCC argued, a bond should be required. On January 7, 1980, the State also asked that the request for a stay be denied.

On February 1, the BHA and the State each filed another brief on the topic. The BHA said that it had shown it was likely to win the case, that the public interest would be served by a stay, and that it would suffer more harm than UCC from a negative result.

The State, on the other hand, alleged that a four-part test should be applied to decide the question, and that the BHA had not proved two of the items: its probability of success and the public interest. The State explained that the organization was not likely to win because its motion to intervene before the Conservation Commission was not filed on time. And it said that the public interest was shown in the state's declared interest in mineral exploration.

The stay was denied by Judge Miller on the same day that his final decision came out in the appeal of the Commission's decision, March 25. Even though the stay was denied, UCC could not start its project because of an automatic thirty-day stay that came after the decision and because the nesting period for eagles in the project area lasted until August 15.

However, before Judge Miller reached his decision on the Commission's granting of the Craven Canyon permit, there were a number of briefs filed by the parties. The Black Hills Alliance, et al., started by filing its Brief in support of its appeal on January 29, 1980. The organization alleged that the September 6 Commission meeting had not been a contested case proceeding because, by law, such a proceeding could not occur until after the Commission's recommendation on the permit. This process, they said, reserved a chance for

interested persons to argue the issues. The BHA also argued that the meeting had violated due process rights; and that it was void because it was not orderly, did not conform to the rules, and because the Commission was not competent to hear the case.

The BHA added that its petition to intervene was presented in time and followed the proper procedures, but that the Commission used the wrong criteria to decide timeliness; that the petition was filed without delay; and that the other parties were not hurt by the time of filing, but that the BHA was gravely harmed by the denial of its petition. The Brief also attacked the proceedings because crucial items were not considered or were not considered sufficiently.

The State's Brief began by stating that, if the Commission's decision was not upheld by the hearing's record, the case must be sent back to the Commission to be re-decided. Overall, the State said, the petitioners' filing its requests late should determine the outcome of the case and dispose of most of petitioners' arguments. Because the petition was not filed in time, for example, the State argued that petitioners were not parties to the proceedings and could not complain about a lack of due process.

In addition, the State continued, the recommendation to approve the permit, which was made at the meeting, was not a "final decision," so it could not be appealed; or, if the court decided the recommendation was "final," the Commission's decision was supported by the record of the meeting. The State ended by pointing out that the BHA, et al., had another remedy for their grievances, because they could start a case under the South Dakota Environmental Protection Act.

Union Carbide filed its Brief on the subject the next day, agreeing with the State that the BHA, et al., were not parties to the meeting's proceedings. UCC also argued that the September 6 meeting was a proper contested case, and that the Commission's Findings of Fact were not clearly erroneous, so the court could not tamper with the agency's decision. UCC said that it had complied with the requirements to get a permit and objected to the BHA's attempt to question its integrity.

In its Reply Brief, filed on February 15, the Black Hills Alliance started by noting that UCC and the State had conceded many

points and had focused on a few issues "while ignoring the countervailing considerations which severely undermine their arguments." The petitioners continued by asserting that they had a right (standing) to appeal the Commission's decision and to raise due process violations; and that, because UCC conceded the BHA's standing earlier, it could not question it now. Not only that, the Brief continued, but the State was stopped from challenging the petitioners' timeliness, because the State's improper procedures at the meeting and the States Attorney's statements caused the BHA to file their petition when they did.

The BHA also asserted that the Commission had acted without having a contested case, which was illegal; and that a contested case was not automatic--it had to be requested. The Brief ended by saying that the Commission's Findings of Fact and Conclusions of Law were so defective that they were insufficient, and that the State's suggested alternative remedy was contrary to the Environmental Protection Act.

Five days later, the State asked the court to erase the part of the petitioners' Brief that dealt with the State's ability to challenge timeliness. The State said the issue had not been raised before, so it could not be raised now. On February 26, the BHA replied by saying that that section of its Brief was in response to the acts of State's attorney and had been raised before.

The briefs ended there, as far as the Circuit Court was concerned. That level of the appeal process ended on March 18, 1980, when Judge Miller gave his decision. The Judge decided that the Commission meeting on September 6 had been a contested case, but that the BHA, et al., had not asked to intervene on time. Because the petitioners had, therefore, not been parties, he said their due process rights were not violated. In addition, the Commission's decision was not clearly wrong.*

On March 24, the BHA, et al., asked the Judge to reconsider or to modify his decision to determine intervention rights under the State Environmental Protection Act. But that motion was denied the next day,

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*The Judge stated that he did not have to consider this question, but did so because he had told petitioners that they would be able to appeal any decision they felt aggrieved by.

and the way was clear for the BHA to appeal to the State Supreme Court, which they did on April 28, 1980.

Although Judge Miller had denied the earlier request of the Black Hills Alliance for a stay on UCC's project, he held another hearing on the issue on April 30. There, UCC contended that the amount of the bond was the only issue, because Miller had no jurisdiction over whether to grant a stay. The State did not object to more general testimony, saying its interest in the matter was negligible.

