

The (Political) Science of HB 1161 and the Rulemaking

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Little Scientific Input

- Legislation was developed without involvement of state or industry professionals
- Testimony before Senate committee was cut off before technical experts spoke
- Technical issues involving baseline, restoration of water quality deferred to rulemaking, leaving vague legislative language in place

Heavy Public Involvement

- Activist groups work with citizens of areas with potential uranium projects
- Water protection is genuine and ongoing concern
- Fears add to public concern
- "Anti-Nuke" crowd gets involved
- Attempting to resolve technical issues with public opinion

Rulemaking Process

- Series of stakeholder meetings convened
- Rules incorporate three bills into reclamation/mining regulations for non-coal minerals (prospecting, uranium, fees)
- Division and AG respond to stakeholder questions, requests for clarification
- Disputes will be pushed toward consensus
- Formal rulemaking anticipated in the Fall

Local Government Actions

- Previous Supreme Court decision established that a county cannot ban a technology that is allowed and regulated under state law (while recognizing legitimate land use)
- Other counties now addressing uranium projects through special use permits and zoning (Fremont, Montrose)
- Land use plans and codes are being reviewed and updated

Need for Clear, Consistent Regulation

- Federal government dominant
- State should avoid duplication, conflict
- Local governments should limit to traditional land use issues, e.g. traffic, noise
- The U.S. needs uranium – multiple layers of duplicative or conflicting regulation will make it impossible to meet needs

House Bill 1161 and the Act

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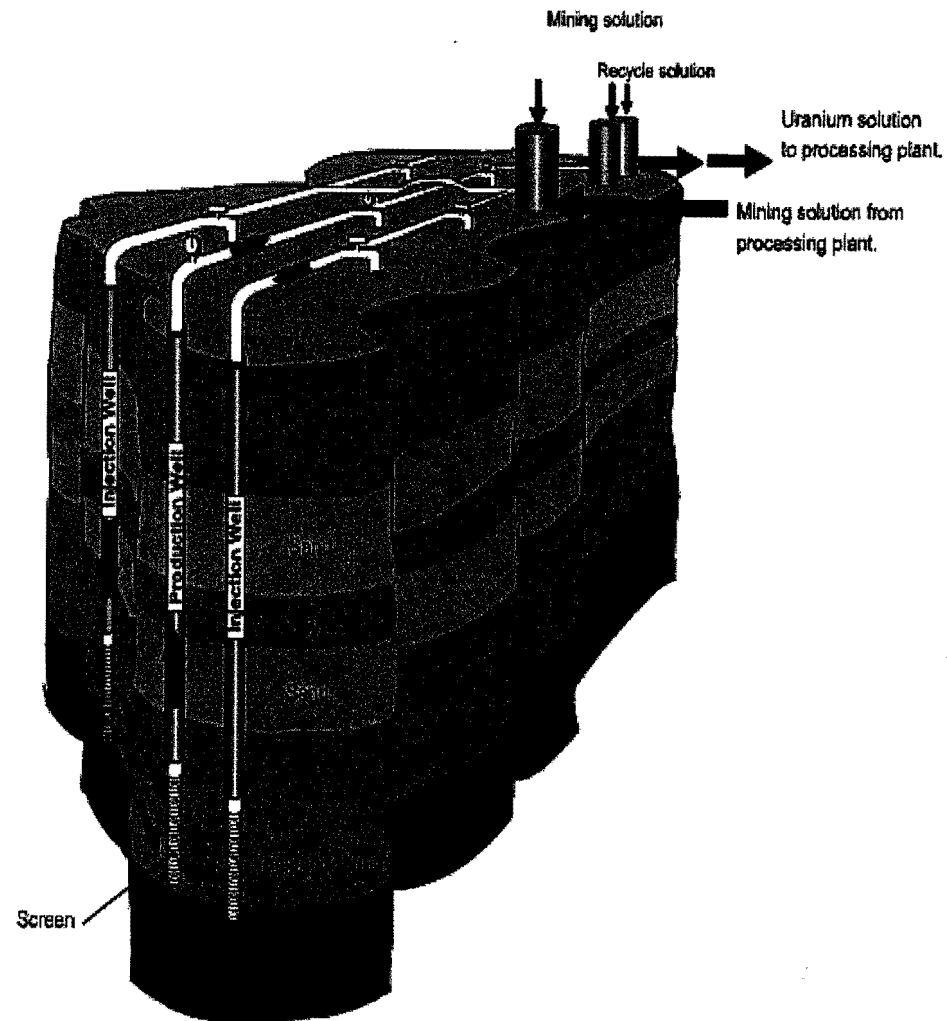
**National Mining Association and Nuclear Regulatory Commission
Uranium Recovery Workshop
Wednesday, July 1 – Thursday, July 2, 2009
Grand Hyatt in Denver, Colorado.**

