

# STATE OF COLORADO

**DIVISION OF RECLAMATION, MINING AND SAFETY**  
Department of Natural Resources

1313 Sherman St., Room 215  
Denver, Colorado 80203  
Phone: (303) 866-3567  
FAX: (303) 832-8106



**NON CONFIDENTIAL**

✓ June 1, 2009

Mr. Richard E. Blubaugh  
to Powertech (USA) Inc.  
5575 DTC Parkway, Suite 140  
Greenwood Village, CO 80111

Bill Ritter, Jr.  
Governor

Harris D. Sherman  
Executive Director

Ronald W. Cattany  
Division Director  
Natural Resource Trustee

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

Dear Mr. Blubaugh:

This letter is the response of the Division of Reclamation, Mining, and Safety (DRMS) to Powertech's letter dated April 14, 2009 and the letter from Powertech's counsel Fognani and Faught dated April 15, 2009.

1. Based on Powertech's letters and request, DRMS acknowledges that Powertech has withdrawn its proposed modification MD-02 to prospecting notice P-2008-043 from DRMS consideration.
2. Powertech's April 14, 2009 letter outlines in general terms Powertech's plan to use Baker tanks to contain pumped ground water generated during aquifer testing. DRMS hereby notifies Powertech that the plan will require approval of a modification to prospecting notice P-2008-043. Powertech's plan to subsequently re-inject the stored water also requires a modification to the notice as DRMS and EPA have separate jurisdiction over underground injection in this matter. These issues were discussed in a meeting between DRMS and Powertech at the Powertech Wellington office on April 30, 2009.
3. Page 5 of Powertech's April 14, 2009 letter states that the information DRMS had requested was provided in MD-02 and that from Powertech's perspective, based on DRMS's March 31, 2009 MD-02 review letter, "there was a misunderstanding about what was required." To clarify, DRMS had discussions with Powertech prior to submittal of MD-02 in which DRMS stated that in order to approve surface pit disposal of pumped ground water, Powertech must demonstrate that such disposal would minimize impacts to the uppermost aquifer. In those discussions, there was agreement that a mixing model including the pit disposed water and the uppermost aquifer ground water would be one acceptable way of making the required demonstration. The details of how a mixing model would be constructed *were not* discussed. When Powertech submitted MD-02, DRMS determined that the mixing model provided included overly simplistic assumptions of how the waters would mix that had no basis in hydrologic principles. Therefore, the March 31, 2009 review letter laid out in detail that information necessary to construct an acceptable mixing model.
4. The April 15, 2009 Fognani and Faught letter states and describes Powertech's position that prospecting activities that have occurred and that are ongoing at the Centennial and Indian Springs Uranium Project are not Baseline Site Characterization, as that term is used in the Colorado Mined Land Reclamation Act, 34-32-101 et seq. C.R.S. (Act). The DRMS has made the determination that many of the subject

prospecting activities are Baseline Site Characterization. The substantive bases for that determination are described as follows.

a. The Act at § 112.5(5)(a) requires inclusion of Baseline Site Characterization in applications for in situ leach mining. Therefore, Baseline Site Characterization must necessarily be completed prior to application submittal.

b. The Act at § 112.5(5)(a) states “(p)rior to submitting an application, the prospective applicant shall confer with the (DRMS) concerning the baseline characterization and plan for ongoing monitoring of the affected land and affected surface and ground water.” Powertech has conferred with DRMS on several occasions concerning Baseline Site Characterization; as a result of those conferences, Powertech submitted the April 2009 Site Characterization Plan. The fact that Powertech is a self described prospective applicant for an in situ leach mining operation in Colorado derives from numerous documents Powertech has submitted to DRMS, including the April 2009 Site Characterization Plan, which states in section 1.3 that “(t)his Plan was designed to thoroughly characterize the pre-mining site conditions at the Centennial Project prior to Powertech’s mining permit application.” The April 2009 Site Characterization Plan describes much of the work that Powertech has been doing at the Centennial and Indian Springs Uranium Project under prospecting notices filed with the DRMS.

c. The Act at § 112.5(5)(b) states “(p)rior to submitting an application, a prospective applicant for in situ leach mining shall design and conduct a scientifically defensible ground water, surface water, and environmental baseline characterization...” The April 2009 Site Characterization Plan states in section 1.3 that “(i)t was developed in a manner that is (i) consistent with applicable regulatory guidance, current standards of practice, and defensible science.”