Testimony was taken from Dr. J. D. Thompson, a college physics professor, on radiation from the Craven Canyon project and the harm that radiation could cause. UCC objected to the testimony and questioned Dr. Thompson's credentials. Each party's attorney then argued his/her case, which followed the same issues as the earlier stay arguments; and the State agreed with Union Carbide. The court granted the BHA a ten-day stay and said that a longer stay would be granted only if the organization posted a $100,000 bond to insure that UCC was protected.

A few months passed before the next round of briefs, these ones to the State Supreme Court. The appellants, Black Hills Alliance, et al., filed their first brief on August 26, 1980. Their arguments covered three main areas: venue, contested case/intervention, and requirements for a permit. On the topic of venue, the appellants argued that the statute was clear that venue should be changed "for convenience of witnesses and production of evidence," and that that meant additional evidence, not the old record of proceedings. The argument continued that the statute did not mention the convenience of attorneys or the place of another, dismissed appeal.

On the subject of contested case and intervention, the appellants said that a petition and notice must be filed before a Conservation Commission meeting becomes a contested case hearing, and that the other parties were interpreting the statutes and regulations so that they did not make sense together. In addition, the BHA contended, the Commission lacked jurisdiction to hear a contested case unless the BHA was a party, because the State and Union Carbide were not adversaries. And, if the meeting had been a contested case, the petitioners had the right to intervene because the law did not give the Commission a choice in the matter.

On the third subject, requirements for a permit, the BHA stated that there must be strict compliance with the requirements before an exploration permit was issued; and that, in this case, strict compliance had not been shown, even though the record was one-sided. The appellants ended by stating that the only issue in the appeal was whether they would ever be heard on the merits of the proposed project.

The State filed its Brief on October 8, and began by saying that the Circuit Court had not abused its discretion by granting the change of venue; and that if the decision was an error it did not hurt appellants, so there was no reason to reverse that decision. On the contested case and intervention issues, the State alleged that the September 6 Commission meeting was a contested case because the statute said it was as a "licensing" proceeding. The State also said the petition to intervene was not on time.

Regarding appellants' argument that the State could not talk about timeliness because it misled the BHA on that issue, the State repeated that that argument was not raised properly. The Brief concluded by restating that the BHA, et al., could not raise certain issues because they were not parties to the proceedings, and that UCC's application was sufficient for the Commission to decide to grant the permit.

Union Carbide's Brief, filed on October 14, agreed with the State on several points. Additionally, the company argued that the venue of the appeal had been decided when the earlier, dismissed appeal was filed in Hughes County. The company said that the Supreme Court could reverse the Commission's decision on BHA intervention only if it had abused its discretion. UCC felt that there was no such abuse, because the BHA, et al., had shown no direct and immediate financial interest in the Commission's decision.

One more brief was filed, the appellants' Reply Brief, which began by objecting to UCC's references to the National Forest Service's review of the Craven Canyon project as irrelevant to the State Supreme Court case. Otherwise, little new argument was produced, except to state that the factual and jurisdictional issues raised by appellants on September 6 had all been covered at the meeting; thus, no delay resulted from the petition to intervene. Additionally, the BHA stated, it had not been able to intervene before the meeting. The reasons

it felt that UCC had not complied with the requirements for getting a permit were also repeated.

After all the briefs were filed, a hearing was held in January, 1981. On July 22, 1981, the Supreme Court issued its decision in the case. The decision was written by Justice Morgan and was agreed to by all the justices. It reversed the Conservation Commission's and Judge Miller's decisions and sent the case back to the Commission for re-consideration.

The decision outlined two crucial issues. First, Justice Morgan wrote, the September 6 meeting was a contested case for two reasons: the statute said contested case provisions applied if it was a "licensing" preceded by a "required notice;" and the written petition of BHA, et al., also required a contested case and served as substitute notice. Because it was a contested case proceeding, the opinion continued, due process rights applied.

The second crucial issue, according to the opinion, was the timeliness of the BHA's petition to intervene. The Supreme Court decided that the organization and five individuals did not have a fair chance to participate in the hearing, and that the State's interpretation of the rules was contradictory and "ludicrous." Since there was also no delay because of the petition to intervene, and because the Commission knew the petitioners planned to intervene, the Commission had abused its discretion when it denied the request to intervene.

The Supreme Court also covered the venue question, ruling that the statute's language was clear and that the Seventh Circuit Court had abused its discretion by ordering the change to Pierre. Besides sending the issue back to the Conservation Commission, the Supreme Court directed the Commission to let the BHA, et al., intervene and to start over with a contested case hearing in Union Carbide's application for an exploration permit in Craven Canyon.

SUMMARY - STATE GOVERNMENT ACTION TWO

IN THE MATTER OF THE APPLICATION OF UNION CARBIDE CORPORATION TO RENEW PERMIT EX-31, CRAVEN CANYON, FALL RIVER COUNTY.