Disclaimer

The views expressed in the paper and presentation *HOUSE BILL 1161 AND THE ACT* are exclusively those of the author, and should not be attributed to any other entity or organization.

Introduction

- What is in situ leach (ISL) mining?
 - A modern alternative to traditional mineral extraction methods
 - The process of injecting a leaching solution into an ore deposit and then extracting the mineral-rich solution via pumps for processing



Introduction (Cont.)

- In situ recovery has been described as:
 - The most advanced, cleanest and safest uranium mining technique
 - A controllable, safe and environmentally benign method of mining, which operates under strict operational and regulatory controls
 - The most cost effective and environmentally acceptable method of mining with little surface disturbance, no tailings or waste rock generated, and no emission of carbon dioxide

Events Leading to HB 1161

- 2006 – A company announced plans for a uranium in situ leach mining operation in Colorado
- 2007 – Coloradoans Against Resource Destruction (CARD) formed, along with others
 - Grassroots movement to stop uranium mining in northern Colorado
 - Other groups were formed to oppose uranium projects
- 2008 – H.B. 1161 drafted, deliberated, slightly amended and approved
 - Few meaningful and substantive hearings were scheduled
 - There was some bipartisan support for the bill
- H.B. 08-1161 is now law and part of Mined Land Reclamation Act

Legislative Timetable of HB 1161

- **01/16/2008** - Introduced In House by Representatives Kefalas and Fischer of Larimer County - Assigned to Agriculture, Livestock, & Natural Resources + Appropriations
- **02/20/2008** - House Committee on Agriculture, Livestock, & Natural Resources Refer Amended to Appropriations
- **03/14/2008** - House Committee on Appropriations Pass Amended to House Committee of the Whole
- **03/31/2008** - House Third Reading Passed
- **04/07/2008** - Introduced In Senate by Senator Johnson - Assigned to Local Government + Appropriations
- **04/17/2008** - Senate Committee on Local Government Refer Amended to Appropriations
- **04/25/2008** - Senate Committee on Appropriations Pass Unamended to Senate Committee of the Whole
- **05/02/2008** - Senate Third Reading Passed
- **05/05/2008** - House Considered Senate Amendments - Result was to Concur - Repass
- **05/13/2008** - Signed by the Speaker of the House
- **05/14/2008** - Signed by the President of the Senate
- **05/20/2008** - Governor Action - Signed

Intended Purpose of HB 1161

- Explicit:
 - To “increase...the regulatory authority of the Mined Land Reclamation Board over mining” (though neither MLRB nor DRMS ever requested more authority)
 - To “[ensure] the protection of ground water and public health”
 - For the “immediate preservation of the public peace, health, and safety”
- Implicit:
 - To impose requirements to potentially forestall or frustrate ISL projects
 - Provide an opportunity for development of even stricter regulations

Summary of HB 1161

- Defines “in situ mining” and “in situ leach mining”
- Requires
 - Reclamation of lands affected by in situ leach mining
 - Restoration of affected groundwater to pre-mining quality or better
 - Operators to notify owners of record of lands within three (3) miles of affected land

Summary (Cont.)

- Requires the potential applicant, prior to applying for a reclamation permit for an ISL operation, to:
 - Undertake initial baseline site characterization plan and ongoing monitoring of affected land and affected surface and ground water
 - Pay for third party expert to review the plan for DRMS
- Requires the Mined Land Reclamation Board (MLRB), as conditions of ISL permit, to
 - Deny permit if operator fails to demonstrate that extremely stringent reclamation can and will be achieved
 - Deny permit if operator fails to show evidence of at least five (5) past ISL sites which did not result in groundwater contamination through leakage, migration or excursion

