

Fort Collins Coloradoan

Powertech Uranium lawsuit: Cleaning groundwater too expensive, burdensome

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Powertech Uranium Corp. is suing the state of Colorado claiming rules state mining regulators adopted in August requiring the company to keep the groundwater clean beneath the proposed Centennial Project uranium mine are unlawful and unreasonable.

The lawsuit, filed in Denver District Court on Nov. 1, also alleges that Reps. Randy Fischer and John Kefalas and three other legislators broke the law by attempting to control how state mining officials implemented two 2008 laws they drafted requiring Powertech to keep its mine from polluting the groundwater.

Fischer and Kefalas are not named in the lawsuit as defendants, which include only Colorado Department of Natural Resources Director Mike King and the Colorado Mined Land Reclamation Board.

King could not be reached for comment Thursday.

Powertech, which previously called some of the provisions of the rules “fatal” to future in situ uranium mining in Colorado, proposes to open the Centennial Project uranium mine about 15 miles northeast of Fort Collins in Weld County.

The rules, mandated by HB-1161, signed by Gov. Bill Ritter in 2008, require Powertech to establish the level of groundwater purity before it begins prospecting for uranium and then establish a similar baseline for water quality before mining begins.

Another 2008 law, SB-228, provides some public transparency into a mining company’s prospecting work.

When the company is finished mining, it must fully decontaminate the groundwater and return it to its original purity to ensure the water is no longer polluted.

Powertech’s lawsuit calls that rule irrational.

Fully cleaning up the groundwater will be too expensive and will require the use of too much water from somewhere else to do the job, the lawsuit claims.

And, Powertech claims, making the company completely decontaminate the water will hold the company to a higher standard than any other mining company in Colorado.

Before the state will approve a permit for Powertech to begin in situ leach, or ISL, mining, the rules require Powertech to show it can fully decontaminate the groundwater by pointing to five other ISL mines elsewhere in the United States that have returned the groundwater to its original purity.

Powertech's lawsuit claims the state has no authority to require mining companies to test groundwater purity before it begins prospecting for uranium, and says the state's rule to show how other mines have reclaimed the groundwater is arbitrary.

"These rules require information about other operations permitted at some time in the past or at other locations by an operator unrelated" to Powertech, the lawsuit claims, dismissing the rules as overly burdensome.

The lawsuit alleges Fischer, Kefalas, Rep. Kathleen Curry and Sen. Gayle Schwartz violated the separation of powers under the state Constitution by writing a March 15 letter to the Mined Land Reclamation Board providing them direction on how to implement HB-1161.

In their letter, the lawmakers urged MLRB members to draft rules in the spirit of HB-1161 and SB-228 and asked them to grant public review of a mining company's prospecting activities even though that isn't explicitly granted under SB-228.

Powertech claims the lawmakers were improperly speaking for the Legislature and trying "to control the details of how executive agencies implement the legislation."

"I think that's a novel argument," Fischer said Thursday. "It's a little hard to comprehend how they would imagine how a legislator doesn't have a way to comment on a rulemaking process. I think it's part of our job to stay on top of the rulemaking process and make sure that the intent of the legislation is being carried out."

He called the MRLB's rules "comprehensive and thoughtful."

Kefalas said the rulemaking process was public, and legislators have a right to weigh in on a rulemaking process just like any other citizen.

Powertech, he said, told lawmakers in 2008 that the in situ leach mining technology was proven and will protect the groundwater and public health.

"Here it is at this juncture, they're singing a different tune and I find that quite curious," Kefalas said.

Robin Davis, who lives near the Centennial Project site, called the lawsuit "insulting."

"Powertech has told us from the very beginning they could and would restore our water," Davis said in a statement. "Now that we have regulations in place that will hold them accountable to their word, they sue the state of Colorado for protecting its resources. "