d. The Act at § 112.5(5)(c) states “(t)he design and operation of the baseline characterization and monitoring plan for in situ leach mining, together with all information collected in accordance with the plan, shall be a matter of public record regardless of whether such activities are conducted pursuant to a notice of intent to conduct prospecting operations under section 34-32-113.” Therefore, it is clear that Baseline Site Characterization can occur under the auspices of a prospecting notice and can be conducted concurrently with, and as part of prospecting activities. In a letter from Powertech to DRMS dated September 15, 2008 requesting modification to prospecting notice P-2008-043, Powertech describes the intended use for seventeen ground water monitoring wells proposed to be installed as “for baseline environmental data collection.” In a letter from DRMS to Powertech regarding that same prospecting notice and dated August 22, 2008, DRMS stated “(y)ou have chosen to keep the locations for the two monitoring wells confidential with the rationale being that the monitoring wells are located over a minerals deposit being prospected. Be advised that as a result of this choice, data gathered from these wells may not be accepted as part of a baseline characterization and monitoring plan if a Reclamation Permit application is submitted. This determination is in accordance with Section 34-32-112.5(5)(c) C.R.S., which was added to Mined Land Reclamation Act through Colorado House Bill 2008-1161.” In response, Powertech stated in a letter dated August 25, 2008 “(h)aving reviewed your discussion of the new requirements related to HB 2008-1161 and the determinations specified in your letter, Powertech will waive its request that the locations of the two monitor wells be confidential.”

e. The Act at § 112.5(5)(a) states “(t)he board or the (DRMS) may retain an independent third-party professional expert to oversee baseline site characterization, monitor field operations, or review any portion of the information collected, developed, or submitted by an applicant or prospective applicant pursuant to this subsection (5).” The DRMS has notified Powertech in meetings and in writing that a

third-party professional expert will be engaged under this section of the Act for Powertech's Centennial and Indian Springs Uranium Project. Powertech has already conducted some Baseline Site Characterization work at the Project. However, Powertech still has significant baseline characterization work to conduct, including the planned aquifer pumping test in section 33, T10N, R67W. Also, DRMS review of the April 2009 Site Characterization Plan is underway. These are exactly the types of things that can be reviewed, monitored, and overseen by a third-party expert, and the DRMS has decided they will be reviewed, monitored, and overseen by a third-party expert.

f. The April 2009 Site Characterization Plan states in sections 1.0, 1.3, and 1.4 that it was prepared to meet the requirements of §§ 112.5(5)(a), (b), and (c) of the Act, which are the sections relating to Baseline Site Characterization and the use of a third-party expert.

5. The DRMS is not dissuaded from the conclusion described in item four above by the arguments included in the April 15, 2009 Fognani and Faught letter (Fognani letter). The DRMS response to the arguments presented are described as follows.

- a. The Fognani letter states that DRMS has not been specific about the components of prospecting notice P-2008-043 it considers to be Baseline Site Characterization. Specifically, the following information collected under P-2008-043 is Baseline Site Characterization because the information is of the type DRMS will expect and require to be used in the preparation of a reclamation permit application:
- i) Stratigraphic information from drilling and logging of seventeen monitoring wells and nine exploration boreholes.
  - ii) Geologic information, including geochemical and mineralogical information from logging of seventeen monitoring wells and nine exploration boreholes and from analysis of core and cuttings such as petrographic analysis, microprobe analysis, leaching characteristic analysis, etc.
  - iii) Geohydrologic information, such as ground water gradient and aquifer/aquitard properties and relationships from drilling and logging of seventeen monitoring wells and nine exploration boreholes, and from completing, developing, pump testing, and monitoring seventeen monitoring wells.
  - iv) Ground water quality information from samples collected from and measurements made in seventeen monitoring wells. Attachment B to Powertech's August 20, 2008 submittal to prospecting notice P-2008-043 lists 65 parameters to be measured in the field, by a laboratory, or calculated for ground water monitored from the seventeen wells.

It is further noted that the same type of Baseline Site Characterization information listed in items i-iv above has been and to an extent is continuing to be collected from the 21 monitoring wells described the April 2009 Site Characterization Plan.

b. The Fognani letter states that hiring a third-party reviewer is not appropriate in connection with a prospecting notice, and can only be done in connection with baseline site characterization activities conducted in connection with a reclamation permit application. This position is incorrect; part of the job of the third-party reviewer is to oversee Baseline Site Characterization activities, and, as discussed in items 4 a and d above, since the activities are required to occur in advance of permit application and can be conducted under a prospecting notice, hiring a third-party expert is appropriate in connection with a prospecting notice. Another task that can be performed by a third-party expert is to review information submitted by a prospective applicant, such as the April 2009 Site Characterization Plan. The decision to require a third-party expert in connection with a prospecting notice is made by DRMS on a case-by-case basis considering the magnitude and complexity of the characterization work being done.

