

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 20, 2008
Date

Committee on Agriculture, Livestock, & Natural Resources.

After consideration on the merits, the Committee recommends the following:

HB08-1161 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute the following:

3 "SECTION 1. 34-32-103 (3.5) and (8), Colorado Revised
4 Statutes, are amended, and the said 34-32-103 is further amended BY
5 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
6 read:

7 **34-32-103. Definitions.** As used in this article, unless the context
8 otherwise requires:

9 (3.5) (a) "Designated mining operation" means a mining operation
10 at which:

11 (I) Toxic or acidic chemicals used in extractive metallurgical
12 processing are present on site; or

13 (II) Acid- or toxic-forming materials will be exposed or disturbed
14 as a result of mining operations; OR

15 (III) URANIUM IS PRODUCED OR EXTRACTED, EITHER BY IN SITU
16 LEACH MINING OR BY CONVENTIONAL UNDERGROUND OR OPEN MINING
17 TECHNIQUES. A URANIUM MINING OPERATION MAY SEEK AN EXEMPTION
18 FROM DESIGNATED MINING OPERATION STATUS IN ACCORDANCE WITH

1 SECTION 34-32-112.5 (2).

2 (b) The various types of designated mining operations are
3 identified in section 34-32-112.5. EXCEPT AS PROVIDED IN
4 SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3), such
5 mining operations exclude operations ~~which~~ THAT do not use toxic or
6 acidic chemicals in processing for purposes of extractive metallurgy and
7 ~~which~~ THAT will not cause acid mine drainage.

8 (5.7) "IN SITU LEACH MINING" MEANS IN SITU MINING FOR
9 URANIUM THROUGH THE IN-PLACE DISSOLUTION OF MINERAL COMPONENTS
10 OF AN ORE DEPOSIT BY CAUSING A CHEMICAL LEACHING SOLUTION,
11 USUALLY AQUEOUS, TO PENETRATE OR TO BE PUMPED DOWN WELLS
12 THROUGH THE ORE BODY AND THEN REMOVING THE MINERAL-CONTAINING
13 SOLUTION FOR DEVELOPMENT OR EXTRACTION OF THE MINERAL VALUES.

14 (5.8) "IN SITU MINING" MEANS THE IN-PLACE RECOVERY OF A
15 MINERAL BY MEANS OTHER THAN OPEN MINING OR UNDERGROUND MINING.

16 (8) "Mining operation" means the development or extraction of a
17 mineral from its natural occurrences on affected land. The term "MINING
18 OPERATION" includes, but is not limited to, open mining, ~~and~~ IN SITU
19 MINING, IN SITU LEACH MINING, surface ~~operation~~ OPERATIONS, and the
20 disposal of refuse from underground and in situ mining. The term
21 "MINING OPERATION" ALSO includes the following operations on affected
22 lands: Transportation; concentrating; milling; evaporation; and other
23 processing. The term "MINING OPERATION" does not include: The
24 exploration and extraction of natural petroleum in a liquid or gaseous
25 state by means of wells or pipe; the development or extraction of coal; the
26 extraction of geothermal resources; smelting, refining, cleaning,
27 preparation, transportation, and other off-site operations not conducted on
28 affected land; OR THE EXTRACTION OF CONSTRUCTION MATERIAL WHERE
29 THERE IS NO DEVELOPMENT OR EXTRACTION OF ANY MINERAL.

30 **SECTION 2.** The introductory portion to 34-32-110 (2) (a),
31 Colorado Revised Statutes, is amended to read:

32 **34-32-110. Limited impact operations - expedited process.**
33 (2) (a) Any person desiring to conduct mining operations on less than ten
34 acres, which mining operations will result in the extraction of less than
35 seventy thousand tons of mineral or overburden per calendar year, prior

1 to commencement of mining, shall file with the office, on a form
2 approved by the board, an application for a permit to conduct mining
3 operations; EXCEPT THAT APPLICATIONS FOR IN SITU LEACH MINING SHALL
4 BE FILED PURSUANT TO SECTION 34-32-112.5 (3) (d). This application
5 shall contain the following:

