



DANR
SOUTH DAKOTA

**WATER MANAGEMENT BOARD
Meeting on October 6 & 7, 2021**

Legislative Conf. Rm. 414
State Capitol Bldg., 500 E Capitol Ave, Pierre SD

Any person(s) interested in speaking during the public comment period needs to contact the Department at (605) 773-3352 no later than 5:00 PM (Central Time) on Tuesday, October 5, 2021, if desiring to speak via remote connection.

Scheduled times are based on Central Time and are estimated start times.

Agenda items may be delayed due to prior scheduled items.

Live audio of the meeting is available at <https://www.sd.net>

October 6, 2021

- 9:30 AM Call to Order
 Roll Call
 Adopt Final Agenda
 Conflicts Disclosures and Requests for State Board Waivers
 Order Appointing Board Member Prehearing Officer and Alternate Prehearing Officer for
 Upcoming Year – Ann Mines Bailey
 Adopt July 7, 2021 Board Minutes
 December 8 - 9, 2021 Meeting and Location
 Status and Review of Water Rights Litigation
 Update on DANR Activities
 Public comment period in accordance with SDCL 1-25-1

 Administer Oath to Department of Agriculture and Natural Resources Staff
 Cancellation Considerations – Ron Duvall
- 10:00 AM Consider Future Use Water Permit Application No. 8512-3, City of Aberdeen – Mark Rath

 Consider Water Permit Application No. 8523-3, Nick & Scott Bebo – Mark Rath
- 10:45 AM Consider Motions and Responses concerning Recommencement of Contested Case Hearing for
 the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and
 Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

LUNCH

RECESS for day or ADJOURN if prior agenda items are completed.

WATER MANAGEMENT BOARD

Meeting on October 6 & 7, 2021

October 7, 2021

8:30 AM Call to Order
 Roll Call

Continue Hearing October 6 Agenda Items

ADJOURN

Board members are reminded they are subject to SDCL 3–23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Agriculture and Natural Resources at (605) 773-3352 at least 48 hours before the meeting if you have a disability for which special arrangement must be made.

WATER MANAGEMENT BOARD MEETING

October 6, 2021

Qualifications: wi - well interference wcr - well construction rules iq - irrigation questionnaire lf - low flow

No.	Name	Address	County	Amount	Use	Source	Qualifications
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Water Permit Applications to be Considered as Scheduled

8512-3	City of Aberdeen	Aberdeen	BN	6,154 AF	municipal	James River	3 special
8523-3	Nick & Scott Bebo	Redfield	SP	1.10 cfs	154.6 acres	James River	iq, 2 special

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

2007-1	Ridge on Lookout Mt Homeowners Association	Spearfish	LA	0.078 cfs	wds	1 well-Minnekahta Aquifer	wi, 2 special
2008-1	City of Lead	Lead	LA	0.022 cfs	industrial	1 well-Deadwood Aquifer	wi, 2 special
2817-2	Aspen Meadows Horse & RV Campground	Box Elder	CU	0.10 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
2819-2	Fall River Water Users Dist.	Oral	FR	0.09 cfs	rws	1 well-Inyan Kara	wi, 2 special
2820-2	Jim & Crystal Wiese	Keystone	PE	0.044 cfs	commercial	2 wells-Crystalline Rock	wi, 2 special
2821-2	Valerie Lauen	Rapid City	PE	0.017 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
2822-2	Johnson Land & Cattle LLC	Cody NE	BT	2.56 cfs	180 acres	1 well-Ogallala Aquifer	wi, wcr, iq
2823-2	Steve Zwetzig	Rapid City	PE	0.033 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
2824-2	Cosmos of the Black Hills	Rapid City	PE	0.011 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
8510-3	TR Golf LLC	Dakota Dunes	UN	1.11 cfs	no add'l acres	1 well-Dakota Aquifer	wi, wcr, iq, 1 special
8511-3	Bowes Construction Inc	Brookings	BG	1.67 cfs	industrial	1 pit/lake-Big Sioux:Aurora	wi, 4 special
8513-3	John S Donnelly	Vermillion	CL	1.78 cfs	179 acres	1 well-Missouri:Elk Point	wi, wcr, iq
8514-3	Tyler Childress	Sioux Falls	MA	0.044 cfs	commercial	1 well-Split Rock Creek Aqu	wi, iq, 1 special
8517-3	Bratberg Family Protection	Gayville	YA	1.78 cfs	132 acres	1 well-Missouri:Elk Point	wi, wcr, iq
8518-3	Bryce Sombke	Conde	BN	0.033 cfs	recreation/fwp	1 well-Dakota Aquifer	wi, wcr, 3 special
8519-3	Melvin Donnelly	Elk Point	UN	1.78 cfs	70 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8520-3	City of Aberdeen	Aberdeen	BN	0.33 cfs	recreation/fwp	2 wells-Elm:Southern Brown	wi, 2 special
8521-3	CBM Land & Cattle	Clear Lake	DU	1.78 cfs	200 acres	Lake Alice	iq, 4 special
8522-3	Mooody County Dairy LP	Sioux Falls	MA	0.333 cfs	commercial	1 well-Split Rock Creek Aqu	wi, 4 special
8324-3	Samantha Hagedorn	Yankton	YA	1.78 cfs	72 acres	1 well-Lower James Missouri	wi, iq, 1 special
8525-3	Banner Farms RE LLC	Pipestone MN	BD	0.22 cfs	commercial	2 wells-Dakota Aquifer	wi, 5 special
8526-3	L G Everist Inc	Sioux Falls	MA	3.33 cfs	industrial	pit-Big Sioux:South Aquifer	wi, 2 special