While the Black Hills Alliance, et al., were appealing the decision of the South Dakota Conservation Commission that granted Union Carbide Corporation an exploration permit for Craven Canyon, Union Carbide asked for a renewal of that permit for another year.

On November 10, 1980, the Black Hills Alliance (BHA) asked the Conservation Commission to let it intervene in the renewal proceedings or, in the alternative, to start a contested case. The reasons for these requests were that the BHA was not represented by the current parties (Union Carbide and the State) and would be affected by the proceedings; that the original permit had been illegal; that the bond and the reclamation plan for the project were inadequate; and that there were alternatives to the project that were not as harmful to health and safety.

On November 13, the BHA was allowed to intervene over Union Carbide Corporation's (UCC) objection, and a hearing was scheduled for December 12. The hearing was long and started with the following testimony: (1) Steve Stampfli of the Division of Conservation on the UCC file, work done since the first permit was issued, and the reclamation plan's suitability; (2) Richard Miller of UCC on work done on the site at the Conservation Commission's request, the waste pile and radiation emissions, and reclamation; (3) Robert Alex, State Archeologist, on UCC's recording and protecting archeological site, and on his belief that more people in Craven Canyon would cause more damage to the sites; (4) Dudley Blancke of UCC on work done since the first permit and on the lowered price of uranium; and (5) Paul Robinson of the Southwest Research and Information Center on the effects of uranium and its trace elements, the nature of uranium deposits, the inadequacy of the proposed dam, pollution from the spoils pile, radiation and its harm, alternatives to UCC's plan, and effects from old mine sites.

After these witnesses, the Assistant United States Attorney asked that two proposed witnesses who were government employees not be required to testify unless they were paid. One of the employees chose

not to testify, but the other, Kent Keenlyne, testified as an individual rather than as a government employee.

The other testimony was: (1) Kent Keenlyne on his situation in trying to follow the laws and still testify; and also on effects UCC's project could have on wildlife, reclamation and radioactive seepage, UCC's poor reclamation of drill holes, and poaching by mine workers; (2) Richard Whitten, University of South Dakota anthropolotist, on possible meanings of the rock art in Craven Canyon, the nomination of that site to the National Register of Historic Places, and dangers to/ protection of the sites; and (3) Pete Catches, Oglala Sioux Medicine Man, on the sacredness of the area that included the Craven Canyon rock art.

Three members of the public then gave testimony, most of which concerned the sacredness of the Black Hills and Craven Canyon to the Lakota (Sioux) people and uranium mining's harm to the earth. Dudley Blancke of UCC was then recalled and testified on why the project, as planned, was the only reasonable mining method in Craven Canyon.

On January 14, 1981, the Conservation Commission issued its Findings of Fact and Conclusions of Law on the renewal request. Among the Findings were that a lawsuit was going on concerning the original permit; that there had been no change in the reclamation or operating plans since the permit was issued, although stabilization and archeological work had been done; that the bond and notice were adequate; that requirements and regulations for renewal had been complied with; and that the Forest Service's Environmental Assessment Report confirmed the lack of harm from the project.

The Commission also found that the Black Hills Alliance had not shown that the reclamation plan should be changed, that the project was likely to pollute or destroy the environment, or that there was a reasonable alternative to the project as planned.

The Conclusions of Law included decisions that the Black Hills Alliance had intervened in time; that the hearings were conducted as contested cases; that there would be no harm and was no reasonable alternative to the project; and that the question of legality of the original permit did not affect the renewal.

The BHA appealed these Findings and Conclusions and filed the

first of a series of briefs on February 25. The Brief began by saying that the case involving the original Craven Canyon permit was procedural, but that in this case, the Conservation Commission had ignored the organization's experts' testimony. The Brief included the assertions that the bond for the project was inadequate and that the company was proposing mining, not exploration. It also contended that the proposed reclamation plan did not comply with requirements on how the low-grade ore stockpile should be covered.

Most of the BHA Brief, however, dealt with the permit renewal and the improper actions associated with it. The allegations included: the renewal was improper because control of non-uranium toxic materials was not considered; the renewal violated the law because the project was likely to pollute and be destructive to the environment, and because reasonable alternatives existed; the Conservation Commission had not met its obligation to insure proper reclamation; and Craven Canyon was not suitable for the project because of its unique archeological and historical significance, its role as a wildlife haven, and the impossibility of reclamation.

Union Carbide filed a Brief in response on March 11 and outlined the two issues it considered important. First, the company said, the only possible reasons to reverse the Commission's decision would be that it was clearly wrong or that it was an abuse of discretion. In contending that neither was the case, the company noted that the requirements were met for the reclamation plan, non-uranium toxic materials, pollution, alternatives, suitability of the area for the project, and bond. During its discussion of these issues, the company also said that it was not error for the Commission to ignore BHA evidence, because the Findings of Fact were supported by the record of the hearings.