6 **SECTION 3.** 34-32-112 (2), Colorado Revised Statutes, is
7 amended BY THE ADDITION OF THE FOLLOWING NEW
8 PARAGRAPHS to read:

9 **34-32-112. Application for reclamation permit - changes in**
10 **permits - fees - notice.** (2) The application forms shall state:

11 (i) FOR IN SITU LEACH MINING OPERATIONS, A CERTIFICATION BY
12 THE APPLICANT THAT NO VIOLATIONS EXIST AS DESCRIBED IN SECTION
13 34-32-115 (5) (d). IF THE APPLICANT IS NOT ABLE TO SO CERTIFY, THE
14 APPLICANT SHALL DESCRIBE THE CIRCUMSTANCES AS MAY BE RELEVANT
15 TO SECTION 34-32-115 (5) (d) AND PROVIDE THE BOARD OR OFFICE ANY
16 ADDITIONAL INFORMATION REASONABLY REQUESTED REGARDING ANY
17 SUCH CIRCUMSTANCES.

18 (j) FOR IN SITU LEACH MINING OPERATIONS, A DESCRIPTION OF AT
19 LEAST FIVE IN SITU LEACH MINING OPERATIONS THAT DEMONSTRATES THE
20 ABILITY OF THE APPLICANT TO CONDUCT THE PROPOSED MINING
21 OPERATION WITHOUT ANY LEAKAGE, VERTICAL OR LATERAL MIGRATION,
22 OR EXCURSION OF ANY LEACHING SOLUTIONS OR
23 GROUND-WATER-CONTAINING MINERALS, RADIONUCLIDES, OR OTHER
24 CONSTITUENTS MOBILIZED, LIBERATED, OR INTRODUCED BY THE IN SITU
25 LEACH MINING PROCESS INTO ANY GROUND WATER OUTSIDE OF THE
26 PERMITTED IN SITU LEACH MINING AREA.

27 **SECTION 4.** 34-32-112 (10) (c), Colorado Revised Statutes, is
28 amended to read:

29 **34-32-112. Application for reclamation permit - changes in**
30 **permits - fees - notice.** (10) (c) In addition, the applicant shall mail a
31 copy of such notice immediately after first publication to all owners of
32 record of the surface rights of the affected land, to the owners of record
33 of immediately adjacent lands, TO THE OWNERS OF RECORD OF LANDS
34 WITHIN THREE MILES OF AFFECTED LAND FOR IN SITU LEACH MINING
35 OPERATIONS, and to any other persons who are owners of record that may

1 be designated by the board that might be affected by the proposed mining
2 operation. Proof of such notice and mailing, such as certified mail with
3 return receipt requested where possible, shall be provided to the board or
4 the office and become part of the application.

5 **SECTION 5.** 34-32-112.5, Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW SUBSECTION to read:

7 **34-32-112.5. Designated mining operation - rules.** (5) (a) AN
8 APPLICATION FOR AN IN SITU LEACH MINING OPERATION SHALL INCLUDE
9 A PLAN FOR A BASELINE SITE CHARACTERIZATION AND ONGOING
10 MONITORING OF THE AFFECTED LAND AND AFFECTED SURFACE AND
11 GROUND WATER. THE BOARD OR THE OFFICE MAY RETAIN AN
12 INDEPENDENT THIRD-PARTY PROFESSIONAL EXPERT TO OVERSEE BASELINE
13 SITE CHARACTERIZATION, MONITOR FIELD OPERATIONS, OR REVIEW ANY
14 PORTION OF THE INFORMATION COLLECTED, DEVELOPED, OR SUBMITTED
15 BY AN APPLICANT PURSUANT TO THIS SUBSECTION (5). THE APPLICANT
16 SHALL PAY THE REASONABLE COSTS INCURRED BY THE EXPERT SELECTED
17 BY THE BOARD OR OFFICE; EXCEPT THAT THE BOARD OR OFFICE SHALL
18 DEFINE THE SCOPE OF WORK TO BE ACCOMPLISHED BY THE EXPERT AND
19 SHALL REVIEW AND APPROVE ALL INVOICES TO BE PAID BY THE APPLICANT.
20 THE APPLICANT MAY OBJECT TO THE SELECTION OF ANY SUCH EXPERT IF
21 THE APPLICANT HAS KNOWLEDGE OR INFORMATION THAT THE EXPERT
22 LACKS THE PROFESSIONAL QUALIFICATIONS TO ACCOMPLISH THE SCOPE OF
23 WORK, HAS A CONFLICT OF INTEREST WITH THE APPLICANT OR THE PROJECT
24 THAT IS THE SUBJECT OF THE APPLICATION, OR HAS A BIAS THAT COULD
25 INFLUENCE THE OBJECTIVITY OF THE WORK TO BE ACCOMPLISHED. IF THE
26 BOARD OR OFFICE CONCURS WITH THE APPLICANT, A NEW EXPERT SHALL
27 BE SELECTED BY THE BOARD OR OFFICE.

