

Berkeley Energia – Spain¹

Since early 2017 the mayor of Villavieja de Yeltes municipality in Salamanca, north-west Spain, has been instrumental in calling Australian-incorporated and AIM-traded Berkeley Energia (formerly Berkeley Resources) to account and in calling local residents and people from neighbouring towns to monthly rallies against the company's proposed Retortillo project. Retortillo is planned as an open-cast uranium mine, heap leaching and processing or 'milling' plant, stated to be for production in late 2018 but lacking necessary permitting and facing four public interest litigation suits from the municipality and from national non-governmental organizations.

The project has sparked a wave of opposition arising from concerns about potential impacts on the environment and local people. These risks include its location very near a school area, possible effects on a protected ecological zone and its permit to discharge wastewater 5 kilometres upstream of established drinking water abstraction for Villavieja de Yeltes. Other water issues are the water discharge permit is in opposition to a European Commission-funded regional five-river biodiversity project because it has transboundary significance.^{2 3} Close to 40 municipalities are said to be against the company's plan to develop the project, which has potential impacts on the existing economy including spa tourism facilities.

Berkeley has renamed itself, changed some of its personnel, reduced its website information, changed its AIM nominated adviser, and negotiated a potential 'take-off' contract with a commodity trader, which has 'phoenixed' itself, that is liquidated and been replaced. This has allowed Berkeley to raise capital, and it has obtained the support of Euratom for its development of the European Union's only open-cast uranium mine. European Commission involvement will not help provide

¹ EJOLT, *Uranium mining: Unveiling the impacts of the nuclear industry*, report no. 15, 2014, http://www.ejolt.org/wordpress/wp-content/uploads/2014/11/141115_U-mining.pdf; European Parliament parliamentary questions, 'Commissioner Cañete's approval of a proposed uranium mine', Dec. 2015, <https://goo.gl/o9sYkK>, and 'Retortillo uranium mine – breach of Community law', Apr. 2017, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2017-003016+0+DOC+XML+V0//EN&language=en>; Mining.com, 'Spaniards to protest against Berkeley's Retortillo-Santidad uranium mine', Oct. 2016, <http://www.mining.com/spaniards-to-protest-against-berkeleys-retortillo-santidad-mine>, and 'Mayor organizes massive protest against Berkeley's uranium mine in Spain', Nov. 2017, <http://www.mining.com/mayor-organizes-massive-protest-berkeleys-uranium-mine-spain>; WWF, 'WWF denuncia ante la Comisión Europea la mayor mina de uranio en Europa en el corazón de un espacio protegido' ('WWF denounces to the European Commission the largest uranium mine in Europe in the heart of a protected area'), Feb. 2017, <https://www.wwf.es/?42760/WWF-denuncia-ante-la-Comisin-Europea-la-mayor-mina-de-uranio-en-Europa-en-el-corazn-de-un-espacio-protegido>; World Nuclear News, 'European approval for Salamanca offtake agreement', Mar. 2017, <http://www.world-nuclear-news.org/UF-European-approval-for-Salamanca-offtake-agreement-2103174.html>; Ecologistas en acción, 'Crece el apoyo internacional contra la minería de uranio en Salamanca' ('International support against uranium mining in Salamanca grows'), Sept. 2017, <https://www.ecologistasenaccion.org/article35005.html>

² Proyecto cipríber, *Diagnóstico de la Situación Inicial*, Mar. 2015, <https://cipriber.eu/documentos/A1.pdf>

³ https://elpais.com/internacional/2018/02/20/actualidad/1519120257_025882.html

sufficient environmental information in a timely manner to assist public participation in decision-making.⁴ With the need for more transparency, the continued involvement of former Spanish state officials Cañete and Lamela creates at best unfavourable impressions⁵. While the Commission in its 2012 verification report on existing former uranium mining sites in Spain, some of which are under reclamation, had been informative about applicable costs, methods and requirements on treating toxic waste, it did raise however continuing questions about the relationships between Berkeley and state uranium mining agency ENUSA.⁶

Potential radiation impacts are being identified by the growing social movement, who argue that the EIA process omitted consideration of ore processing .