The second issue UCC's Brief covered was its contention that the Commission was wrong to let the BHA intervene, because the BHA did not have the required direct and immediate financial interest in the case. Not only that, the company asserted, but the Commission's rule only required that an intervenor's interest not be otherwise represented, and making that rule exceeded the Commission's authority.

The State's Brief, filed a few days later, followed many of the company's arguments, although sometimes with different emphasis. The only major difference was the State's opinion that the Commission's rule on intervention did not exceed the agency's statutory authority.

The Black Hills Alliance filed a Reply Brief to the State and Union Carbide on March 25, 1981. The document began by noting that both the other parties' briefs had relied on the National Forest Service's Environmental Assessment Report. The BHA alleged that the Report was not relevant in a state proceeding, was not from an adversary proceeding, and was itself being challenged in court. The Conservation Commission, the BHA said, must consider the evidence presented to it and base its decision on that evidence. Otherwise, the points in the organization's original Brief were restated.

Two months later, on May 27, the Sixth Circuit Court in Pierre gave its decision that the Commission was correct in letting the BHA intervene, and that its Findings of Fact and Conclusions of Law were not clearly erroneous, arbitrary, capricious, or an unwarranted use of discretion. Therefore, the court said, the Commission's action did not violate State law. The court ended by affirming the Conservation Commission's renewal of Union Carbide's Craven Canyon permit.

Two months after the Circuit Court's decision, on July 22, 1981, the State Supreme Court decided that the Commission had been wrong in denying the BHA, et al., access to the original permit hearing. That decision also ended this renewal case, because the mistake in granting the original permit made issues involving the renewal unsettled (moot). After officially having had its Craven Canyon permit for two years, Union Carbide Corporation found itself back at the beginning of the State permit application process.

SUMMARY - FEDERAL GOVERNMENT ACTION ONE

IN THE MATTER OF THE APPEAL OF THE BLACK HILLS ALLIANCE AND BRUCE BORNSTEIN OF APPROVAL OF UNION CARBIDE CORPORATION'S OPERATING PLAN FOR CRAVEN CANYON, BLACK HILLS NATIONAL FOREST.

On July 6, 1979, John McCarthy, District Ranger for the Elk Mountain District of the Black Hills National Forest, issued a decision approving Union Carbide Corporation's Operating Plan for its project in Craven Canyon. This meant the company could start work, as far as the Forest Service was concerned.

On August 20, the Black Hills Alliance (BHA) filed notice that it was appealing McCarthy's decision to let the company go ahead without preparing an Environmental Impact Statement. McCarthy's decision was based on an Environmental Assessment Report, a shorter and less rigorous document.

On September 4, the BHA asked the Forest Supervisor who was hearing the appeal, James R. Mathers, to stop (stay) Union Carbide's project until he had made his decision. Three days later, Mathers granted the stay, but said the Union Carbide Corporation (UCC) would still be able to do work to stabilize the ground that had already been disturbed.

Union Carbide appealed the stay order on September 20 and asked Mathers to allow the company to intervene in the BHA's appeal case. UCC also questioned whether the BHA's notice of appeal had been filed in time.

In support of its request to lift the stay order, the company said it was not arguing with the need for stabilization work, but that the BHA's request for a stay was based on false information. UCC also said that, if Mathers' decision in the basic appeal went against the organization, the stay must be lifted; then, UCC would withdraw its appeal. The BHA replied on November 29, saying that its request for a stay was fully supported.

Union Carbide was permitted to intervene in the lawsuit on October 1, 1979. Meanwhile, on September 11, the Black Hills Alliance had filed its Statement of Reasons supporting its appeal of District Ranger McCarthy's decision. The Statement contended that the proposed project was mining, not exploration, and that UCC was calling it exploration to avoid the complex requirements of the Nuclear Regulatory

Commission and the 1872 Mining Law. The Mining Law would require UCC to prove that it had a valuable deposit of ore before it could mine.

The BHA also cited a number of reasons it felt the Environmental Assessment Report (EAR) was deficient, including: inadequate discussion of alternatives to the project; procedural inadequacies in documentation, criteria considered, areas affected, and certain types of effects; and inadequacies in discussion of environmental impacts such as radiation, water, eagles, archeological sites, socioeconomic factors (boom town effect), reclamation, Native American religious sites, and the total impacts from future proposed uranium mining and milling.

The BHA also alleged that public notice and participation in McCarthy's decision had not been sufficient, and that he lacked authority to approve UCC's Operating Plan because it was a major project requiring a full Environmental Impact Statement (EIS). The bond the company had posted to insure that the project was cleaned up was also called inadequate, and UCC's record of failure to follow environmental laws was noted.

On October 12, District Ranger McCarthy replied to the BHA's allegations, beginning with background on the situation. He then listed the reasons he had decided that no EIS was needed. The reasons included: the area to be disturbed was small and not unique or of critical ecological importance; there would be no significant irreversible commitment of National Forest Service (NFS) surface resources; the project was not a commitment to future mining; and secondary and non-local impacts were not significant.