28 (b) THE APPLICANT SHALL DESIGN AND CONDUCT A
29 SCIENTIFICALLY DEFENSIBLE GROUND WATER, SURFACE WATER, AND
30 ENVIRONMENTAL BASELINE CHARACTERIZATION AND MONITORING PLAN
31 FOR THE PROPOSED MINING OPERATION. THIS PLAN SHALL BE DESIGNED IN
32 SUCH A MANNER AS TO:

33 (I) THOROUGHLY CHARACTERIZE PREMINING SITE CONDITIONS;

34 (II) DETECT ANY SUBSURFACE EXCURSIONS OF CHEMICALS USED
35 IN OR MOBILIZED BY IN SITU LEACH MINING DURING THE MINING
36 OPERATIONS; AND

1 (III) EVALUATE THE EFFECTIVENESS OF POSTMINING RECLAMATION
2 AND GROUND WATER RESTORATION PLANS.

3 (c) THE DESIGN AND OPERATION OF THE BASELINE
4 CHARACTERIZATION AND MONITORING PLAN, TOGETHER WITH ALL
5 INFORMATION COLLECTED IN ACCORDANCE WITH THE PLAN, SHALL BE A
6 MATTER OF PUBLIC RECORD.

7 (d) (I) NOTWITHSTANDING SECTION 34-32-103 (6), IN THE CASE OF
8 IN SITU LEACH MINING, RECLAMATION OF GROUND WATER SHALL BEGIN
9 IMMEDIATELY UPON CESSATION OF PRODUCTION OPERATIONS IN
10 ACCORDANCE WITH THE RECLAMATION PLAN APPROVED BY THE BOARD.

11 (II) IF THE OPERATOR PLANS TO CEASE OPERATION ON A
12 TEMPORARY BASIS, THE OPERATOR SHALL NOTIFY THE BOARD AT LEAST
13 THIRTY DAYS PRIOR TO SUCH TEMPORARY CESSATION SETTING FORTH
14 BOTH THE REASONS FOR THE TEMPORARY CESSATION AND THE EXPECTED
15 DURATION OF THE TEMPORARY CESSATION. THE OPERATOR SHALL
16 MAINTAIN A GROUND WATER MONITORING AND PUMPING REGIME
17 SATISFACTORY TO THE BOARD DURING ANY PERIOD OF TEMPORARY
18 CESSATION OF OPERATIONS. IF, IN THE JUDGMENT OF THE BOARD, THE
19 EXPECTED DURATION OF ANY TEMPORARY CESSATION WILL BE OF SUCH
20 LENGTH THAT THE BOARD BELIEVES THAT GROUND WATER RECLAMATION
21 SHOULD COMMENCE, IT SHALL SO ORDER.