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8527-3	Finley Family LLLP	Oakes ND	BN	1.78 cfs	160 acres	1 well-Middle James Columbia	wi, wcr, iq
8528-3	Bluestem Family Farms LLC	Pipestone MN	DN	0.223 cfs	commercial	3 wells-Dakota Aquifer	wi, wcr, 5 special
8529-3	Chico Ag LLC	Elk Point	UN	1.78 cfs	110 acres	1 well-Missouri Elk Point	wi, wcr, iq, 1 special
8530-3	Nat'l Field Archery Assoc.	Yankton	YA	no add'l	7 acres	1 well-Missouri Elk Point	wi, iq
8531-3	Old Tree Dairy	Volga	BG	2.22 cfs	222 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
8532-3	Brehmer Family Farms LLC	Hoven	WL	0.044 cfs	2 acres	1 well-Bowdle:Hoven North	wi, iq
8534-3	Terry L Frick	Yankton	YA	no add'l	23 acres	1 well-Lower James Missouri	wi, iq, 1 special
8538-3	City of Springfield	Springfield	BH	0.98 cfs	municipal	Missouri River	3 special

CANCELLATIONS – OCTOBER 6, 2021

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
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DIVISION I WATER PERMITS

PE 1962A-1	ECB LLC, Elton Bierman	Same	MD	0.022	COM DOM	A	Ground water, one well Quaternary Age Alluvium	8-31-2021	
PE 1986-1	TransCanada Keystone Pipeline LP	John Taylor w/Taylor Law Firm	MD	6.68	IND	A	Cheyenne River	8-31-2021	

DIVISION II WATER PERMITS

PE 2792-2	TransCanada Keystone Pipeline LP	John Taylor w/Taylor Law Firm	LY	6.68	IND	A	White River	8-31-2021	
PE 2793-2	TransCanada Keystone Pipeline LP	John Taylor w/Taylor Law Firm	HK	0.67	IND	A	Bad River	8-31-2021	

DIVISION III VESTED WATER RIGHT, WATER RIGHT AND WATER PERMITS

VR 721-3	Town of Strandburg	Same (%Tammy Rufer, Finance Officer)	GT	0.13	MUN	A/F	Ground water, two wells Prairie Coteau Aquifer	8-31-2021	
RT 2406-3	Medary Creek Ranch (% Darrell Deboer)	same	BG	1.78	IRR	A/F	Ground water, one well Big Sioux Brookings Aquifer	8-31-2021	
PE 5181-3	Cold Springs Granite Co	Same (%Steven Chouanard)	GT	0.125	IND	A	Collection gallery Crystalline Rock	8-31-2021	
PE 5564-3	Cold Springs Granite Co	Same (%Steven Chouanard)	GT	0.67	IND	A	Quarry holes - well Crystalline Rock	8-31-2021	
PE 7074A-3	Calvin Hanson	Same	CL	1.78	IRR	NC	Ground water, one well Missouri Elk Point Aquifer	8-31-2021	
PE 7520-3	John Gunderson	Same	YA	1.56	IRR	A/F	Ground water, one well Lower James Missouri Aquifer	8-31-2021	
PE 7644-3	John S Donnelly	Same	CL	1.78	IRR	NC	Ground water, one well Missouri Elk Point Aquifer	8-31-2021	
PE 7655-3	Thomas Brady	Same	YA	0.10	IRR	NC	James River	8-31-2021	
PE 7784-3	Koletszy Family Ltd (% Robert Koletszy)	Same	YA	25 AF	FWP	NC	Springs – storage dam	8-31-2021	
PE 7989-3	Tetonka LLP (% Jeffrey Oyen)	Same	MA	2.23	FWP	NC	Unnamed creek fed by outflow of Clear Lake	8-31-2021	

ABBREVIATIONS				PAGE 1			
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE				
FU = FUTURE USE PERMIT	VR = VESTED WATER RIGHT	PE = WATER PERMIT	RT = WATER RIGHT				
IRR = IRRIGATION	GEO = GEOTHERMAL	COM = COMMERCIAL	MUN = MUNICIPAL				
INS = INSTITUTIONAL	FWP = FISH & WILDLIFE PROPAGATION	DOM = DOMESTIC	IND = INDUSTRIAL				

CANCELLATIONS – OCTOBER 6, 2021

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
PE 8020-3	Dustin Reiff	Same	MY	1.56	IRR	NC	Ground water, one well Big Sioux Moody Aquifer	8-31-2021	
PE 8170-3	Jerald Zubke	Same	GT	2.22	IRR	NC	South Fork Whetstone River diverted into Tile drainage	8-31-2021	
PE 8171-3	Friessen Construction Co Inc	Same (% Cindy Friessen Monnin, President)	MA	0.56	IND	A	Skunk Creek	8-31-2021	
PE 8353-3*	Oscar Inc (Floyd Peterson)	Same	SP	0	IRR	A	James River	8-31-2021	
*The diversion authority & acreage under No. 8353-3 were transferred three miles NW of the permitted area and are now authorized under Permit 8353A-3.									

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

August 31, 2021

NOTICE OF CANCELLATION

TO: Elton Bierman, ECB, LLC, PO Box 504, Rapid City SD 57709-0504

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 1962A-1

Water Permit No. 1962A-1 authorizes diversion of water from the Quaternary Age Alluvium Aquifer for domestic use and commercial purposes. Through recent communication with you, it is our understanding the well for this project was drilled in April 2019 but due to E.coli contamination was plugged in August 2019. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1962A-1 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 1962A-1 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1962A-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 1962A-1, ECB, LLC

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 1962A-1.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment.

Rapid Drilling LLC drilled the 30 feet deep well for the project in April 2019 and later plugged the well due to E coli contamination. The permit holder agreed to cancellation of the water permit.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: John Taylor, Taylor Law Firm PC, 4820 E 57th St, Ste B, Sioux Falls SD 57108

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit Nos. 1986-1, 2792-2 and 2793-2

Water Permit Nos. 1986-1, 2792-2 and 2793-2 authorized diversion of water from the Cheyenne River, White River and Bad River in Meade, Lyman, and Haakon Counties in South Dakota for construction purposes for the TransCanada Keystone Pipeline. Upon President Biden's executive order revoking the Presidential Permit for the project, we received notification from you that TransCanada intends to abandon the project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 1986-1, 2792-2 and 2793-2 due to abandonment.

The Water Management Board will consider cancellation of Water Permit Nos. 1986-1, 2792-2 and 2793-2 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

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RECOMMENDATION OF CHIEF ENGINEER

**FOR WATER PERMIT NOS. 1986-1, 2792-2 AND 2793-2
TRANSCANADA KEYSTONE PIPELINE LP**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 1986-1, 2792-2 and 2793-2.