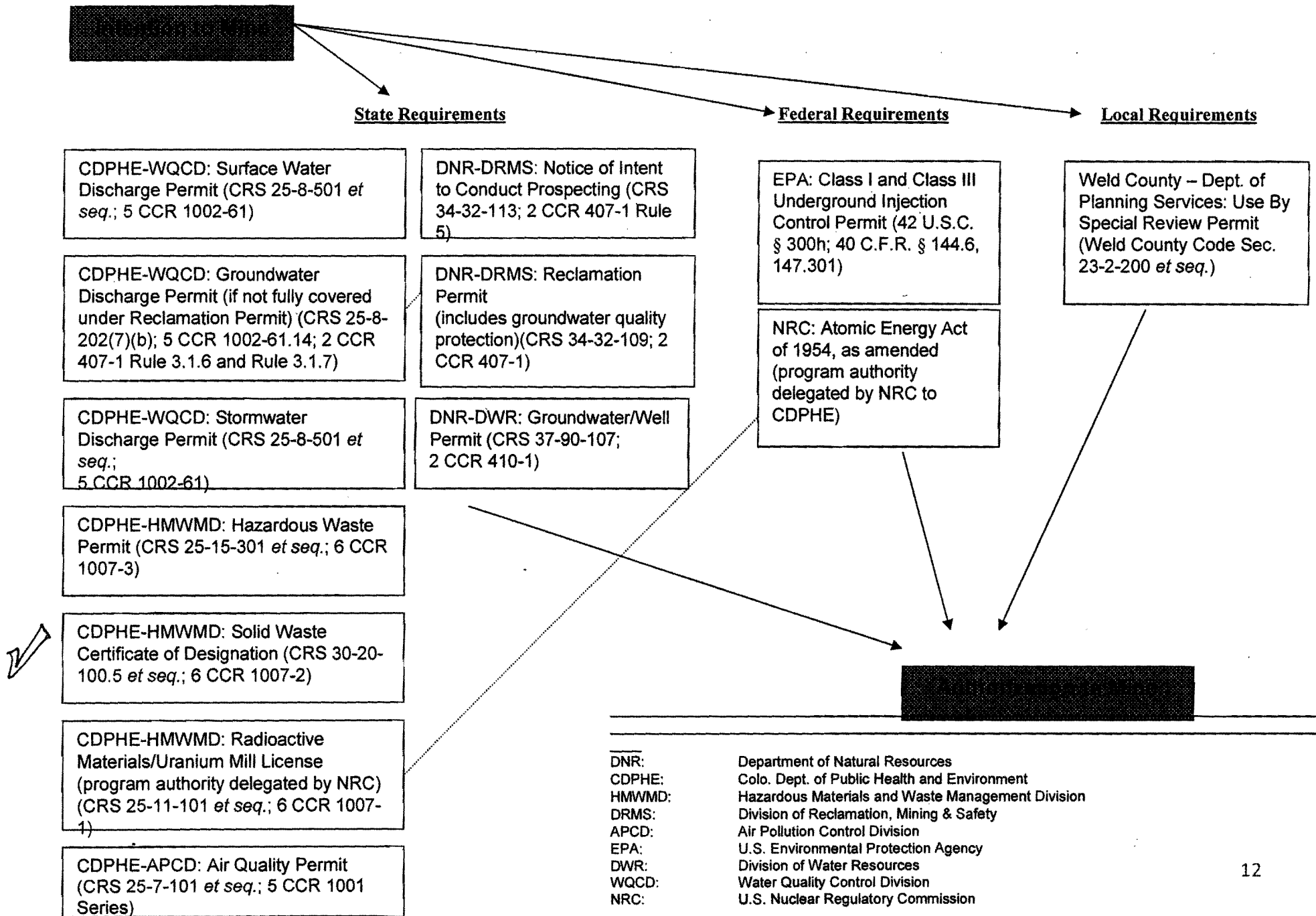
Summary (Cont.)