22 **SECTION 6.** 34-32-115 (2), Colorado Revised Statutes, is
23 amended, and the said 34-32-115 is further amended BY THE
24 ADDITION OF A NEW SUBSECTION, to read:

25 **34-32-115. Action by board - appeals.** (2) Prior to the holding
26 of any such hearing, the board or the office shall provide notice to any
27 person previously filing a protest or petition for a hearing or statement in
28 support of an application pursuant to section 34-32-114 and shall publish
29 notice of the time, date, and location of the hearing in a newspaper of
30 general circulation in the locality of the proposed mining operation once
31 a week for two consecutive weeks immediately prior to the hearing. The
32 hearing shall be conducted as a proceeding pursuant to article 4 of title
33 24, C.R.S. A final decision on the application shall be made within one
34 hundred twenty days of AFTER the receipt of the application. In the event
35 of complex applications, serious unforeseen circumstances, or significant
36 snow cover on the affected land that prevents a necessary on-site

1 inspection, the board or the office may reasonably extend the maximum
2 time sixty days. IN THE EVENT OF IN SITU LEACH MINING OPERATIONS, A
3 FINAL DECISION ON THE APPLICATION WILL BE MADE WITHIN TWO
4 HUNDRED FORTY DAYS.

5 (5) (a) THE BOARD OR THE OFFICE MAY DENY A PERMIT FOR IN SITU
6 LEACH MINING OPERATIONS BASED ON UNCERTAINTY ABOUT THE
7 FEASIBILITY OF RECLAMATION AND SHALL DENY SUCH A PERMIT IF THE
8 APPLICANT FAILS TO DEMONSTRATE THAT RECLAMATION CAN AND WILL
9 BE ACCOMPLISHED IN COMPLIANCE WITH THIS ARTICLE, INCLUDING THE
10 PROTECTION OF GROUND WATER AND OTHER ENVIRONMENTAL RESOURCES
11 AND HUMAN HEALTH.

12 (b) THE BOARD OR THE OFFICE SHALL DENY A PERMIT FOR IN SITU
13 LEACH MINING IF THE APPLICANT FAILS TO DEMONSTRATE BY
14 SUBSTANTIAL EVIDENCE THAT IT WILL RESTORE ALL AFFECTED GROUND
15 WATER FOR ALL WATER QUALITY PARAMETERS TO PREMINING BASELINE
16 WATER QUALITY OR BETTER AS ESTABLISHED BY THE BASELINE SITE
17 CHARACTERIZATION CONDUCTED PURSUANT TO SECTION 34-32-112.5 (5),
18 OR TO THAT QUALITY WHICH MEETS THE STATEWIDE RADIOACTIVE
19 MATERIALS STANDARDS OR THE MOST STRINGENT CRITERIA SET FORTH IN
20 TABLES 1 THROUGH 4 OF THE BASIC STANDARDS FOR GROUND WATER AS
21 ESTABLISHED BY THE COLORADO WATER QUALITY CONTROL COMMISSION.

22 (c) THE BOARD OR THE OFFICE MAY DENY A PERMIT FOR IN SITU
23 LEACH MINING IF THE EXISTING OR REASONABLY FORESEEABLE POTENTIAL
24 FUTURE USES FOR ANY POTENTIALLY AFFECTED GROUND WATER,
25 WHETHER CLASSIFIED OR UNCLASSIFIED PURSUANT TO SECTION 25-8-203,
26 C.R.S., INCLUDES DOMESTIC OR AGRICULTURAL USES, AND THE BOARD
27 DETERMINES THE IN SITU LEACH MINING WILL ADVERSELY AFFECT THE
28 SUITABILITY OF THE GROUNDWATER FOR SUCH USES.

29 (d) THE BOARD OR THE OFFICE MAY DENY OR REVOKE A PERMIT
30 FOR IN SITU LEACH MINING IF:

31 (I) THE APPLICANT, AN AFFILIATE, OFFICER, OR DIRECTOR OF THE
32 APPLICANT, THE OPERATOR, OR CLAIM HOLDER HAS DEMONSTRATED A
33 PATTERN OF WILLFUL VIOLATIONS OF THE ENVIRONMENTAL PROTECTION
34 REQUIREMENTS OF THIS ARTICLE, RULES PROMULGATED PURSUANT TO THIS
35 ARTICLE, A PERMIT ISSUED PURSUANT TO THIS ARTICLE, OR AN ANALOGOUS
36 LAW, RULE, OR PERMIT ISSUED BY ANOTHER STATE, THE UNITED STATES,