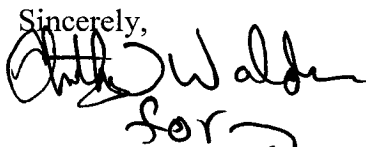
c. The Fognani letter presumes that it is the position of DRMS that any sampling or testing activities at a potential mining site constitute baseline site characterization. The goal of the Act is that planned and

ongoing characterization activities under the Act are sufficiently overseen, field operations are adequately monitored, and that baseline information collected, developed, submitted is completely and expertly reviewed. One tool the Act provides to accomplish this goal is to employ a third-party expert. Importantly, the Act at § 112.5(5)(a) requires the DRMS to define the scope of work to be accomplished by the expert. DRMS has determined that a third-party expert will be engaged to, among other things, oversee and monitor Powertech's up-coming aquifer pump test in section 33, T10N, R67W, and to review the April 2009 Site Characterization Plan. The aquifer pump test involves numerous wells, management and disposal of naturally contaminated ground water, 24-hour operations over several days, and the results of the test will be relevant to determination of whether the targeted mineralized zone can be leached while minimizing impacts to overlying, underlying, and laterally adjacent ground water. The stated objective of the April 2009 Site Characterization Plan is to "thoroughly characterize the pre-mining site conditions at the Centennial Project prior to Powertech's mining permit application." Thus, the April 2009 Site Characterization Plan is an important submittal. DRMS will conduct complete and thorough oversight, monitoring, and review, and will engage a third-party expert to assist. Other aspects of the scope of work for the third-party expert are still being developed.

d. The Fognani letter states "the potential operator will be required to conduct a thorough baseline site characterization under the supervision of a third-party reviewer and submit the information to the (Mined Land Reclamation Board) if and when it determines to mine the site, at which stage it will be required to include all this information in its application for a Reclamation Permit." This statement seems to indicate that once Powertech makes the decision to apply for a reclamation permit, it will commence a thorough baseline site characterization, and that the approximately 14,000 water quality data points collected from eight samplings of 21 monitoring wells in 2007 and 2008, aquifer pumping test results, samplings of additional wells drilled in 2009, etc. would not form the basis of the baseline characterization required to be included in the permit application. DRMS doubts this is the case but please clarify this point. The DRMS has determined that it is critical that the important characterization work, pertinent to the Act, that remains to be done at the Centennial and Indian Springs Uranium Project prior to the potential submittal of a reclamation permit application, be done with a third party reviewer engaged.

Please find enclosed a letter from the Division's attorney, Cheryl Linden, to John Fognani responding to certain other assertions in the Fognani letter. If you have any questions, please contact me.

Sincerely,



Allen C. Sorenson  
Reclamation Specialist

enclosure(s)

cc: Ron Cattany, DRMS  
David Berry, DRMS  
Cheryl Linden, AGO



**JOHN W. SUTHERS**  
Attorney General

**CYNTHIA H. COFFMAN**  
Chief Deputy Attorney General

**DANIEL D. DOMENICO**  
Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**  
OFFICE OF THE ATTORNEY GENERAL

**STATE SERVICES BUILDING**  
1525 Sherman Street - 7th Floor  
Denver, Colorado 80203  
Phone (303) 866-4500

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

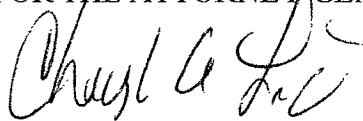
You also disagree with DRMS' statement that many of Powertech's activities conducted under NOI, No. P-2008-043, are baseline site characterization. Allen Sorenson of DRMS has responded to this issue by separate letter. However, please note that if Powertech uses *any* information from the "prospecting" 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



CHERYL A. LINDEN

First Assistant Attorney General

Natural Resources and Environment Section

(303) 866-5127

(303) 866-3558 (FAX)

Email: [Cheryl.linden@state.co.us](mailto:Cheryl.linden@state.co.us)

cc: Ron Cattany, Director  
David Berry, DRMS  
Allen Sorenson, DRMS