Human rights abused or at risk

Right to information⁷

Right to health⁸

Right to livelihood/adequate standard of living⁹

Right to a safe and healthy natural environment¹⁰

What the company says¹¹

Berkeley Energia claims on its website to have developed 'a good neighbour and business partner

⁴ The relationship between the Parliament, Commission and Euratom is constitutionally uncertain.

⁵ Green light for a controversial uranium mine, <https://corporateeurope.org/power-lobbies/2016/03/disputed-commissioner-ca-ete-involved-new-controversies>

⁶ European Commission DG Energy, *Southern and western Spain – former uranium installations and national monitoring*, technical report, https://ec.europa.eu/energy/sites/ener/files/documents/tech_report_spain_2012_en.pdf, 4.4.1.3, 4.4.1.5, 4.4.3 et al.

⁷ UN General Assembly, 'Calling of an International Conference on Freedom of Information', Resolution 59, 1946, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>; International Covenant on Civil and Political Rights, 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Art. 19; UN Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 1998, <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

⁸ Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 12.

⁹ Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>, Art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, Art. 11.

¹⁰ An emerging human right: UN Environment, 'Human rights and the environment', n.d. (2015), <http://web.unep.org/divisions/delc/human-rights-and-environment>; D. Shelton, Professor of Law, Notre Dame University, 'Human rights, health and environmental protection: Linkages in law and practice', background paper for the World Health Organization, n.d., http://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

¹¹ Berkeley Energia, company website, including <https://www.berkeleyenergia.com/salamanca-project-overview>, and 2017 Annual Report, https://www.berkeleyenergia.com/wp-content/uploads/2017/09/Berkeley-Annual-Report-2017_Merged.pdf; Mining.com, 'Spaniards to protest against Berkeley's Retortillo-Santidad uranium mine', Oct. 2016, <http://www.mining.com/spaniards-to-protest-against-berkeley-retortillo-santidad-mine>

relationship with the local community’ and to have local and regional support and major community investment and environmental rehabilitation plans for the project area. The website makes no mention of community opposition, health risks from uranium or other potentially negative social or environmental impacts, apart from initial felling of trees.

The *2017 Annual Report* cites ‘highly supportive’ local municipalities and sizeable community investments to date, and commits Berkeley to improve the ecological and agricultural value of the area through a reforestation programme. There is no mention of environmental risks from, or public concerns about, uranium. The *Annual Report* notes in passing that ‘various appeals’ against the necessary licences have been unsuccessful. It is quoted on Mining.com as emphasizing the mine’s job creation potential, adherence to ‘the highest EU environmental and safety standards’ and ‘overwhelming support’ from local and regional communities.

Berkeley is reported in the press as signing an agreement that ‘will provide construction capital’ with the Oman Sovereign Wealth Fund, an institution that has been evaluated as having a transparency rating of 4 out of 10.¹²

It published in 2016 a ‘definitive feasibility study’ on its website. As the International Atomic Energy Agency (IAEA) has stated, however, the best approach advised by the UN is to evaluate the full clearly disaggregated costs of ‘economic and social viability’.¹³ It’s clear that Berkeley has not done this.

¹² Telegraph, ‘Uranium miner Berkeley Energia wins £93m backing from Oman’, Aug. 2017, <http://www.telegraph.co.uk/business/2017/08/30/uranium-miner-berkeley-energia-wins-93m-backing-oman/>; Linaburg-Maduell Transparency Index, <https://www.swfinstitute.org/statistics-research/linaburg-maduell-transparency-index/>

¹³ IAEA, *In Situ Leach Uranium Mining: An Overview of Operations*, 2016, http://www-pub.iaea.org/MTCD/Publications/PDF/P1741_web.pdf; United Nations Economic Commission for Europe, *United Nations Framework Classification for Fossil Energy and Mineral Reserves and Resources*, 2009, https://www.unece.org/energy/se/unfc_2009.html IAEA stipulates stating separately and internalised: direct costs of mining, transporting and processing the uranium ore; costs of associated environmental and waste management during and after mining; costs of maintaining non-operating production units; in the case of ongoing projects, non-amortized capital costs; capital cost of providing new production units, including the cost of financing; indirect management costs, taxes and royalties; future exploration and development costs wherever required for further ore delineation to the stage where it is ready to be mined.