1 OR A FOREIGN JURISDICTION AS DISCLOSED IN THE APPLICATION PURSUANT
2 TO SECTION 34-32-112 (2) (i);

3 (II) (A) EXCEPT AS SPECIFIED IN SUB-SUBPARAGRAPH (B) OF THIS
4 SUBPARAGRAPH (II), THE APPLICANT OR ANY AFFILIATE, OFFICER, OR
5 DIRECTOR OF THE APPLICANT HAS PREVIOUSLY VIOLATED THIS ARTICLE,
6 RULES PROMULGATED PURSUANT TO THIS ARTICLE, A PERMIT ISSUED
7 PURSUANT TO THIS ARTICLE, OR AN ANALOGOUS LAW, RULE, OR PERMIT
8 ISSUED BY ANOTHER STATE, THE UNITED STATES, OR A FOREIGN
9 JURISDICTION AS DISCLOSED IN THE APPLICATION PURSUANT TO SECTION
10 34-32-112 (2) (i).

11 (B) THE BOARD OR OFFICE MAY ISSUE OR REINSTATE A PERMIT IF
12 THE APPLICANT SUBMITS PROOF THAT THE VIOLATION REFERRED TO IN
13 SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) HAS BEEN
14 CORRECTED OR MAY CONDITIONALLY ISSUE OR REINSTATE A PERMIT IF THE
15 VIOLATION IS IN THE PROCESS OF BEING CORRECTED TO THE SATISFACTION
16 OF THE BOARD OR IF THE APPLICANT SUBMITS PROOF THAT THE APPLICANT
17 HAS FILED AND IS PRESENTLY PURSUING A DIRECT ADMINISTRATIVE OR
18 JUDICIAL APPEAL TO CONTEST THE VALIDITY OF THE ALLEGED VIOLATION.
19 FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (B), A DIRECT
20 ADMINISTRATIVE OR JUDICIAL APPEAL TO CONTEST THE VALIDITY OF THE
21 ALLEGED VIOLATION SHALL NOT INCLUDE AN APPEAL OF AN APPLICANT'S
22 RELATIONSHIP TO AN AFFILIATE. IF THE VIOLATION IS NOT SUCCESSFULLY
23 ABATED OR IF THE VIOLATION IS UPHELD ON APPEAL, THE BOARD OR
24 OFFICE SHALL REVOKE OR DENY THE CONDITIONAL PERMIT ISSUED OR
25 REINSTATED PURSUANT TO THIS SUB-SUBPARAGRAPH (B).

26 **SECTION 7.** The introductory portion to 34-32-116 (7) (q) and
27 34-32-116 (7) (q) (III), Colorado Revised Statutes, are amended, and the
28 said 34-32-116 is further amended BY THE ADDITION OF THE
29 FOLLOWING NEW SUBSECTIONS, to read:

30 **34-32-116. Duties of operators - reclamation plans.**
31 (7) Reclamation plans and the implementation thereof shall conform to
32 the following general requirements:

33 (q) All reclamation provided for in this section shall be carried to
34 completion by the operator with all reasonable diligence and shall be
35 conducted concurrently with mining operations to the extent practicable,
36 taking into consideration the mine plan, mine safety, economics, the

1 availability of equipment and material, and other site-specific conditions
2 relevant and unique to the affected land and to the postmining land use.
3 Upon termination of the entire mining operation and in accordance with
4 the reclamation plan, each phase of final reclamation shall be completed
5 ~~prior to the expiration of~~ WITHIN five years after the date on which the
6 operator advises the board that such phase has commenced, unless such
7 period is extended by the board pursuant to section 34-32-112 (7); except
8 that:

9 (III) (A) With the approval of the board and the owner of the land
10 to be reclaimed, the operator may substitute land previously mined and
11 owned by the operator not otherwise subject to reclamation under this
12 article or, in the alternative, with the approval of the board and the owner
13 of the land, reclamation of an equal number of acres of any lands
14 previously mined but not owned by the operator if the operator has not
15 previously abandoned unreclaimed mining lands. The board also has
16 authority to grant, in the alternative, the reclamation of lesser or greater
17 acreage so long as the cost of reclaiming such acreage is at least
18 equivalent to the cost of reclaiming the original permit lands. If any area
19 is so substituted, the operator shall submit a map of the substituted area,
20 which map shall conform to all of the requirements with respect to other
21 maps required by this article. Upon completion of reclamation of the
22 substituted land, the operator shall be relieved of all obligations under this
23 article with respect to the land for which substitution has been permitted.

