

WESTERN MINING ACTION PROJECT

*Roger Flynn, Esq.,
Jeffrey C. Parsons, Esq.*
P.O. Box 349
440 Main Street, Suite 2
Lyons, CO 80540
(303) 823-5738
Fax (303) 823-5732
wmap@igc.org

via email, hardcopy to follow

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David Berry, Minerals Supervisor
Div. of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203
(303) 866-4938
david.berry@state.co.us

RE: Powertech (USA) Inc. Request for Modification to Notice of Intent (NOI) File No. P-2008-043; Centennial Uranium Project, Weld County, Colorado

Dear Mr. Berry:

This letter is submitted on behalf of **Coloradoans Against Resource Destruction (CARD), Environment Colorado, Clean Water Action, and Information Network for Responsible Mining (INFORM)** to follow up on the Division's consideration of Powertech (USA) Inc.'s Request for Modification (MD-02) to Notice of Intent (NOI) File No. P-2008-043. Specifically, this letter 1) responds to the letters dated April 14, 2009 and April 15, 2009 submitted on behalf of Powertech (USA) Inc. addressing NOI File No. P-2008-043, and 2) responds to and seeks clarification regarding the scope of the activities previously approved via Modification MD-01 as described in the Division of Reclamation Mining and Safety's File Memorandum dated April 3, 2009 from Ron Cattany, Director. This letter is intended to supplement the letter from the same groups dated March 20, 2008, as the Division has yet to directly respond to the issues raised therein. Overall, there remain serious concerns related to the proposed modification and deficiencies in the completeness of the information submitted by Powertech (USA) Inc. with respect to the modification.

Powertech (USA) Inc. letters

In response to the March 31, 2009 request from the Division of Reclamation Mining and Safety ("Division" or "DRMS") for what Powertech (USA) Inc. characterizes as "considerable technical information in order to make a determination that impacts to the hydrologic balance will be minimized and that groundwater standards will be met," Powertech (USA) Inc. states that it is withdrawing MD-02. Letter dated April 14, 2009 from Richard E. Blubaugh, Vice-President – Environment Health and Safety Resources, Powertech (USA) Inc. to Allen C. Sorenson, Reclamation Specialist, DRMS ("April 14th Blubaugh Letter") at 1. As a result of the withdrawal of MD-02, the

company contends that the Division's requests for information are now moot. As a substitute, Powertech (USA) Inc. now asserts that it "will proceed to handle the pumped water with Baker tanks which will not require temporary water storage" and in this way, "eliminate the needless research and drafting of technical responses to justify the prior proposal." April 14th Blubaugh Letter at 2. Powertech (USA) Inc. repeats this basic approach throughout its April 14th letter, stating that no additional information is needed because the company has abandoned its plans to store its waste water in an unlined surface pit.

Critically, however, it does not appear that Powertech (USA) Inc. has actually submitted any additional application for the alternate disposal method identified. As such, the company fails to provide any of the technical information regarding this new plan necessary for the Division to discharge its duties under the Mined Land Reclamation Act ("MLRA"). As the Division is aware, the MLRA requires "[o]perators of in situ leach mining operations shall take all necessary steps to prevent and remediate any degradation of preexisting ground water uses **during the prospecting, development**, extraction, and reclamation phases of the operation. C.R.S. § 34-32-116(8)(emphasis added).

The MLRA further requires that any notice of intent to conduct prospecting activities must "contain the following: ... (f) Measures to be taken to reclaim any affected land consistent with the requirements of section 34-32-116." C.R.S. § 34-32-113(2). Section 34-32-116 specifically requires that:

(7) Reclamation plans and the implementation thereof shall conform to the following general requirements:

(g) Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation shall be minimized

C.R.S. § 34-32-116(7). Thus, regardless of whether the activities proposed are properly defined as "development" or "prospecting" under the MLRA, sufficient information must be presented to allow for the Division to determine compliance with the Act. Based on the April 14th Blubaugh Letter, Powertech has not provided any of this information to the Division related to the hydrological and groundwater quality impacts associated with the proposed aquifer pump tests, including the as of yet unspecified plan to reinject back into the Fox Hills aquifer formation.

Powertech (USA) Inc. asserts that because the company believes the proposed aquifer pump tests and associated activities are prospecting in nature, the requirements of C.R.S. § 34-32-112.5(5)(a) relating to baseline characterization and third party review are inapplicable. April 14th Blubaugh Letter at 2; Letter dated April 15, 2009 from John D. Fognani, attorney for Powertech (USA) Inc. to Allen C. Sorenson, Reclamation Specialist, DRMS ("April 15th Fognani Letter") at 2-4. There can be little doubt that the purpose of the aquifer pump tests is to characterize the site conditions. Indeed, Powertech (USA) Inc. stated in its March 4, 2009 Request for Modification that the pump tests are designed to "determine the hydrologic properties of the sedimentary rock units that host uranium mineralization as well as adjacent rock units." March 4, 2009 Request for Modification at 1.

In any case, simply because the proposal is characterized as prospecting does not exempt it from the requirements of C.R.S. § 34-32-112.5(5)(a), including the third party review of baseline

characterization activities. Indeed, the MLRA specifically requires that the baseline characterization be designed and conducted “prior to submitting an application” for mine development work. *See* C.R.S. § 34-32-112.5(5)(b)(“Prior 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 and monitoring plan for the proposed mining operation.”). Under Powertech (USA) Inc.’s interpretation, this provision for baseline characterization and monitoring plans “prior to application” would be rendered meaningless.

