

Uranium mining goes to court

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On Nov. 1, Powertech Uranium Corp., a Canadian uranium prospecting company, filed a lawsuit against the Colorado Mined Land Reclamation Board and Mike King, Executive Director of the Colorado Department of Natural Resources. The lawsuit, filed through its South Dakota subsidiary Powertech (USA) Inc., claims that recently-adopted rules and regulations implementing House Bill 08-1161 and Senate Bill 08-228 are arbitrary, capricious and exceed Colorado statutory authority. The action was filed in Denver State District Court.

The lawsuit challenges a list of specific rules, each designed to ensure ground water protection as well as require public and local government involvement in the mine permit process. The rules were crafted over a two-year process and were supported by a diverse range of groups, including Coloradoans Against Resource Destruction (CARD), Environment Colorado and other conservation groups statewide, as well as Denver Water, along with multiple local governments and affected communities.

Both the Wellington Town Board and the Nunn Town Board submitted letters to the Mined Land Reclamation Board in support of the rules.

Long-time Powertech mine opponent and Weld County land owner Robin Davis, whose ranch is adjacent to the proposed mine site, had this to say after learning of the lawsuit: "Powertech has told us from the very beginning they could and would restore our water. 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."

This is the second time in recent weeks the uranium mining industry has sued state mine regulators to weaken ground water protections. On Sept. 24, Cotter Corporation sued the Mined Land Reclamation Board in an attempt to fight clean up orders at its Schwartzwald Mine, which drains into Denver Water supplies on Ralston Creek near Golden. "The uranium mining industry in Colorado is wrong to keep fighting water quality protections and better public involvement. The people of Colorado have a right to be heard and will not accept mining projects that cannot protect the water," said Jeff Parsons, Senior Attorney with the Western Mining Action Project, who represented local communities in the rulemaking process. "Frankly, we expect better from the Colorado mining industry, both because of the real threats they can pose and their repeated promises about protecting water and communities."

Powertech's lawsuit contrasts with recent public statements about the new rules made by President and Chief Executive Officer Richard Clement. As recently as Oct. 27, in an interview with Dan MacArthur of the North Forty News,

Clement stated about the rules, "we can live with them." In the same interview, Clement responded, "they are not fatal to the project" when asked about an earlier comment made in an Aug. 6 written submission to the Mined Land Reclamation Board. At that time, Powertech claimed a requirement to collect baseline water quality data before commencing prospecting "would be fatal to any serious potential in situ recovery project."

Even after filing of the suit, the "no-we-can't-yes-we-can" commentary continues. In a Nov. 12 article by Monte Whaley of the Denver Post covering the suit, Powertech attorney John Fognani commented, "we

feel some improvements can be made and others are outside the bounds of what the Colorado legislature intended.” Later in the same interview Fognani said Powertech would still be able to meet the requirements of any state permitting process if the rules remain intact. “We just believe some certain improvement can be made,” he said.

In a Greeley Tribune report Nov. 13, Colorado Department of Natural Resources spokesman Todd Hartman said, “we’re still examining the lawsuit, but our initial response would be to emphasize that we have an extensive stakeholder process and rule-making process that’s behind those uranium-mining regulations. We feel that it’s a strong process and, of course, we think it’s critically important to be protecting the state’s water supplies.”

The unanimous 7-0 approval by the Mined Land Reclamation Board is an endorsement of the rule-making process and reinforces the ultimate importance of the rules to Colorado’s water resources.

Powertech’s lawsuit comes on the heels of a recent announcement by major shareholder and investor Synatom that the Belgian firm is exploring options for selling its stake in Powertech. Synatom owns 19.6% of Powertech and has loaned roughly \$25 million to the company.

On Oct. 25, Powertech announced the resignation of two Synatom officials from Powertech’s board of directors. Adding to the uncertainty for Powertech is the Aug. 2010 release of a Preliminary Economic Assessment on the Centennial Project. CARD believes various sections of this report reveal serious technical issues with the project such as low hydraulic conductivity/transmissivity, insufficient hydraulic head, vertical communication between aquifers and the fact that much of the uranium mineralization resides above the water table.

Powertech’s suit challenges the requirement for restoration of the aquifer to a pre-mining baseline water quality or better, or that quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for ground water as established by the Colorado Water Quality Control Commission.

In Powertech’s complaint, it would appear they place a value on groundwater and other water sources beyond cost: “This rule fails to recognize and consider the value of groundwater and costs associated with groundwater restoration. No additional environmental benefit will be achieved without excessive and unnecessary consumption of groundwater or water from some other source and expenditure of funds which are contradictory to the purposes of the Act. This rule is arbitrary, capricious and contrary to the purposes of the Act.”

In an interview with David O. Williams of The Colorado Independent, a Powertech attorney further reinforces this new view of water as a resource, stating 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.”

Good call, Mr. Fognani, you’re catching on. One extremely important issue that is not addressed in any of these interviews or during the stakeholder process is the significant hurdles Powertech faces with the proposed mining at the Centennial project. One of several points discussed in the Preliminary Economic Assessment is that the uranium is above or only partially contained within the aquifer. This occurs in 6 of the 9 proposed mine units comprising the Centennial project that are identified in the report. The in situ leach (ISL) process only works in an aquifer.

Powertech’s proposed method for raising the existing water table to enable ISL mining is “aquifer enhancement,” where water from outside the site is injected into the ground around the uranium, creating an artificial aquifer. Powertech provides few details on how the process works or the quantity of water to

be used.

The company proposes to use Colorado-Big Thompson (CBT) water for aquifer enhancement. The report describes the water as being of "very good quality."

CBT water will be used as a mining tool. Powertech proposes to take "very good quality" water and contaminate it for mining and yet argues that they should not have to restore it.

CBT water is supplied to 30 Colorado cities and towns including Fort Collins, Loveland, Greeley, Timnath, Severence, Wellington, Windsor, Nunn and a number of local water districts. It is also used to irrigate approximately 693,000 acres of northeastern Colorado farmland.

Now that Powertech recognizes that water is the issue here, and given the proposed consumption of CBT water in addition to the existing groundwater to make the project viable, it would be a wonder if they can argue that the rules and regulations implemented to restore and protect this valuable resource are "unreasonable, arbitrary, capricious and otherwise contrary to law."