24 (B) SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III) SHALL
25 NOT APPLY TO URANIUM OR IN SITU LEACH MINING.

26 (8) ALL URANIUM EXTRACTION OPERATIONS USING IN SITU LEACH
27 MINING OR RECOVERY METHODS, INCLUDING ANY INJECTION OF ANY
28 CHEMICALS DESIGNED TO MOBILIZE URANIUM RESOURCES, SHALL RESTORE
29 ALL AFFECTED GROUND WATER FOR ALL WATER QUALITY PARAMETERS TO
30 PREMINING BASELINE WATER QUALITY OR BETTER AS ESTABLISHED BY THE
31 BASELINE SITE CHARACTERIZATION CONDUCTED PURSUANT TO SECTION
32 34-32-112.5 (5), OR TO THAT QUALITY WHICH MEETS THE STATEWIDE
33 RADIOACTIVE MATERIALS STANDARDS OR THE MOST STRINGENT CRITERIA
34 SET FORTH IN TABLES 1 THROUGH 4 OF THE BASIC STANDARDS FOR
35 GROUND WATER AS ESTABLISHED BY THE COLORADO WATER QUALITY
36 CONTROL COMMISSION. IN ESTABLISHING, DESIGNING, AND IMPLEMENTING
37 A GROUND WATER RESTORATION PLAN, THE MINE OPERATOR SHALL USE
38 BEST AVAILABLE TECHNOLOGY.

1 (9) OPERATORS OF IN SITU LEACH MINING OPERATIONS SHALL TAKE
2 ALL NECESSARY STEPS TO PREVENT AND REMEDIATE ANY DEGRADATION
3 OF PRE-EXISTING GROUND WATER USES DURING THE PROSPECTING,
4 DEVELOPMENT, EXTRACTION, AND RECLAMATION PHASES OF THE
5 OPERATION.

6 **SECTION 8.** 34-32-121.5, Colorado Revised Statutes, is
7 amended to read:

8 **34-32-121.5. Reporting certain conditions.** Any person engaged
9 in ~~any~~ A mining operation shall notify the office of any failure or
10 imminent failure as soon as reasonably practicable after such person has
11 knowledge of such condition, BUT FOR IN SITU LEACH MINING OPERATIONS
12 IN NO EVENT MORE THAN TWENTY-FOUR HOURS AFTER THE DISCOVERY OF
13 SUCH FAILURE OR AN IMMINENT FAILURE, of: Any impoundment,
14 embankment, or slope that poses a reasonable potential for danger to any
15 persons or property or to the environment; ANY STRUCTURE FOR IN SITU
16 LEACH MINING OPERATIONS DESIGNED TO DETECT, PREVENT, MINIMIZE, OR
17 MITIGATE ADVERSE IMPACTS ON GROUND WATER; ANY STRUCTURE USED
18 IN CONNECTION WITH IN SITU LEACH MINING DESIGNED TO DETECT,
19 PREVENT, MINIMIZE, OR MITIGATE ADVERSE IMPACTS ON HUMAN HEALTH,
20 WILDLIFE, OR THE ENVIRONMENT; or any environmental protection facility
21 designed to contain or control chemicals or waste ~~which~~ THAT are acid-
22 or toxic-forming, as identified in the permit.

23 **SECTION 9. Applicability.** This act shall apply to mining
24 applications filed and mining operations occurring on or after the
25 effective date of this act.

26 **SECTION 10. Safety clause.** The general assembly hereby finds,
27 determines, and declares that this act is necessary for the immediate
28 preservation of the public peace, health, and safety."

** ** ** ** **