- Authorizes MLRB to deny a permit
 - Based on “uncertainty about the feasibility of reclamation”
 - If existing or reasonably foreseeable future uses of groundwater include domestic or agricultural uses and if the MLRB believes the ISL operation will adversely affect the suitability of the groundwater for that use
 - If applicant or related entity or person has previously violated reclamation laws and any violation remains unabated
 - If applicant or related entity or person has demonstrated pattern of willful violations of environmental protection requirements in Colorado or other states or U.S. laws
 - If applicant cannot show it will restore ground water for “all baseline parameters” or better

Response to HB 1161

- New law was unnecessary because
 - Existing State and Federal laws and regulations were sufficient to protect groundwater
 - The extent to which it overlaps with existing local, state and federal regulations renders it redundant – may lead to preemption issues
- HB 1161 contains numerous vague, unrealistic and overreaching requirements
 - The practical implications are that well-planned, environmentally clean operations may have difficulty being permitted
 - The legal implication is that ambiguity in the statute may result in arbitrary decisions requiring legal challenge

Permitting Process for In Situ Uranium Recovery in Colorado Under Existing Laws and Regulations



Existing Laws and Regulations

- Colorado Department of Public Health and Environment (CDPHE)
 - Water Quality Control Division (WQCD)
 - Hazardous Materials Waste Management Division (HMWMD)
 - Air Pollution Control Division (APCD)

Existing Laws and Regulations (Cont.)

- Colorado Department of Natural Resources
 - Division of Reclamation, Mining and Safety (DRMS)
 - Colorado Division of Water Resources (DWR)
- U.S. Environmental Protection Agency (EPA)
- Nuclear Regulatory Commission (NRC)
- Local Regulations
- Public Process

Rulemaking Related to HB 1161

- DRMS is conducting a rulemaking process to implement the new law, as well as several other new laws related to prospecting or mining
- May 27 and June 11, 2009 – first informal stakeholder meetings were held on the draft rulemaking; additional meetings will occur
- Anti-mining activists have been attempting to add unnecessary complexity and unrealistic restrictions through the rulemaking
- Nevertheless, rules that ultimately result from the process hopefully will serve to clarify the new law

Unrealistic/Overreaching Requirements

- Ground Water Quality
 - Bill Sections 6 and 7, C.R.S. 34-32-115(5)(b), 34-32-116(8)
 - Requires applicant to show by “substantial evidence” that ground water will be restored to baseline parameters or better
 - Seems to arguably require matching water chemistry on a constituent-by-constituent basis
- Potential Agricultural Use of Ground Water
 - Section 6, C.R.S. 34-32-115(5)(c)
 - MLRB may deny permit if “existing or reasonably foreseeable potential future use for any potentially affected groundwater” includes domestic or agricultural uses
 - Overbroad because potentially all ground water in Colorado meets this use standard
 - Conflicts with the UIC permit requirement under SDWA that an applicant must obtain an aquifer exemption (indicating water is not a source of drinking water)

Unrealistic/Overreaching Requirements (Cont.)

- Uncertainty About the “Feasibility of Reclamation”
 - Bill Section 6, C.R.S. 34-32-115(5)(a)
 - MLRB may deny permit based on “uncertainty” about the feasibility of reclamation
 - So open-ended that any permit could be denied based on this language alone, even if the application meets all substantive requirements of the Act
- “Blackball” Provisions
 - Bill Section 6, C.R.S. 34-32-115(5)(d)(1)&(2)
 - MLRB may deny permit if applicant or any affiliate, officer, or director of the applicant, the operator or the claimholder has violated the Mined Land Reclamation Act or rules, a permit issued under the Act, or an “analogous” law, rule, or permit issued by any other state or the U.S. (The draft Bill also identified violations in “foreign countries.”)
 - Disastrous implications given that acquisitions of one mining company by another is common practice in the industry, and a good operator may be replacing one with a questionable record.
- Evidence of 5 Sites to Accompany Permit Applications
 - Bill Section 3, C.R.S. 34-32-112(2)(i)
 - Application must identify 5 ISL operational sites that have not resulted in leaking or migration of leaching solutions and ground water containing chemicals/constituents
 - This seems to require irrelevant and meaningless information from other unrelated sites

Conclusion

- The new law is in need of some significant clarification through regulation
 - Industry expects that the ongoing DRMS rulemaking will answer outstanding questions about the law and provide a clearer path forward
 - Industry is working to ensure that anti-mining activists do not misuse the rulemaking to try to hamper efforts to permit good ISL operations
 - Though the regulatory framework has become more burdensome through this Act we remain optimistic that ISL operations can and will be permitted
 - It is inevitable that litigation may be necessary to resolve ultimately some of the uncertain issues – e.g., constitutional, preemption and regulatory scope issues
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- Remember above all, **“a mine is a terrible thing to waste!”**

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