The Chief Engineer is recommending cancellation of the above water permits due to abandonment.

Permit Nos. 1986-1, 2792-2 and 2793-2 were approved in February 2020 authorizing diversion of water from the Cheyenne River, White River and Bad River for construction of an oil pipeline. On January 20, 2021, President Biden issued an executive order revoking the Presidential Permit for the pipeline project. On June 9, 2021, TC Energy Corporation confirmed their decision to terminate the project and have requested the water permits be cancelled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021



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August 31, 2021

NOTICE OF CANCELLATION

TO: Tammy Rufer, Finance Officer, Town of Strandburg, PO Box 13, Strandburg SD 57265-0013

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Vested Water Right No. 721-3

Vested Water Right No. 721-3 authorizes diversion of 0.13 cfs from two wells to be used for municipal purposes. On August 11 & 13, 2021, you corresponded with Eric Gronlund concerning the town's wells. It is our understanding Strandburg is on rural water for municipal needs and has not used the wells in years. You indicated the town's intent was to contact a driller and have the wells plugged. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Vested Water Right No. 721-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Vested Water Right No. 721-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Vested Water Right No. 721-3 based upon facts presented at the public hearing. Our records show the town of Strandburg to be the owner of property covered by this vested water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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RECOMMENDATION OF CHIEF ENGINEER

FOR VESTED WATER RIGHT NO. 721-3, TOWN OF STRANDBURG

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Vested Water Right No. 721-3.

The Chief Engineer is recommending cancellation of the above vested water right due to abandonment and/or forfeiture.

Information obtained from the town indicates they are on rural water and have no need for wells. Their intent is to contact a well driller and have both wells plugged.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021



**DEPARTMENT of AGRICULTURE
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August 31, 2021

NOTICE OF CANCELLATION

TO: Darrell DeBoer, Medary Creek Ranch, 313 21st Ave., Brookings SD 57006

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 2406-3

Water Right No. 2406-3 authorizes diversion of ground water from the Big Sioux Brookings Aquifer to irrigate 169 acres. Recently, Genny McMath in our program, contacted you about your intent towards irrigation of the land described in the water right. Most of the land had been in CRP for many years. You indicated the well is still on the property, but you would not be irrigating the land in the future. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 2406-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 2406-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 2406-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 2406-3

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 2406-3.

The Chief Engineer is recommending cancellation of the above water right due to abandonment and/or forfeiture.

Records on file with the Water Rights Program show most of the land was in CRP for many years. The water right holder has indicated the center pivot system was removed and they will not be irrigating in the future.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water right does not prohibit a new application for this project in the future.



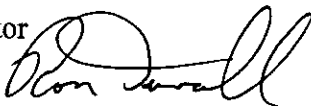
**DEPARTMENT of AGRICULTURE
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August 31, 2021

NOTICE OF CANCELLATION

TO: Steven Chouanard, Cold Spring Granite Co., 17482 Granite West Road, Cold Spring, MN 56320-4578

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program 

SUBJECT: Cancellation of Water Permit Nos. 5181-3 and 5564-3

Water Permit Nos. 5181-3 and 5564-3 collectively authorize removal of water within the quarry (crystalline rock) to allow for excavation of granite. On August 9, 2021, a staff engineer with our program contacted you concerning possible licensing of the water permits. It is our understanding from the discussion that due to development in the area, water is removed naturally from the site and dewatering as authorized under the permits will no longer be needed. You had also indicated the dewatering pumps and collection system have been removed. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 5181-3 and 5564-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit Nos. 5181-3 and 5564-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 5181-3 and 5564-3 based upon facts presented at the public hearing. Our records show Cold Spring Granite to be the owner of property covered by these permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NOS. 5181-3 & 5564-3, COLD SPRING GRANITE COMPANY

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 5181-3 and 5564-3.

The Chief Engineer is recommending cancellation of the above water permits for abandonment.

Discussions with Steve Chouanard with Cold Spring Granite on August 9th and August 26, 2021 found the dewatering pumps and collection system have been removed and the company no longer needs to dewater the quarry.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permits does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: Calvin Hanson, 31524 452nd Ave., Meckling SD 57069

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7074A-3

Permit No. 7074A-3 reinstated Water Permit No. 7074-3 and appropriated water from the Missouri Elk Point Aquifer to irrigate 162 acres in the NW ¼ Section 31 and S ½ SW ¼ Section 30, T93N, R53W. On your 2020 irrigation questionnaire you indicated no construction had occurred. On August 25, 2021, Genny McMath with our program spoke with you about the permit. You confirmed nothing had been developed but your intent was still to put up a system and irrigate. The time limit for completion of works, as outlined in the water permit, expired in March 2019. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7074A-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7074A-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD (*the agenda time is an estimate, and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7074A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

August 31, 2021

Calvin Hanson

Page 2

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7074A-3, CALVIN HANSON

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7074A-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

Water Permit No. 7074A-3 reinstated Water Permit No. 7074-3 giving the permit holder until March 31, 2019 to develop the irrigation system. The 2020 irrigation questionnaire indicated no construction had occurred and in a follow-up phone conversation with Genny McMath on August 25, 2021, Mr. Hanson confirmed the system had not been developed. He indicated he would still like to irrigate and is working on getting bids.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: John H Gunderson, 29875 443rd Ave., Irene SD 57037

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7520-3

Water Permit No. 7520-3 authorized an additional well and diversion rate to irrigate land described in Water Permit No. 6698-3 and Water Right No. 4091-3. On July 27, 2021, a staff engineer conducted a field investigation of the water use system under Nos. 4091-3, 6698-3 & 7520-3. The investigation found the well drilled as authorized under No. 7520-3 was not going to be used for irrigation purposes. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7520-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 7520-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7520-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7520-3, JOHN H GUNDERSON

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7520-3.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment and/or forfeiture.