In answer to the BHA's Statement of Reasons, McCarthy alleged that the project was not mining; that the EAR was sufficient; that the EAR was prepared within procedural requirements; that the environmental hazards discussion and public notice were adequate; and that he had the authority to approve the Operating Plan.

The next day, Union Carbide filed its Statement of Reasons. Although some of its reasons were different, it supported McCarthy in saying that the project was exploration, that no EIS was needed, and that the Environmental Assessment was adequate and appropriate. The company added that the BHA's appeal was filed late and according to the wrong law. The document also attacked the Black Hills Alliance's

right (standing) to appeal McCarthy's decision, saying that the organization was seeking to create false impressions and that it was totally irresponsible in its allegations. UCC also charged that the BHA was seeking delay and disruption without concern for the environment, that it was a front for the Sioux's wish to regain western South Dakota's mineral riches, and that it was attacking NFS personnel.

Union Carbide ended with a request that the stay on its operation be lifted because the BHA's appeal was just a delaying tactic, the organization did not have a strong likelihood of success in its case, and its Statement of Reasons was "mostly lies."

UCC again filed a document on October 29, this one in answer to District Ranger McCarthy's Response to the BHA. This, shorter paper primarily supported the NFS's Statement, but it made the additional comment that the entire Craven Canyon area emitted a lot of radiation, and the proposed project would not make a difference in radiation levels a hundred meters away.

The same day, the BHA filed its response to UCC, beginning by saying that the company should not have raised procedural matters. The organization then alleged that its appeal was on time and that environmental problems were already clear in the Craven Canyon area because of past uranium mining and milling. The BHA also supported its right to appeal McCarthy's decision, saying that UCC's arguments were absurd and malicious. The BHA also said that concerns about nuclear development, Indian religious and property concerns, and the BHA's interest in UCC's project were legitimate.

On October 30, the next day, the BHA filed another long response, this one to District Ranger McCarthy's Statement. The document began by stating that the full scope of the Craven Canyon project had to be addressed by the NFS to comply with the National Environmental Protection Act (NEPA). In support of that position, the organization said that the EAR must address the purpose of the project (whether it was for nuclear energy or weapons), and that the NFS's consideration of the project must be broad enough to include contributing and compounding factors that increased the project's impact. The assertion that the Craven Canyon decision was a major federal action was also stated in support of the repeated demand for an EIS.

Several violations of the National Environmental Protection Act were asserted, including that alternatives to UCC's project were never really considered and that full disclosure was not given by the EAR. The BHA said that the 1872 Mining Act was not applicable; that a cost-benefit analysis was not done; and that certain impacts were not considered.

The BHA stated that these omissions and violations were not the NFS's fault, but that the agency had been misled by Union Carbide. The organization ended by contending that consideration of this type of project was the reason the National Environmental Protection Act had been passed, as a measure to prevent corporation's from polluting without concern for the future.

The decisions on the appeals came from Black Hills National Forest Supervisor James Mathers on November 19, 1979. Regarding the stay on UCC's operation, Mathers said that the BHA's request for a stay was on time and had been granted because failure to grant it would have nullified the organization's appeal of McCarthy's decision.

Mathers affirmed McCarthy's decision to prepare an Environmental Assessment rather than an EIS and his authority in approving the Operating Plan. Mathers called the EAR sufficient and proper under the National Environmental Protection Act and said that UCC was within its rights in seeking, developing, and producing uranium ore in Craven Canyon. The Forest Supervisor added that there was currently an automatic stay on UCC's operation until November 30, at which time the operation could start.

The operation did not start then, though. At the end of December, two appeals were filed with the next level of the Forest Service hierarchy, the Regional Forester in Denver. On December 21, the Black Hills Alliance appealed Mathers' decision supporting McCarthy. On December 26, Union Carbide appealed Mathers' decision that had given a stay on their operation during consideration of the BHA's appeal.

On January 3, 1980, the BHA asked the Regional Forester to dismiss UCC's appeal, saying that it was filed too late. The organization also stated that the appeal was not proper because no relief was requested. The company's appeal was dismissed, but the BHA's appeal of McCarthy's decision went on.

The next step in the proceedings occurred on January 7, when the BHA filed its Statement of Reasons supporting its appeal. The organization alleged that the decision not to require an EIS was arbitrary and capricious because it was based on an inaccurate and legally deficient analysis. The organization also alleged an abuse of agency discretion under the Administrative Procedures Act, and repeated its arguments on the District Ranger's lack of authority and the inadequacy of the Environmental Assessment. The BHA asked that an Environmental Impact Statement be done and that full consideration be given to the total effects of proposed uranium projects in the southern Black Hills.

UCC replied two weeks later, arguing that private use of heavy equipment did not require compliance with the National Environmental Protection Act (NEPA); that environmental concerns had been adequately taken care of; that mining was still a policy of the United States despite the passage of NEPA; and that Forest Service authority was limited because UCC had rights to explore under the 1872 Mining Law. The response closed with the contention that McCarthy clearly had authority to prepare the EAR, although it was "impossible to dignify /BHA's/ rambling illogic by a rational response."

