

United States Senate

WASHINGTON, DC 20510

October 20, 2016

The Honorable Shaun Donovan
Director
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

Dear Mr. Donovan:

We are concerned about the Environmental Protection Agency's (EPA) rulemaking requiring in situ uranium recovery (ISR) operators to conduct long-term groundwater monitoring under 40 C.F.R. Part 192. To date, EPA has not sufficiently articulated the threat to the environment or public health that it is attempting to address in this rulemaking. As a result, it is not clear that the benefits of the proposed rule or a substantially similar final rule would outweigh the costs. We, therefore, ask you to direct EPA to withdraw its proposed rule and collect additional data on the costs and benefits of its proposal prior to taking any further action on this rulemaking.

On January 26, 2015, EPA proposed a rule requiring ISR operators to conduct groundwater monitoring for up to 30 years following the end of ISR operations. EPA states that "current industry practices for restoration and monitoring of the affected aquifer may not be adequate to prevent either the further degradation of water quality or the more widespread contamination of groundwater that is suitable for human consumption." EPA says "[m]ost ISR sites historically have been unable to meet restoration goals for all constituents even after extensive effort." It cites as evidence a study titled, "Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain," published in 2009, by Susan Hall of the U.S. Geological Survey.

EPA argues that "[b]ecause monitoring after restoration is typically conducted for only a short period, we find it difficult to characterize the probability or magnitude of future contamination problems, or the costs involved in remediating such future contamination." It says, "[s]imilarly, because ISR...and any subsequent contamination may take years, decades or even longer to reach groundwater being consumed by humans, it is difficult to characterize the benefits of our proposal by applying typical Agency metrics." Instead, EPA conducted a largely "qualitative assessment" of the benefits. Setting aside the unknowns (or perhaps *on account of* them), EPA says "[i]t is likely, however, that the costs of such future remediation would far exceed the costs of the more extensive monitoring (in all phases of site activity) that we are proposing today."

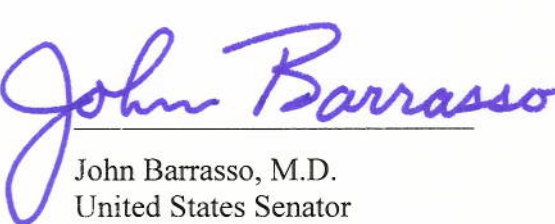
We do not share EPA's confidence that the benefits of the proposed rule would exceed the costs. While EPA repeatedly cites Hall's study in its proposed rule, it fails to note that the study finds nearly all the examined well fields "are characterized by groundwater elevated in multiple MCLs [maximum contaminant levels] prior to mining." In other words, "[t]hese well fields would require pretreatment to be used as a source for drinking water." EPA also fails to note that "[o]f those elements for which MCL is established, the majority of [well fields] showed...decreases in arsenic, cadmium, fluoride, lead, mercury, nitrate, and radium to below baseline for the majority of well fields." That is, ISR activities had positive as well as negative effects on the well fields.


Finally, EPA does not explain that Hall's study did not address whether a failure to meet all restoration goals at ISR sites poses any risk to the environment or public health.


ISR has a 40-year history in the United States. EPA, by its own admission, has yet to confirm a single case where ISR activities have affected a source of drinking water. However, instead of writing a rule based on data from existing ISR well fields, EPA has proposed a rule based largely on its "qualitative view of the situation." EPA can and must do better. We, therefore, ask that you direct EPA to withdraw its proposed rule and work with ISR operators and the Nuclear Regulatory Commission, the principal regulator of ISR activities, to collect additional data on the costs and benefits of its proposal. At a minimum, your agency should use its authority to conduct an independent cost-benefit analysis of EPA's final rule before taking further action on that rule.

Thank you for your consideration and we look forward to your prompt response.

Sincerely,


John Barrasso, M.D.
United States Senator


John Cornyn
United States Senator


Deb Fischer
United States Senator