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June 1, 2009

John Fognani
Fognani and Faught
1700 Lincoln Street
Suite 2222
Denver, CO 80203

RE: Centennial Project, Notice of Intent Modification MD-02, File No. P-2008-043

Dear Mr. Fognani:

My client, the Division of Reclamation, Mining and Safety ("DRMS"), asked me to respond to some of the issues your letter, dated April 15, 2009, raised concerning Powertech (USA)'s request for a modification of a notice of intent to conduct prospecting ("NOI"). Your letter was in reply to a letter DRMS sent concerning the NOI modification. DRMS' letter, dated March 31, 2009, found that Powertech's modification application was incomplete and requested Powertech to respond to several adequacy issues including issues raised by Weld County officials and the Western Mining Action Project.

This letter responds to certain of the assertions made in your letter but does not address the technical letter Powertech sent to my client:

1. Assertion that outside parties are being allowed to intervene in the DRMS review of the NOI process.

In your letter you state that by DRMS requiring Powertech to respond to issues raised in letters sent by citizens, DRMS was allowing citizens to "intervene" in DRMS' review of the NOI modification. DRMS disagrees.

The Colorado General Assembly determined that land affected by a mining operation should be put to a use beneficial to the people of the state of Colorado. § 34-32-102, C.R.S. In addition, the legislature enacted the Mined Land Reclamation Act to protect and promote the health, safety and general welfare of the people of this state. *Id.*

With this declaration in mind, the Colorado legislature in 2008 enacted and the Governor signed into law Senate Bill 228. This bill made information about prospecting public that once was confidential. Although SB 228 did not create an administrative procedure in which citizens may intervene in the NOI approval process or appeal a NOI decision DRMS makes,

citizens may send DRMS concerns they have about prospecting activities, just as they do with mining activities. DRMS, as a state agency, will respond to such concerns, as appropriate. In addition, since DRMS will not speak on behalf of Powertech (or any other prospector or operator) and because the citizens' concerns here relate specifically to Powertech's activities, it is important for Powertech to address the issues raised by the public. Requiring Powertech to respond to concerns about its prospecting activities does not fall outside the ambit of SB 228. Indeed, it is likely that the Colorado General Assembly anticipated that once it made information about prospecting activities public, the public would voice its concerns about such activities.

2. Pre-submittal Baseline Activities and Third Party Expert

In your letter you also state that Powertech disagrees with DRMS' determination that many of Powertech's activities conducted under NOI, No. P-2008-043, are baseline site characterization. I address that issue below. However, I will first address your assertion that DRMS' decision to hire a third party expert is inappropriate at this time because House Bill 1161 only allows DRMS to hire a third party expert in connection with a permit application. Contrary to your assertion, the General Assembly in HB 1161, as codified at § 34-32-112(5)(a), C.R.S., specifically authorizes DRMS to hire a third party expert *prior* to submittal of a permit application.

First, HB 1161 requires the baseline site characterization and monitoring plan to be included in a permit application, meaning the characterization and plan must be completed prior to submittal of the permit application.

Second, the statute authorizes DRMS to hire an expert to oversee baseline site characterization, monitor field operations and review information collected, developed or submitted by an applicant or a prospective applicant. Since baseline activities must be conducted prior to submitting a permit application and because the statute authorizes the expert to oversee the baseline activities, the statute allows DRMS to hire the third party expert prior to submittal of a permit application.

Third, the legislature in HB 1161 used the words "prospective applicant" and not just "applicant" throughout this subsection, *e.g.*, expert may review the information submitted by the prospective applicant, the prospective applicant shall pay the cost of the expert, *etc.* Thus, contrary to your assertion, the legislature, through enactment of HB 1161 specifically authorizes DRMS to hire an expert prior to submittal of a permit application. Indeed, if your argument were correct, it would render meaningless the above provisions of HB 1161.

Lastly, please also note that under SB 169, the legislature required a permit applicant to pay for the cost of an expert in the review of an in situ uranium permit application. § 34-32-127(2)(a)(I)(O), C.R.S. Thus, the costs to review a submitted permit application fall within this section rather than § 34-32-112(5)(a), C.R.S.

Prospecting and Baseline Site Characterization

You also disagree with DRMS' statement that many of Powertech's activities conducted under NOI, No. P-2008-043, are baseline site characterization. Allen Sorenson of DRMS has responded to this issue by separate letter. However, please note that if Powertech uses *any* information from the "prospecting" activities to meet the requirement of a baseline site characterization, then those activities fall within the category of baseline site characterization and DRMS may hire a third party expert - even if those activities also are to search for or investigate a mineral deposit.

One other statement in your letter requires a response. On page 5 of your letter, you discuss your interpretation of the distinction between prospecting and mining, and you state that contrary to Western Mining Action Project's assertion, the pending issue is whether Powertech's activities are prospecting or mining and not whether the activities are prospecting or development. Please note that the legislature has defined mining operation to include development. § 34-32-103(8), C.R.S. Thus, development is mining as those terms are defined by the Mined Land Reclamation Act and relative to the need for a reclamation permit as opposed to a NOI.

As mentioned above, by separate letter, Allen Sorenson from DRMS will address other issues Powertech raised in its letters. Thank you for your attention to this matter.

Sincerely,

FOR THE ATTORNEY GENERAL



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