Forest Supervisor Mathers' comments on the appeal of his decision came out on February 8. He made three main points. The first was that the BHA's allegation that an EIS was needed showed that the organization wished "to frustrate legitimate mineral development," not to consider Union Carbide's limited project. Second, Mathers supported approval of the Environmental Assessment, saying that all issues were covered. And, third, he contended that McCarthy clearly had authority to approve the Operating Plan.

Union Carbide responded to Mathers' statement two weeks later and in glowing terms. Calling the Black Hills Alliance's appeal "frivolous," the response noted that the Forest Supervisor had originally been fooled by the organization. The company continued by saying, "Too late, the Forest Supervisor has recognized the true motives and intent of the Black Hills Alliance," and by bemoaning the disruption caused by consideration of the BHA's "groundless allegations, mischaracterizations and wild conjectures." Union Carbide suggested that the BHA might be the guilty party in the case, and that a more precise appeal standard

might be enacted to prevent abuse of the current procedure's "unwarranted liberality."

A few days later, on February 27, the Black Hills Alliance replied to the other two parties. In response to UCC, the organization started by saying that the company's work had not been stopped by the NFS, but by its failure to get a state exploration permit. The BHA then suggested that the appeal process was destroyed when counter-arguments were "replaced by venomous and malicious allegations." The BHA continued by contending that the alternative of turning down the company's proposed project had to be considered, despite its claim that it had 1872 Mining Law rights. The response also said that courts had repeatedly stated that NFS approval of projects like the one in Craven Canyon were "federal actions" and were reviewable under the Administrative Procedures Act.

In answer to Mathers' Statement, the BHA alleged that many of its points had been conceded by the Forest Supervisor because they were not disproved, and that Mathers failed to adequately address the remaining issues, such as whether the approval of the Environmental Assessment and the decision not to do an EIS were arbitrary and capricious. The BHA ended by saying that the Forest Service had prematurely approved a project that would irretrievably alter the archeological sites in the Canyon, and that the NFS must make every effort to protect surface resources.

The next day, February 28, the Black Hills Alliance again requested a stay on UCC's Craven Canyon project, this one pending the decision from the Regional Forester, Craig Rupp. Union Carbide responded immediately, saying that the organization's request was not timely, that it was only made because there was currently no State stay in effect, that the BHA's appeal had little chance of success, and that granting a stay would cause UCC more than minimal harm.

The BHA responded by contending that its request for a stay was both timely and proper, that it had a good chance of success, and that the harm Union Carbide claimed was just speculative. Two days later, on April 9, the Regional Forester denied the request for a stay because UCC would not be able to begin work until after his final decision anyway.

On April 24, 1980, Regional Forester Rupp gave his final decision

on the BHA's appeal of District Ranger McCarthy's decision. Rupp stated that the Environmental Assessment Report met the necessary standards for approval of UCC's Operating Plan. He also stated that the record in the proceeding supported the decision that no Environmental Impact Statement be required. The decisions of McCarthy and Forest Supervisor Mathers were supported, and no more appeals would be made within the National Forest Service structure.

SUMMARY - FEDERAL GOVERNMENT ACTION TWO

BLACK HILLS ALLIANCE, ROY K. SAYLE, RICHARD G. WHITTEN, DR. DILWYN J. ROGERS, Plaintiffs,

-versus-

REGIONAL FORESTER, Rocky Mountain Region, National Forest Service, FOREST SUPERVISOR, Black Hills National Forest, DISTRICT RANGER, Elk Mountain District, Defendants.

Once the Black Hills Alliance, et al., had appealed District Ranger McCarthy's decision on Union Carbide's project through two levels of bureaucracy - up to the Regional Forester in Denver - they could not appeal any further in the Forest Service structure. So, on July 21, 1980, they filed a Complaint in Federal Court in Rapid City, South Dakota, against the three officials who had decided that Union Carbide could start work.

The Complaint made eleven charges (Causes of Action) against the three officials, including: violations of the National Environmental Protection Act (NEPA); that the lack of an Environmental Impact Statement violated that Act; that the District Ranger's Finding of No Significant Impact was arbitrary, an abuse of discretion and illegal; and that laws on registration and preservation of historical places, an Executive (Presidential) Order on that topic, and the Endangered Species Act had been violated.

The Plaintiffs asked for judgments that the Ranger's Environmental Assessment Report (EAR) was not adequate, that the District Ranger acted in excess of his authority, that Union Carbide was mining (not exploring), and that the historic and Endangered Species laws had been violated. They also asked for orders that an Environmental Impact Statement be prepared, that Union Carbide's Operating Plan be rescinded, and that further decisions not be made on the project until all laws were complied with. Plaintiffs also asked the court to award their expenses.

The next day, the original judge on the matter, Andrew Bogue, took himself off the case, and Judge Donald Porter took over. To date, the case had gone through two phases. First, there has been controversy over Union Carbide Corporation's (UCC) taking part in the lawsuit, and second, there has been controversy over each side giving information to the other side.