On July 27, 2021, the water use system described in Nos. 4091-3, 6698-3 and 7520-3 was conducted for licensing purposes. The investigation found the well drilled under No. 7520-3 was not going to be used for irrigation purposes. At the time of inspection, the well did not have a pump or motor in it however the permit holder requested he be allowed to use the well in the future for domestic purposes.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit the well from being used for domestic purposes (household, lawn, garden, livestock) provided the use does not exceed 25,920 gallons per day or a peak pump rate of 25 gallons per minute.



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August 31, 2021

NOTICE OF CANCELLATION

TO: John S Donnelly, 616 S Crawford Rd, Vermillion SD 57069

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7644-3

Water Permit No. 7644-3 appropriated 1.78 cfs from one well (Missouri Elk Point Aquifer) to irrigate 160 acres in the N ½ Section 27, T92N, R51W. The time limit for completion of works as described in No. 7644-3 expired on April 1, 2018. In July 2021 a new permit was issued authorizing the same project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7644-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7644-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7644-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7644-3, JOHN S DONNELLY

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7644-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

The project authorized under No. 7644-3 was not developed within the 5 year construction period which ended on April 1, 2018. The permit holder still intended to develop irrigation on the land and has obtained a new permit authorizing construction of the project.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

NOTE: Cancellation consideration of Water Permit No. 7644-3 does not pertain to the newly issued Water Permit No. 8513-3.



**DEPARTMENT of AGRICULTURE
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August 31, 2021

NOTICE OF CANCELLATION

TO: Thomas Brady, 265 Antler Dr., Yankton SD 57078

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7655-3

Water Permit No. 7655-3 authorizes diversion of water from the James River for irrigation of 10 acres in the NE ¼ Section 13, T93N, R55W in Yankton County. On July 12, 2021, a staff engineer contacted you as part of a possible licensing investigation for the project. It is our understanding the project was not developed. The time limit for completion of works as authorized under the permit expired March 18, 2018. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7655-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7655-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7655-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7655-3, THOMAS BRADY**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7655-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

A staff engineer with the program contacted the permit holder to set up an investigation of the water use system for licensing purposes. The permit holder confirmed the project was never constructed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



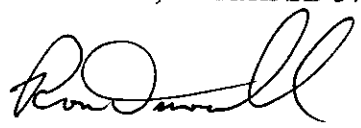
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August 31, 2021

NOTICE OF CANCELLATION

TO: Robert Koletzky, Koletzky Family Ltd Partnership, PO Box 589, Yankton SD 57078

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program 

SUBJECT: Cancellation of Water Permit No. 7784-3

Water Permit No. 7784-3 authorizes impoundment of 25 acre feet of water from springs and runoff by constructing a dam to be located in Section 7, T93N, R57W in Yankton County. On July 12, 2021 a staff engineer with our program contacted you to set up a licensing investigation for the project. You indicated the soil was too sandy to hold water and you had made a decision not to build the dam. The time limit for completion of works as specified in the permit expired April 8, 2018. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7784-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7784-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7784-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7784-3, KOLETZKY FAMILY LTD PARTNERSHIP

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7784-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On July 12, 2021, the permit holder was contacted concerning the project. Mr. Koletzky indicated the soil was too sandy and he decided not to build the storage dam.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



**DEPARTMENT of AGRICULTURE
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August 31, 2021

NOTICE OF CANCELLATION

TO: Jeffrey Oyen, Tetonka LLP, 46578 254th St, Hartford SD 57033

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7989-3

Permit No. 7989-3 appropriated water from an unnamed creek fed by outflow of Clear Lake to saturate a wetland for promoting vegetation for fish & wildlife propagation. In July 2021, a staff engineer with our program contacted you concerning the project and found it had not been developed. The time limit for completion of works as specified in the permit expired on June 9, 2019. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7989-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7989-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7989-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7989-3, TETONKA LLP**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7989-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On July 21, 2021, a staff engineer spoke with the permit holder concerning the project. The project had not been developed. The time limit for completion of works expired June 9, 2019.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: Dustin Reiff, 23591 472nd Ave., Colman SD 57017

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 8020-3

Water Permit No. 8020-3 authorizes diversion of ground water from the Big Sioux Moody Aquifer to irrigate 168 acres in portions of Section 22, T106N, R49W in Moody County. On June 15, 2021, a staff engineer with our program contacted you to set up a licensing investigation of the water use system authorized under No. 8020-3. It is our understanding the project was not developed. The time limit for completion of works as specified in the permit expired on August 11, 2019. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8020-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8020-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8020-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 8020-3, DUSTIN REIFF**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8020-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On June 15, 2021, the permit holder was contacted by a staff engineer for the purposes of setting up a field investigation for the water use system as developed. Mr. Reiff indicated over the phone that he had not developed the irrigation system. The construction period specified on the permit expired in August 2019.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: Jerald Zubke, 14536 SD Hwy 15, Milbank SD 57252

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 8170-3

Water Permit No. 8170-3 authorizes diversion of water from a tile drainage supplemented with water from the South Fork Whetstone River for irrigation purposes in Grant County. On July 23, 2021, a staff engineer with our program contacted you regarding a possible licensing investigation of your irrigation system. During the conversation you indicated the project had not been constructed. The time limit for completion of works expired September 7, 2020. Based on that information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8170-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8170-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD (*the agenda time is an estimate, and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8170-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 8170-3, JERALD ZUBKE**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8170-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

A staff engineer with the program contacted Mr. Zubke to set up a licensing investigation. The permit holder indicated the project had not been developed. The time limit for completion of works expired in September 2020.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: Cindy Friessen Monnin, Friessen Construction Co. Inc., 615 S Marion Rd, Sioux Falls, SD 57106

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 8171-3

Water Permit No. 8171-3 authorizes diversion of water from Skunk Creek in the NE ¼ Section 7, T101N, R50W for use in washing landscape rock and the sand and gravel operation at the same site. It is our understanding from discussions you had with Darrell DeBoer and Mark Rath in our program the company no longer diverts from Skunk Creek. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8171-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8171-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8171-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

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Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 8171-3, FRIESSEN CONSTRUCTION COMPANY INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8171-3.

The Chief Engineer is recommending cancellation of the above water permit for abandonment.

