

WESTERN MINING ACTION PROJECT

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Regional Freedom of Information Officer
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Subject: FREEDOM OF INFORMATION ACT REQUEST

SENT VIA E-MAIL ATTACHMENT – CONFIRMATION REQUESTED

Dear Sir/Madam:

On behalf of Clean Water Alliance, Powertechexposed.com, Owe Aku – Bring Back the Way, and Coloradoans Against Resource Destruction (CARD), I hereby submit this Freedom of Information Act (“FOIA”) request pursuant to the requirements of 5 U.S.C. §552(a). I request written confirmation (preferably by e-mail) of the receipt of this request. This FOIA request is submitted pursuant to the instructions for making FOIA requests as set forth on the USEPA website at <http://www.epa.gov/foia/>.

I hereby request a copy of all agency records, limited to those materials created or obtained by EPA Region 8 after February 4, 2009, related to the Dewey-Burdock (South Dakota) and/or Centennial (Colorado) in-situ leach uranium projects. The request for agency records includes, but is not limited to, communications, records of communications and/or meeting notes involving: 1) the staff of the United States Environmental Protection Agency Region 8 Underground Injection Control Program; and/or, 2) persons working for Powertech Uranium Corp., Powertech (USA) Inc., or Azarga Uranium Corp. (including “Azarga Resources Limited” or “Azarga Resources USA Company”) including, but not limited to, employees, attorneys, contractors, sub-contractors, agents, etc.

For the purpose of this request, the term “records” also includes, but is not limited to: letters, correspondences, memoranda, applications, faxes and facsimiles, notes, telephone messages, transcripts, declarations, images, illustrations, studies, assessments, evaluations, analyses, reports, monitoring records, and all other written, printed, or typed documents – as well as electronic

records such as e-mail messages, text messages, attachments to emails, and other forms of electronic communications. *See e.g.* 36 C.F.R. §1236.22. Please ensure that relevant agency personnel's personal computers, email accounts, smart phones, and similar electronic communications devices are searched for responsive agency records. 36 C.F.R. §1236.22(b).

If you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions of documents from the nonexempt portions and provide me with copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide me with a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

Clean Water Alliance is a diverse collection of citizens concerned about the health, environmental and economic impacts that proposed uranium mining projects would have on our communities, people, economy, and natural resources. Clean Water Alliance conducts extensive research and investigations into the consequences of uranium mining. The organizations seek to protect the valuable resources of the Black Hills region - especially water - for future generations.

Powertechexposed.com is a website with the mission of educating the public about the potential environmental and public health risks from uranium mining, with a specific focus on Powertech Uranium Corp.'s proposed Centennial project in Colorado and Dewey-Burdock project in South Dakota. Through the dissemination of information and education, it seeks to help residents protect the quality of their water and air, as well as the local economy.

Owe Aku – Bring Back the Way is a grassroots non-governmental social change organization dedicated to the preservation and revitalization of the Lakota Way of Life, 1851 & 1868 Ft. Laramie Treaty Rights, and Human Rights. Its work encompasses and goes beyond the Oglala band of the Lakota Nation and the Pine Ridge Homeland, to the Lakota Nation and the Oceti Sakowin: the Seven Council Fires, known historically (incorrectly) as the "Great Sioux Nation".

CARD is diverse collection of citizens concerned about the health, environmental and economic impacts that proposals to mine uranium would have on northern Colorado. After much research and investigation, we are convinced uranium mining projects will have dire consequences for our area and set a dangerous precedent for the entire state of Colorado. CARD's goal is to prevent uranium mining in northern Colorado and protect our valuable resources, especially water, for future generations. CARD has created this website to share our research, to educate the public on the perils of uranium mining, to urge other concerned citizens to get involved and to promote the research and development of safe, clean, and renewable sources of energy.

Release of the records described in this request will primarily benefit the public and substantially contribute to the understanding of the government's policies and activities concerning regulation of in-situ leach uranium mining by the UIC Program. Through publication via websites, creation and distribution of informational fliers and brochures and reports, and through other means, the requesting parties intend to make the information obtained from this request available to affected residents, supporters, local officials, and the general public.

Release of the information will empower members of the public to engage in public advocacy efforts to protect and conserve the resources of Colorado and South Dakota. None of the requesting

parties seek these documents for commercial use. The requesting parties have the necessary technical ability to interpret, summarize, and distribute the information in the requested agency records and intend to publicly disseminate the requested information and summaries thereof as part of their organizational missions.

Accordingly, the requesting parties request that you grant a waiver of fees pursuant to 5 U.S.C. § 522 (a)(4)(A). I expect that such a waiver will be granted. However, if a waiver is not granted, please inform me of the cost of disclosing the above described records if such fees exceed \$25.00. If the documents requested are voluminous, I would be willing to discuss arranging an opportunity to review the documents at your offices at your convenience.

The FOIA provides that agency documents shall be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(ii). This fee waiver provision was adopted to facilitate access to agency records by citizens and citizen organizations (*See Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1987); *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 649 (D.C. Cir. 1987); *Ettlinger v. FBI*, 596 F. Supp. 867, 873 (D. Mass. 1984)). For this reason, Congress intended that the provision be liberally construed in favor of waivers for noncommercial requesters. *See McCellan Ecological Seepage Situation v. Carlucci*, 835 F.2d. 1282, 1284 (9th Cir. 1987); *Ettlinger*, 596 F. Supp at 872-74.