The controversy over UCC's intervention in the suit started only

two weeks after the suit was filed. The company asked the court to let it intervene, saying it was being delayed by the suit and had questions of fact or law in common with the federal defendants. The company also said that it would lose contract costs and over $250,000 on its investment for each year the project was stopped.

Ten days later, on August 15, 1980, the Black Hills Alliance, et al., (BHA) filed its opposition to UCC's motion. The BHA said that having another party to the suit would delay th e proceedings, and that UCC had no right to intervene because it had not proved that its rights were not well enough represented by the federal defendants. The BHA also said that UCC had not contributed positively to the earlier BHA-Forest Service proceedings. The federal defendants said that they had no objection to Union Carbide joining the lawsuit.

In mid-September, Union Carbide filed a brief in support of its motion to intervene. The company repeated the statement that it had a significant economic interest in the outcome of the lawsuit. UCC added that it did not have the same interests as the National Forest Service (NFS), mainly because the Forest Service's interest was not economic. On September 25, the court said that UCC could intervene in the lawsuit.

Meanwhile, on August 11, the BHA had requested that the federal defendants admit a number of statements. Requests for Admissions are used in United States law for three main purposes: (1) to find out what issues the parties agree on; (2) to hurry the proceeding toward considering the issues the parties disagree on; and (3) to give the asking party advantages later because the answering party had admitted some factors.

A month after the Requests for Admissions, the federal defendants objected to all the Plaintiffs' Requests, saying that the suit was a review of an administrative decision, so no new information could be brought up. The NFS backed up this assertion by saying that plaintiffs already had the information they were requesting, and that answering the Requests would just cause delay. The NFS also asked for protection from any discovery of information in the case.

On September 26, the BHA responded with a motion to determine whether the NFS's objections were enough to keep them from having to

answer the Requests. The plaintiffs said discovery of information was appropriate in the case, but that discovery was not being sought yet, so it could not be objected to. The BHA also said that when discovery was sought, the new information would be needed to supplement the administrative record, because facts that were not in the Environmental Assessment Report were being considered. Plaintiffs also said that the NFS's request for protection was improper, because it had not shown good cause for being protected.

Three days later, the court ordered the defendants to answer the Requests for Admissions. The federal defendants answered on October 8, admitting very little. Mainly, the Requests concerned the care and survey of archeological sites in Craven Canyon, such as rock drawings (pictographs) and carvings (petroglyphs). But, where the defendants admitted that something had not been done regarding those sites, they contended that the action was not required at all or was not required yet.

The BHA, et al., challenged the sufficiency of certain NFS answers, saying that they were evasive, incomplete, or not specific. Plaintiffs added that the law required that an item be specifically denied or admitted. The plaintiffs also argued that the defendants had changed the meaning of "area of the undertaking's potential environmental impact" to mean only the area of surface disturbance.

The federal defendants answered on November 10, contending that they had to qualify their answers to the Requests to avoid sacrificing their legal position. They also said that their answers were sufficient and that, if the court found otherwise, the Plaintiffs' Requests should be eliminated from the suit due to their improper form.

A week later, the plaintiffs responded by saying that the federal defendants had ignored all arguments except the definition of the "area of impact." Plaintiffs also said that their definition of that phrase was a frame of reference within which the NFS should answer the Requests, not a legal issue or a Request to Admit.

On the same day, another issue involving information exchange was raised by the federal defendants. A set of Interrogatories for Production of Documents was sent to plaintiffs. Eventually, the fate of both the Requests for Admission and the Interrogatories would be

solved on the same day.

But, before there was a solution, there was a long legal battle. On December 20, 1980, the plaintiffs answered the Forest Service's Interrogatories. The answers identified the individual plaintiffs and their interests in Craven Canyon and gave information on which archeological sites were of concern. The document also gave information on which officials the plaintiffs had notified of their interest in Craven Canyon. The plaintiffs objected to Interrogatories on whether their eleven Causes of Action were included in the earlier administrative appeal, and said that they would not produce documents until the defendants set a time and place for production.

The federal defendants asked the court to force plaintiffs to respond to the questions about whether the Causes of Action were included in the earlier appeals on January 18, 1981. The defendants said that getting responses to the Interrogatories was relevant to get plaintiffs' position on the issues and to narrow the issues. They also disagreed with the BHA on two points: whether administrative remedies had been exhausted so this case could be filed (the NFS said no), and whether the NFS could request documents it already had for purposes of identifying which documents plaintiffs thought it had (the NFS said yes).

On February 5, the Black Hills Alliance, et al., responded. They said that the Forest Service had already admitted that the administrative remedies had been exhausted, and alleged that giving information on the Causes of Action would not lead to evidence that could be used in court. Plaintiffs also said that the burden to them of answering the Interrogatories would outweigh the benefit to defendants.

On July 1, the court said that the Forest Service would have to fully answer the Plaintiffs' Requests for Admissions, and that the BHA would have to fully answer the defendants' Interrogatories. But another battle over Interrogatories began on June 19, when Union Carbide filed its first Interrogatories to the BHA, et al.