On July 6th and August 24th, 2021, Darrell DeBoer and Mark Rath with the Water Rights Program spoke with the president of the company who indicated they no longer divert water from Skunk Creek as authorized under Water Permit No. 8171-3.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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August 31, 2021

NOTICE OF CANCELLATION

TO: Floyd Peterson, Oscar Inc., 209 27th St SW, Huron SD 57350

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 8353-3

Water Permit No. 8353-3 authorized diversion of 2.28 cubic feet of water per second (cfs) from the James River to irrigate the NW ¼ Section 25, T114N, R62W. Water Permit No. 8353A-3 transferred the entire diversion authority and acreage to Section 10, T114N, R62W. With no cfs or acres remaining under No. 8353-3, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8353-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8353-3 at **9:30 am, Wednesday, October 6, 2021 (Central Time)** in the Legislative Conference Room 414, State Capitol Building, 500 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8353-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 27, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

August 31, 2021

Oscar Inc.

Page 2

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by September 27, 2021.

Prior to September 27, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by September 10, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 8353-3, OSCAR INC.**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8353-3.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment.

SDCL 46-5-34 allows an irrigation permit to be severed from one parcel of land and simultaneously transferred to another parcel if it becomes impractical to use all or any part of the water beneficially or economically for irrigation of the current land. The permit holder obtained Water Permit No. 8353A-3 to transfer the entire diversion authority and acreage under No. 8353-3 to another location. With nothing remaining under No. 8353-3, it becomes subject to cancellation.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
August 31, 2021

Note:

Cancellation of Water Permit No. 8353-3 does not affect Water Permit No. 8353A-3.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>

MINUTES OF THE 232ND MEETING OF THE
WATER MANAGEMENT BOARD
REMOTE MEETING VIA AUDIO/VISUAL CONFERENCE
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA

July 7, 2021

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 9:30 a.m. Central Time. The roll was called, and a quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following were present either remotely or in person:

Board Members: Jim Hutmacher, Leo Holzbauer, Peggy Dixon, Rodney Freeman, and Tim Bjork. Chad Comes and Bill Larson were absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, John Farmer, and Adam Mathiowetz.

Attorney General's Office: David McVey, board counsel; Ann Mines Bailey, Water Rights Program counsel.

Legislative Oversight Committee: Senator Mary Duvall, Pierre, and Representative Mike Weisgram, Ft. Pierre.

Court Reporter: Carla Bachand, Capital Reporting Services.

Deferred Water Permit Application No. 8433-3, City of Lake Norden: Gregg Jorgenson, Brookings; Jason Aho, Lake Norden; and Todd D. Boyd, Clear Lake.

Consider rescission of suspension of Water Right Nos. 4678-3 and 6960-3, Craig Jepsen, Hutchinson, MN: Gary Jepsen.

ANNUAL ELECTION OF OFFICERS: Mr. Freeman nominated Tim Bjork as chairman, Bill Larson as vice chairman, and Leo Holzbauer as secretary.

There were no other nominations.

Motion by Dixon, seconded by Freeman, to approve the slate of officers nominated by Mr. Freeman. A roll call vote was taken, and the motion carried unanimously.

ADOPT FINAL AGENDA: Chairman Bjork requested approval of the final agenda.

Motion by Dixon, seconded by Hutmacher, to adopt the final agenda. A roll call vote was taken, and the motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT MAY 5, 2021, BOARD MINUTES: Motion by Freeman, seconded by Dixon, to approve the minutes of the May 5, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

ADOPT MAY 19, 2021, BOARD MINUTES: Motion by Freeman, seconded by Hutmacher, to approve the minutes of the May 19, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

OCTOBER 6-7, 2021 MEETING AND LOCATION: Ron Duvall stated that, based on Hearing Officer Freeman's Order, the board is scheduled to consider motions and responses to motions in the matter of Water Permit Application Nos. 2685-2 and 2686-2, and the 2012 Groundwater Discharge Plan Application submitted by Powertech (USA) Inc. at the October meeting

Hearing Officer Freeman stated that he is expecting multiple requests to hold the October meeting in Rapid City. He asked for guidance from the board and the DANR.

Mr. Duvall said he has been receiving a lot of emails from people, several of whom are not parties. He requested guidance from the board as to what he should do with these emails. Several of the parties that submitted emails requested that the board meet in Rapid City.

Mr. Duvall stated that Room 413 and 414 in the Capitol Building are available on October 6-7. He said if the board decides to meet in Rapid City, technology will most likely be an issue, in terms of any of the board members wishing to participate remotely. Another issue for the board to consider is security. The State Capitol Building has security, but there is no security at a third-party site such as a motel meeting room.

Chairman Bjork asked if it is possible to hold the meeting at City Hall or the County Courthouse. Mr. Duvall responded that he would have to check on availability of a meeting room at either of those places.

Mr. Hutmacher suggested the board meet in the State Capitol in October.

Mr. Freeman agreed, stating that this is a motions hearing, not the actual hearing on the permit applications.

Ms. Dixon agreed that the October meeting should be in Pierre. She also suggested checking into holding the hearing at the School of Mines because the technology is available there.

Chairman Bjork asked if there is a way to pass along the understanding that in October the board will consider motions; it is not the actual permit application hearing.

Mr. Duvall stated that Hearing Officer Freeman's Order was clear that in October the board will consider motions regarding re-starting the hearing.

Chairman Bjork requested a motion to hold the October 6-7 meeting at the State Capitol in Pierre.

Motion by Hutmacher, seconded by Holzbauer, to hold the October 6-7, 2021, Water Management Board meeting at the State Capitol in Pierre. A roll call vote was taken, and the motion carried unanimously.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: None.

ADMINISTER OATH TO DANR STAFF: The court reporter administered the oath to DANR staff who intended to testify.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 2814-2, JUDE WILDEMAN/BIG MOUNTAIN CABINS: David McVey, board counsel, stated that Water Permit Application No. 2814-2 came before the board on May 5, 2021. The board, having considered the testimony, exhibits presented, all records and documents filed and having entered an oral decision, directed preparation of Findings of Fact, Conclusions of Law, and Final Decision.

Ann Mines Bailey, on behalf of the Water Rights Program, filed the proposed Findings of Fact, Conclusions of Law, and Final Decision.