In this instance, the six factors set forth in the U.S. Department of Justice, Freedom of Information Act Guide & Privacy Act Overview (May 2004) support a waiver and justifies a fee waiver for this FOIA request.

Factor #1: The subject matter of the requested records must specifically concern identifiable operations or activities of government. A request for access to records for their informational content alone does not satisfy this factor.

In this case, the requested records concern the pending and anticipated applications to U.S. EPA for Underground Injection Control (UIC) permits for the proposed Dewey-Burdock and Centennial in situ leach uranium mining projects. Neither South Dakota nor Colorado have been delegated authority to issue permits under the Safe Drinking Water Act (SDWA) for such solution mining activities. In fact, the South Dakota legislature has stripped its state regulatory agencies of permitting authority for UIC. Thus, U.S. EPA Region 8 would be the permit issuing authority. The U.S. EPA's processing of such applications, and meetings, communications, etc. with Powertech concerning such applications, are identifiable operations or activities of government to which the relevant FOIA request relates. Thus, factor #1 is satisfied in this case.

Factor #2: For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

In this case, the requested materials are meaningfully informative in relation to the subject matter of the request. As discussed, the subject matter of the request is the UIC permitting and application process for Powertech's Dewey-Burdock and Centennial Project in situ leach uranium mines. As described above, the requested materials include applications,

communications, etc. between U.S. EPA and the applicant for these specific projects. These are materials that have not yet to date been made readily available in the public domain, either in the U.S. EPA's public or electronic reading room. Disclosure of these documents will substantially aid public understanding of the UIC permit process for these specific projects, as well as aid in the understanding of the projects themselves, and the possible impact on local communities and groundwater the projects may have.

Factor #3: The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. Please provide a statement as to how you plan to disseminate the documents to the public.

In this case, each of the requesters (and certainly when viewed collectively) will disseminate the disclosed records to a broad audience of persons interested in the project. Each of the requesters possess the ability to extract, synthesize, and effectively convey the information to the public, as well as the ability and intention to disseminate the information to the public. For example, each of the requesters maintains a comprehensive and detailed website through which similar information related to uranium mining and uranium permitting issues is published, including with respect to these particular projects proposed by Powertech. See, bhecleanwateralliance.org, www.powertechexposed.com, www.oweakuinternational.com, www.nunnglow.com. These groups also regularly publish publicly distributed essays and newsletters available via their websites, hardcopy, and email. Further, these groups regularly sponsor, conduct, and participate in public information meetings related to uranium mining in general, and the subject Powertech projects in particular. These groups also publish news releases and are frequently quoted in the national, regional, and local press related to the specific Powertech projects that are the subject of the request. Lastly, these groups regularly participate before administrative and legislative bodies, and conduct substantial public activities in monitoring uranium development. These activities are set forth in detail on the websites referenced. Overall, the requesters (each in their own right, and collectively) have the capacity and ability to relay the requested information to a substantial segment of the public interested in these issues.

Factor #4: The disclosure must contribute "significantly" to public understanding of government operations or activities.

In this case, the public's understanding of the subject matter in question, as compared to the level of public understanding existing currently, will be enhanced by disclosure of the requested materials and records to a significant extent. As stated, much, if not all, of the material and records requested have never been publicly disseminated or made readily available to the public in any form or fashion. In fact, disclosure of the material requested would be first time much of this information would be made public in any respect. Further, as discussed, once the material is obtained, the requesters intend to collect, synthesize, and convey the information to the general public via publicly available websites and newsletters, as well as incorporate the information disclosed into public presentations. Both the Dewey-Burdock and Centennial projects have been the subject of widespread media attention in both Colorado and South Dakota, and disclosure of the information will greatly enhance the public's understanding of the proposed projects, including, but not limited to, their potential impacts on groundwater, among other resources.

Factor #5: The extent to which disclosure will serve the requester's commercial interest, if any.

In this case, each of the requesters is either a not-for-profit corporation or a volunteer run organization with no commercial interests. As set forth in the website materials, each of the requesters has a stated mission generally of educating the public and influencing public and government decision-making to better protect human communities and the environment. As such the disclosure of the materials and records requested will not further any commercial, trade, or profit interest of the requesters.

Factor #6: The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

As discussed, the requesters' have no commercial interest in disclosure of the materials and records requested. In contrast, the public interests identified herein of making the materials and records requested publicly available for the first time are weighty. These projects have the potential to irreparably impact local and regional ground water supplies, among other impacts. The UIC permit process is intended to ensure protection of underground sources of drinking water, upon which local and regional populations depend. The public interest in disclosure of materials and records requested thus clearly outweighs the non-existent commercial interest, thereby justifying a fee waiver in this case.

Hopefully, these responses are sufficiently detailed for you to make a determination in favor a granting the requested fee waiver, particularly in light of the liberal standard for granting such waivers referenced above. However, to the extent you believe that a fee waiver is not justified, or that additional information would aid in your determination, the requesters respectfully request an additional opportunity to answer any questions or provide more detail as may be necessary. Thank you for your consideration of this matter, and please feel free to contact me directly at any time to discuss.

I look forward to your response within 20 days as required by the FOIA. I am happy to schedule a time to inspect relevant records in Denver. If I do not receive a response within 20 days, I will deem this request denied. If you have any questions regarding the scope of this request, or any concerns, please feel free to contact me at 303-823-5738 or via email at wmap@igc.org. Thank you for your time and attention.

Respectfully submitted,

/s/ Jeffrey C. Parsons

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Western Mining Action Project