The BHA, et al., gave their answers and objections to those Interrogatories on July 10. The organization said it would show all the documents that it had produced about Union Carbide, and this was done on July 22 in Rapid City. The BHA also agreed to give information

on why it thought the area of UCC's project had been withdrawn from under the 1872 Mining Law; on Indian ceremonies that had been held in Craven Canyon; and on its trial documents, witnesses and experts (when that information was available).

However, several Interrogatories were objected to. The plaintiffs refused to identify all members of the BHA, their races, and dates of joining the organization. They also refused to identify all sacred drawings in the Canyon and all Indians who held them sacred. The BHA called these requests burdensome, broad, and/or irrelevant. The plaintiffs also would not identify all directors of the organization and the policy statement or goal of the organization, contending that the information was not relevant and would not lead to evidence that was admissible in court. At the time of writing these Summaries, that is where the conflict over UCC's Interrogatories remains.

However, since the conflicts over information exchange began, there have also been developments in the core issues of the suit, and a new party was added as plaintiff. The new party, the Traditional People of the Four Bands, asked to join the suit on June 15, 1981. They are a group of Lakota (Sioux) Indians who did not sign the 1877 Agreement which purported to turn the Black Hills over to the United States. These people wanted to enter the lawsuit because they consider the Craven Canyon area sacred, because the cliff drawings there hold religious prophesy, and because of the eagles, herbs, ceremonial grounds, and serene atmosphere in the Canyon. These intervenors also invoked the American Indian Religious Freedom Act, saying that mining in Craven Canyon would deny them free and full exercise of their religion and access to ceremonial grounds. On July 1, 1981, the judge allowed the Four Bands to join the suit.

The legal issues in the lawsuit have been developed by the various replies filed and by the plaintiffs' Amended Complaint. On the same day that the original Complaint was filed, July 21, 1980, the plaintiffs asked the court to restrain UCC from taking any action on its Craven Canyon project. After talking to everyone, the court had UCC agree that it would give notice before starting its project, and had the plaintiffs explain the laws on which they were relying in the case. The plaintiffs' Brief to the court on the laws was filed a month later.

The federal defendants replied to the Complaint on September 12, 1980, saying that the project was exploration, not mining, and that the case should be disposed of by summary judgment. To begin with, the NFS said, in all matters but the decision not to do an EIS, the BHA could only raise the Administrative Procedures Act, which requires that an administrative decision not be arbitrary, capricious or illegal. As for the decision not to do an Environmental Impact Statement on UCC's project, the federal defendants alleged that the court had to judge that decision by whether it was reasonable.

But, to cover all angles, the defendants also said that the laws on historic and archeological preservation, the Endangered Species Act, the Executive Order, and the National Environmental Protection Act were not violated. Among the assertions in support of these statements were: the Environmental Assessment Report was adequate; Craven Canyon was not critical habitat for endangered eagles; the only archeological site present was not eligible for the National Register of Historic Places;* the Forest Service could not prohibit mining on its lands; and the project would have no significant impact on the environment.

Much of Union Carbide's reply to the plaintiffs' Complaint, which was filed on September 21, supported the Forest Service's contentions. However, UCC believed that the Administrative Procedures Act guidelines also covered the decision not to do an Environmental Impact Statement, and that the plaintiffs had the burden of proving that the Forest Service acted improperly. In closing its brief, UCC stated that the BHA's opposition to the Craven Canyon project was political and "not based upon any respect for wildlife, archaeological sites or the natural environment."

Because of developments in the suit, the plaintiffs filed an Amended Complaint on May 18, 1981, and that document was accepted by the court on July 1. The amendments mainly dealt with the proposed project area having been withdrawn from mining laws and with religious harm to Indian peoples if the cliff art was disturbed. The seventeen Causes of Action also included the allegation that the Fish and Wildlife Coordination Act had not been followed.

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*54 sites in Craven Canyon were nominated to the National Register of Historic Places in Fall, 1980, and approved by the State.

The federal defendants answered the Amended Complaint on June 30, denying most of the allegations and stating that their actions were not capricious, arbitrary, an abuse of discretion, or illegal. The NFS also said that this case was only a limited judicial review of an agency action.

Union Carbide also answered the Amended Complaint, using the same defenses as the Forest Service, on July 11. Additionally, UCC stated that the BHA's original appeal of the District Ranger's decision was not filed on time. The company also denied any corporate irresponsibility in polluting the environment or in the treatment of its workers.

As of August 14, 1981, that is the status of this lawsuit.

NOTE: August 18, 1981

Union Carbide Corporation has withdrawn its Operating Plan from National Forest Service consideration, which means that it will have to start from the beginning if it decides to try to begin its Craven Canyon project again. An agreement (stipulation) is being prepared between the parties in the BHA, et al., versus Regional Forester, et al. lawsuit. The stipulation states that the lawsuit is being dismissed because the Operating Plan has been withdrawn.