The intervenor, Lon Buehner submitted an objection and suggested revisions to Findings of Fact Paragraph 19 (now Paragraph 23) and requested the Findings of Fact Paragraph 5 be deleted in its entirety.

Mr. McVey stated that the intervenor's request to amend Finding of Fact Paragraph 19 (now Paragraph 23) and to delete Finding of Fact Paragraph 5 in its entirety should both be denied.

The Final Decision determines that Water Permit Application No. 2814-2 is granted with the following qualifications:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

Mr. McVey noted that the signature block will be changed from "Jim Hutmacher, Chairman" to "Tim Bjork, Chairman."

Motion by Freeman, seconded by Dixon to reject the two proposed amendments submitted by Mr. Buehner, and accept the change to the signature block, and to adopt the final Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2814-2, Jude Wildeman/Big Mountain Cabins. A roll call vote was taken, and the motion carried unanimously.

DEFERRED WATER PERMIT APPLICATION NO. 8433-3, CITY OF LAKE NORDEN: Ann Mines Bailey stated that this matter was before the board in October of 2020 at which time the Chief Engineer recommended deferral for a study of the aquifer. The city of Lake Norden subsequently acquired a consultant who worked in conjunction with Adam Mathiowetz, DANR, to perform aquifer testing and received the information that was necessary for this application. The city of Lake Norden also decreased the amount of the appropriation requested.

The Chief Engineer has changed his recommendation from deferral to approval.

Ms. Mines Bailey stated that when this matter came before the board initially it was public noticed and there were no intervenors so this is not a contested case. She said because the Chief Engineer had previously recommended deferral and is now recommending approval of the application, the Water Rights Program wanted to bring it before the board.

Ms. Mines Bailey asked Chairman Bjork if he would like Mr. Mathiowetz to provide narrative testimony. Chairman Bjork asked that Mr. Mathiowetz be available for questions.

Ms. Mines Bailey noted that representatives of the city of Lake Norden were present.

Chairman Bjork asked the board if they had any questions of Mr. Mathiowetz or the city of Lake Norden representatives.

There being no questions, Chairman Bjork requested a motion from the board.

Motion by Hutmacher, seconded by Freeman, to approve Water Permit Application No. 8433-3, city of Lake Norden with the qualifications set forth by the chief engineer. A roll call vote was taken, and the motion carried unanimously.

DEFERRED WATER PERMIT APPLICATION NO. 7610-3, BRET FLIEHS: Ron Duvall reported that this application was submitted in January 2013. The application was for 18 shallow wells to irrigate 360 acres in Brown County, which were also permitted for irrigation under a different permit. At the time, the Chief Engineer made a recommendation to defer the application in order to complete an aquifer pump test to determine whether water was available and to determine any potential impacts on other users in that aquifer.

At the May 2013 meeting, the board deferred action to await completion of that pump test. Mr. Duvall noted that the pump test has not occurred.

In 2021, Mr. Fliehs submitted another application, which has now been processed and approved. After the new application was submitted, staff contacted Mr. Fliehs to see what his intentions were

Water Management Board
July 7, 2021, Meeting Minutes

regarding this deferred application. Mr. Fliehs responded that he was not going to pursue completion of the pump test, and he asked to withdraw the application. Since the application was previously presented to the board and action was taken by the board to defer it, notice was sent to Mr. Fliehs informing him that the board would consider denial of the permit, and the Chief Engineer reissued a recommendation changing it from deferral to denial. Mr. Duvall noted that the benefit to Mr. Fliehs in getting this settled is he gets the licensing fee and 75 percent of the application fee refunded.

Motion by Freeman, seconded by Dixon, to deny Water Permit Application No. 7610-3, Bret Fliehs. A roll call vote was taken, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 8450-3, TOM NUHSBAUMER: Water Permit

Application No. 8450-3 proposes to appropriate water at a maximum instantaneous diversion rate of 1.78 cubic feet per second (cfs) for the irrigation of 101.4 acres. The proposed diversion points are four wells to be completed into the Pleistocene Series: Unknown aquifer with well depths less than 60 feet. The location of the proposed wells and the proposed acres is in northeast corner of Hand County approximately 6.5 miles south of Rockham. This application is requesting a diversion rate that exceeds the statutory limit of 1 cfs per 70 acres.

Mr. Gronlund stated that the report was written by John Farmer. The application was reviewed, and a recommendation of approval was made and published for board hearing. In response to that public notice, no petitions to intervene were filed.

The application was scheduled for board hearing under SDCL 46-1-16, which provides the Chief Engineer the option to schedule an application for hearing, even if uncontested, if it is found that the application presents important issues that should be heard by the board.

Mr. Gronlund stated that the issue at hand in this case is the well location is within the boundary of what was previously identified as the Tulare:Western Spink Hitchcock Aquifer, which is a fully appropriated aquifer, and there are applications placed on hold in the event of if or when water becomes available. This well is in what was previously a small finger of the Tulare:Western Spink Hitchcock Aquifer.

Mr. Gronlund stated that Mr. Farmer did a deep dive of the complex geology of this area and determined that this is not the Tulare:Western Spink Hitchcock Aquifer, but instead it is best identified as the Pleistocene Series: Unknown Aquifer. That finding was vetted through the South Dakota Geological Survey, who concurred with Mr. Farmer's determination. Mr. Gronlund stated that since this was an area previously identified as a finger of the Tulare:Western Spink/Hitchcock Aquifer, he felt it necessary to bring the application before the board for consideration. Mr. Farmer's report discusses two other existing water rights within this area that were previously identified as Hand Management Unit of the Tulare Aquifer. That aquifer is not fully appropriated, but Mr. Gronlund said he wanted it to be on record that those are now identified as being in the Pleistocene Series: Unknown Aquifer, based on Mr. Farmer's review. Moving forward, DANR will manage that accordingly.

Mr. Gronlund noted that Mr. Farmer was prepared to provide a brief narrative on the application if the board desired, and he and Mr. Farmer were available to answer questions.

Water Management Board
July 7, 2021, Meeting Minutes

Chairman Bjork asked if any of the board members had questions. There were no board questions.