Further, the MLRA specifically contemplates that the baseline characterization study can be conducted, at least in part, through a prospecting authorization. *See* C.R.S. § 34-32-112.5(5)(c)(“The 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.”). Thus, the provisions of the MLRA applicable to baseline characterization studies apply regardless of whether specific activities proposed are “development” or “prospecting” under the MLRA. Overall it appears Powertech (USA) Inc. is attempting to conduct itself as if HB 08-1161 was never enacted into law. The reality is that the Centennial Project, as an in-situ leach uranium mining proposal, is no longer treated the same as a conventional mining operation. Rather, as a result of HB 08-1161, the project is appropriately subject to the additional provisions enacted into the MLRA specific to in-situ leach uranium mining proposals.

Powertech (USA) Inc. also appears to assert a secondary basis for an effective exemption from the provisions of C.R.S. § 34-32-112.5(5)(a), arguing that the company’s proposed activities should somehow be “grandfathered” from the application of the MLRA amendments enacted via HB 08-1161. Specifically with respect to the aquifer pump tests and reinjection, Powertech (USA) Inc. states that “[i]f the concept of ‘grandfathering’ has any validity at all, the baseline characterization activities for the proposed Centennial Project should be so considered.” April 14th Blubaugh Letter at 5. Powertech (USA) Inc. is mistaken in attempting to assert that its aquifer pump tests deserve an exemption from the MLRA provisions related to baseline characterization plans enacted via HB 08-1161. This is because the “applicability” clause for that legislation (Section 10) specifically provided for its application to all existing as well as future proposals. As such, Powertech (USA) Inc. cannot legitimately claim any “grandfathering” to escape the requirements of the MLRA.

Lastly, Powertech (USA) Inc. makes the argument that the public is not “authorized to intervene formally or informally in the review by DRMS of a Notice of Intent.” April 15th Fognani Letter at 1. As support, Powertech (USA) Inc. asserts that “[t]he Colorado Legislature has neither directed nor empowered DRMS to allow such intervention.” *Id.* The DRMS should reject Powertech (USA) Inc.’s attempt to exclude the public and local governmental entities from these highly important matters of public interest. Not only would such exclusion be bad public policy, but would also contravene well established Colorado law that state regulatory agencies have expansive discretion and authority to implement their controlling statutes. In particular, even where state statutes do not expressly grant authority, Colorado agencies possess broad implied authority to carry out their statutory mandates. In this case, certainly the Division has authority to consider legitimate issues related to protection of the environment and public health raised by the public and local governmental entities. To the extent Powertech (USA) Inc. or the mining industry in general seeks to limit such participation, the upcoming regulatory drafting process presents a critical opportunity for the Division and the Mined Land Reclamation Board to clarify the issue by specifying the procedure for such participation by rule.

Division's April 3, 2009 File Memorandum

On April 3, 2007, the Division prepared a File Memorandum in which Director Cattany sets forth an update as of that time of Powertech's proposed Modification MD-02 to Notice of Intent No. P-2008-043 ("April 3rd Memorandum"). In that Memorandum, Director Cattany states that:

Under the original NOI and modification MD-01 to the NOI, Powertech will drill wells to conduct an aquifer pump test. The modification addresses how to dispose of water from such a test. The modification MD-02 addresses disposal of the water from the test and not the conduct of the test itself.

April 3rd Memorandum, at 1.

Thus, it appears that the Division may be taking the position that the aquifer pump test itself has somehow already been fully reviewed and approved by the Division. However, a careful review of the complete publicly available file for P-2008-043, including the application, review, and bonding calculation for the original NOI and MD-01 contradicts any such assertion. The original application and the application for MD-01 address only the installation of groundwater monitoring wells for baseline environmental data collection and the advancement of exploration boreholes to delineate uranium resources in the project area. Indeed, there is no mention whatsoever, in any of the documentation associated with the original NOI or MD-01, of any use of the proposed wells or boreholes for an aquifer pump test. In particular, there are no documents in the publicly available file that evidence that the Division conducted the required review of potential disturbances to the hydrologic balance of the affected land and of the surrounding area or of potential impacts to the quality and quantity of water in surface and groundwater systems both during and after the aquifer pump test itself, as is required by the MLRA. *See* C.R.S. §§ C.R.S. § 34-32-116(7), 34-32-113(2).

Given the lack of information in the publicly available file, clarification is sought on the extent of the Division's review of the proposed aquifer pump tests, apart from the proposed method of disposal for the water produced by such tests. To the extent that such review has not been conducted, it is appropriate for the Division to require Powertech (USA) Inc. to provide the necessary information related to the pump tests as well as the proposed disposal method for the water produced from such tests, including the substantial technical issues raised in our letter dated March 20, 2009, for which no suitable response has to date been offered.

As always, we appreciate the Division's thoughtful and careful review of mining projects proposed in the state. We look forward to your prompt attention on this matter. Please do not hesitate to contact me directly with any questions.

Sincerely,

/s/ Jeffrey C. Parsons

Jeffrey C. Parsons, Esq.
On behalf of CARD, Environment Colorado, and INFORM

cc: Ron Cattany, Director, DRMS

Allen Sorenson, Reclamation Specialist, DRMS
Rep. Randy Fischer
Rep. John Kefalas
Thomas Honn, Director, Weld County Planning and Zoning Department