



Uranium mining firms step up legal pressure as state regulations stiffen

Powertech, Cotter sue state regulatory agencies over water reclamation issues

By David O. Williams 11/16/10 12:12 PM

A litigious pattern is developing in Colorado's uranium mining industry, where officials have told the Colorado Independent they're feeling increasingly squeezed by state regulations meant to protect limited water resources. So they're suing the state to curtail those rules.

Two uranium mining companies have filed lawsuits against the state this fall, challenging rules requiring cleanup of existing uranium mines and mandating water reclamation at a proposed mining site. Conservationists say the recent lawsuits filed by the Cotter Corp. and Powertech USA demonstrate the industry isn't serious about a higher level of environmental protection in a new uranium mining boom.

"The uranium mining industry in Colorado is wrong to keep fighting water quality protections and better public involvement," said Jeff Parsons, senior attorney with the Western Mining Action Project in Lyons, Colo. "The people of Colorado have a right to be heard and will not accept mining projects that cannot protect the water."

Powertech, a Canadian company with a South Dakota-based U.S. subsidiary, filed suit against the Colorado Mined Land Reclamation Board in Denver District Court earlier this month, challenging a two-year rulemaking process that impacts Powertech's proposed Centennial mining project about 15 miles northeast of Fort Collins in Weld County.

As nuclear power advocates, including Colorado Democratic Sen. Mark Udall, continue to call for more reactors to augment the nation's alternative energy mix and reduce greenhouse gas emissions from fossil fuels, Colorado is increasingly being eyed as a front-end mining catalyst for that nuclear renaissance. Its uranium reserves once made it the domestic epicenter of yellowcake production for fuel rods in the United States.

But concerns ranging from transportation of yellowcake and related processing chemicals to the enormous cost of new reactors to the appropriate uses for water in a largely arid

state have slowed the uranium mining boom in Colorado, and industry representatives now point to growing regulatory hurdles as well.

An executive for Uranium One, a Canadian company with Denver offices, told the Colorado Independent (TCI) in October that his company is divesting itself of Colorado mine holdings in part because of the cost of increased environmental scrutiny and state regulation. But a Powertech attorney last week told TCI that his company's lawsuit is less about money and more about reducing regulatory hurdles.

"No, it isn't a fiscal issue at all," said John Fognani of Fognani and Fought law firm. "If you want to narrow it down, it's a resource issue in terms of utilizing more water resources to make sure that you meet the mandate and bring water quality back to background or better, which is what the rule states, and of course that's what the legislation states. At the end of the day it's really the water resource issue."

In 2008, the Colorado Legislature passed House Bill 1161 and Senate Bill 228 to ensure uranium mining operations such as the so-called in-situ Centennial project, which would pump water deep underground to recover uranium reserves, are compelled to reclaim water to previous purity levels.

The Colorado Mined Land Reclamation Board and the state Department of Natural Resources engaged in a two-year rulemaking process to determine how that legislation would be implemented. Powertech and the Colorado Mining Association, among others, had a seat at the table for those negotiations.

Critics say the company had ample opportunity to say the rules were too stringent during that two-year process, and in fact consistently said they could work with the new rules. Fognani denies the company has flip-flopped on the new rules.

"We believe that there are some portions of the rules that don't comport with the legislative mandate and that's the opportunity we have now [with the lawsuit] to address that," Fognani said. "We still feel we would have the opportunity and we're optimistic that we would be able to get a permit under the current rulemaking, so that hasn't changed. So by filing the lawsuit, I don't think it's a reversal."

Centennial project opponent and nearby Weld County landowner Robin Davis says Powertech is definitely changing its tune on water reclamation.

"Powertech has told us from the very beginning they could and would restore our water," Davis said. "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. It's insulting. If it can't fulfill its promises of protecting our precious water supplies, Powertech should abandon this risky project."

Parsons says Powertech wants more than just lower water quality standards. "They're challenging the provisions that allow for the public and local governments to

participate in the mine permitting process,” he said. “They want no public involvement and relaxed water standards.”

But Fognani counters the state rulemaking goes too far on public meetings.

“There’s a big difference between public participation and allowing notice and comment for people to express their issues and desires and then forcing or mandating a public hearing at every juncture of the proceeding, which is certainly not what the Colorado Legislature intended,” he said.

In September, Cotter Corp., which is owned by San Diego-based General Atomics, sued the Colorado Mined Land Reclamation Board for “abusing its discretion” when it compelled the company to pump out and treat uranium-tainted water at its defunct Schwartzwalder mine in Jefferson County, which is near a creek that feeds into the Denver drinking water supply.

Cotter, a company whose uranium mill in Cañon City is an EPA Superfund cleanup site, refused to pay a state fine and then turned around and sued the state. Cotter also abandoned plans to expand uranium processing activities at the Cotter Mill after the State Legislature this past session established tough new rules requiring cleanup of past projects before future expansion is approved. The state is also being sued by a local conservation group alleging the new Uranium Accountability Act was violated when Cotter struck a deal with the state on how much it will cost to clean up the Cotter Mill.

And former Cotter executives are involved as consultants for a proposed mill in Montrose County in far western Colorado. The mill would be the first new processing facility in decades, and Montrose officials gave the nod based on national security concerns over domestic energy production. Critics argue foreign companies control too much domestic uranium mining, benefiting from lax hard-rock mining standards and no royalty structure.

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