Motion by Freeman, seconded by Hutmacher, to approve Water Permit Application No. 8450-3, Tom Nuhsbaumer subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

Chairman Bjork acknowledged that Senator Duvall and Representative Weisgram were present at the meeting.

CANCELLATION CONSIDERATIONS: Mr. Duvall stated that prior to the meeting, the board members received the board packet, which included a table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

Thirteen water rights/permits were scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The department received no comments or letters in response to the notices of cancellation.

None of the right/permit holders were present at the meeting.

The following water rights/permits were recommended for cancellation for the reasons listed in the table below.

Number	Original Owner	Present Owner(s) & Other Persons Notified	Reason
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DIVISION I WATER PERMIT

PE 1954-1	Katmandu Enterprises LLC	Same (% Mike Russell)	Non-construction
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DIVISION II WATER PERMITS

PE 2632-2	City of Box Elder	Same (% Bob Kaufman)	Non-construction
PE 2646-2	Fred Rittberger & Sons Inc	same	Non-Construction
PE 2745-2	Croell Redi Mix	Same (% Kyle Frisinger)	Abandonment

DIVISION III WATER PERMITS AND WATER RIGHT

RT 164-3	Debra L Hansen	Debra L Hansen, Alan Flyger	Abandonment/Forfeiture
PE 6853-3	Pine Knoll Inc.	Same (% Don Boyd)	Non-Construction
PE 6853A-3	Pine Knoll Inc.	Same (% Don Boyd)	Non-Construction
PE 7016-3	Richard Kor	Same	Abandonment
PE 7420-3	Rick Even	Same	Non-Construction
PE 7536-3	Eugene Kleinjan	Same	Non-Construction
PE 7672-3	Mayfield Hutterian Brethren	Same (% Joe Waldner)	Non-Construction
PE 7673-3	Mayfield Hutterian Brethren	Same (% Joe Waldner)	Non-Construction
PE 7992-3	Porter Farm Inc.	Same (% Mark Porter)	Non-Construction

Water Management Board
July 7, 2021, Meeting Minutes

Motion by Freeman, seconded by Dixon, to accept the chief engineer's recommendations for cancellation of the thirteen water rights/permits for the reasons listed. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE REVIEWS: A table listing the two future use permits up for a seven-year review was included in the board packet that the board members received prior to the meeting. Mr. Duvall reported that certain entities such as water distribution systems, municipalities and rural water systems can reserve water for future needs.

State law requires future use permits to be reviewed by the Water Management Board every seven years, and it requires the permit holder to demonstrate a reasonable need for the future use permit.

The board packet also included a letter from the entity requesting that they be allowed to retain their future use permits, the Chief Engineer's recommendations, and the Affidavits of Publication showing that today's hearing was public noticed. No letters in opposition were received in response to the public notice.

The chief engineer recommended that the board allow the two Future Use Permits to remain in effect as listed below.

No.	Name	Amount Remaining in Reserve	Source
5689-3	Big Sioux Community Rural Water System	360 AF	Big Sioux:Northern Skunk Creek
6834-3	Big Sioux Community Rural Water System	600 AF	Big Sioux:Northern Skunk Creek

Motion by Hutmacher, seconded by Holzbauer, that the two future use permits for Big Sioux Community Rural Water System remain in effect for the amounts listed. A roll call vote was taken, and the motion carried unanimously.

CONSIDER RESCISSION OF SUSPENSION OF WATER RIGHT NOS. 4678-3 AND 6960-3, CRAIG JEPSEN, HUTCHINSON, MN: Mr. Duvall reported that at the March 3, 2021, meeting, the board suspended these two permits for failure to submit the irrigation questionnaires.

Mr. Duvall stated that a compliance check was done by staff, and it was discovered that the irrigation systems were operating. Staff then contacted Gary Jepsen, who is Craig Jepsen's nephew, regarding the suspended permits.

Gary Jepsen was administered the oath by the court reporter. Mr. Jepsen stated that he and his uncle have farmed together since the mid-1980's. His uncle recently retired, and he has been diagnosed with Alzheimer's disease. Mr. Jepsen said he was not aware of the irrigation questionnaires had not been submitted because Craig Jepsen has always taken care of submitting them in the past. Mr. Jepsen stated that he would like to be able to irrigate.

Water Management Board
July 7, 2021, Meeting Minutes

Mr. Duvall stated that when staff contacted Mr. Jepsen, he indicated that he would like to have the suspension rescinded, and he did submit the irrigation questionnaires.

Mr. Freeman suggested that Mr. Jepsen submit questionnaires on time in the future.

Mr. Duvall noted that the Water Rights Program will send the questionnaires to Gary Jepsen in the future.

Motion by Freeman, seconded by Holzbauer, to rescind suspension of Water Right Nos. 4678-3 and 6960-3, Craig Jepsen. A roll call vote was taken, and the motion carried unanimously.

ADJOURN: Chairman Bjork declared the meeting adjourned.

A court reporter was present, and a transcript of the proceedings may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre SD 57501, telephone number (605) 222-4235.

The audio recording for this meeting is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Approved on the 6th day of October 2021.

Water Management Board

WATER MANAGEMENT BOARD MEETING

July 7, 2021

Qualifications: wi - well interference wcr -well construction rules iq - irrigation questionnaire lf - low flow
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Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
2005-1	Cedar Berry Canyon LLC	Sioux Falls	LA	0.20 cfs	wds	1 well-Madison	wi, wcr, 3 special
2006-1	Thomas Simons	Howes	MD	5.34 cfs	900 acres	Cheyenne River	lf, iq
2815-2	Jerry & Kari-Ann Casper	Rapid City	PE	0.009 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
2816-2	Sudbury Ranch LLC	Rapid City	PE	0.11 cfs	wds	1 well-Madison	wi, wcr, 3 special
5887A-3	Kock Fertilizer LLC	Wichita KS	BD	no add'l	commercial & industrial	1 well-Dakota Aquifer	wi, wcr, 3 special
8455-3	Rob & Jodi Waltman	Wetonka	MP	1.10 cfs	60 acres	1 well-Inyan Kara	wi, wcr, iq, 1 special
8482-3	Reid Bird	Elk Point	UN	1.56 cfs	116 acres	1 well-L Vermillion Missouri	wi, wcr, iq
8487-3	Spink Hutterian Brethren	Frankfort	SP	0.144 cfs	domestic & commercial	2 wells-Dakota Aquifer	wi, wcr, 5 special
8488-3	Brett Petersen	Hurley	TU	1.78 cfs	80 acres	1 well-Upper Vermillion Missouri: West	wi, wcr, iq, 1 special
8494-3	Beadle Conservation Dist.	Huron	BD	0.022 cfs	4.5 acres	1 well-Warren:West James	wi, iq
8495-3	Justin VandeWeerd	Bruce	BG	no add'l	119 acres	1 well-Big Sioux:North Deer Cr	wi, iq
8496-3	John Bovill	Beresford	LN	1.00 cfs	80 acres	1 well-Brule Creek	wi, iq
8497-3	City of Sioux Falls	Sioux Falls	MA	no add'l	municipal	1 well-Big Sioux:Sioux Falls	wi, wcr, iq, 1 special
8498-3	Terry Wieting	Huron	BD	0.41 cfs	30 acres	James River	iq, 2 special
8499-3	NorSwiss Dairy	Twin Brooks	GT	2.22 cfs	160 acres	1 well-Prairie Coteau	wi, wcr, iq
8500-3	Joseph Plucker	Parker	TU	no add'l	105 acres	1 well-Parker Centerville	wi, iq
8501-3	John & Jacki Smith	Yankton	YA	1.33 cfs	80 acres	1 well-Lower James Missouri	wi, wcr, iq, 1 special
8503-3	Sorensen Family Farm LLC	Vermillion	CL	2.56 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
8504-3	Redstone Farms RE LLC	Pipestone MN	CK	0.133 cfs	commercial	1 well-Altamont	wi, 4 special
8505-3	Dakota Range III O&M	Summit	GT	0.044 cfs	commercial	1 well-Prairie Coteau	wi, 2 special
8506-3	Prairie View Golf LLC	Gary	DU	0.064 cfs	4.3 acres	1 well-Prairie Coteau	wi, iq, 2 special
8507-3	Craig Vanderlei	Springfield	BH	1.78 cfs	140 acres	1 well-Niobrara	wi, wcr, iq
8508-3	Mark or Lee Guthmiller	Menno	HT	no add'l	90 acres	1 well-Lower:James Missouri	wi, iq
8509-3	Riverview Farm LLC	Canton	LN	0.55 cfs	40 acres	1 well-Big Sioux:South	wi, wcr, iq

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
5689-3	Big Sioux Community Rural Water System	Egan	LK	360 AF	RWS	Big Sioux:Northern Skunk Creek	none
6834-3	Big Sioux Community Rural Water System	Egan	LK	600 AF	RWS	Big Sioux:Northern Skunk Creek	none



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
APPLICATION NO. 8512-3, City of Aberdeen**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit Application No. 8512-3, City of Aberdeen, 123 S Lincoln, Aberdeen SD 57401.

The Chief Engineer is recommending APPROVAL of Application No. 8512-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the City of Aberdeen has demonstrated a reasonable need for the water reserved, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Future Use Permit No. 8512-3 reserves 6,154 acre-feet of water annually from the James River.
2. That Future Use Permit No. 8512-3 is approved with the stipulation that this Permit is subject to review by the Water Management Board as to accomplishment in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted prior to construction of facilities pursuant to SDCL 46-5-38.1.

See report on application for additional information.

Eric Gronlund, Chief Engineer

June 21, 2021

REPORT ON FUTURE USE PERMIT APPLICATION NO. 8512-3

City of Aberdeen

June 16, 2021

Future Use Permit Application No. 8512-3, proposes to reserve for future use 6,154 acre-feet of water at a diversion rate of 8.5 cubic feet of water per second (cfs) from the James River located in the SE 1/4 Section 14-T124N-R62W. The water is to be reserved for future water supplies for municipal use by the city. This application does not request authorization of the construction of works or to put water to beneficial use. The James River diversion site is located approximately 10 miles northeast of Aberdeen SD in Brown County.

South Dakota Codified Law (SDCL) 46-2A-10 and 46-5-38.1 sets out the criteria and conditions under which a future use permit may be approved and Administrative Rule 74:02:01:24.01 defines the limits the Water Management Board may place on a future use permits. SDCL 46-2A-10 allows a future use permit may be approved only if 1) there is reasonable probability unappropriated water is available for appropriation; 2) the quantity of water reserved will be needed by the entity; 3) the proposed use will be a beneficial use; and 4) the proposed use is in the public interest. This report will address the first two criteria.

Review of the Proposed Water Source

Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation, the James River experiences extremely low flows and cannot be considered a reliable source of water.

The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. The USGS collects realtime stream flow data and retains a historical record of the flow data for each of these stations (USGS. 2021). Water Rights staff uses this flow data to help regulate water usage during dry periods and for performing flow analyses in determining the likelihood of water availability at a particular location. The USGS provides an online statistical package to help analyze the flow data.

Two of the measures considered are Mean, often referred to as average, and Median, otherwise referred to as 50-percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean, often used to describe the middle value of a dataset, is calculated by determining the sum of the entries composing the dataset and then dividing that sum by the total number of entries in the dataset. Median, is the central value separating the higher half of values in a dataset from the lower half. The disadvantage of using mean to describe flow

is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long-term flow data, large flood event data values skew the calculated mean value giving an unreasonable expectation of a higher flow value over a period of time.

The USGS operates stream flow gaging station No. 06473000, on the James River at Ashton, SD (USGS, 2021). Figure 1 shows plots of historical percentile data from 1945 to 2020 for this stream flow gage. Looking at the requested period of use at the 50th percentile, with flows at or below this level on average one out of two years, the mean daily flow values range from over 650 cfs throughout May before steadily dropping to a low of 60 cfs at the end of August. During the period of proposed use, the 25th percentile level, at this level or below on average one out of four years, shows the daily flow values ranging between 160 cfs in May before dropping below 20 cfs by mid-August. At the 10th percentile with flows expected at this level or below on average one out of ten years, flow is above 20 cfs only for a short time in late April and early May.

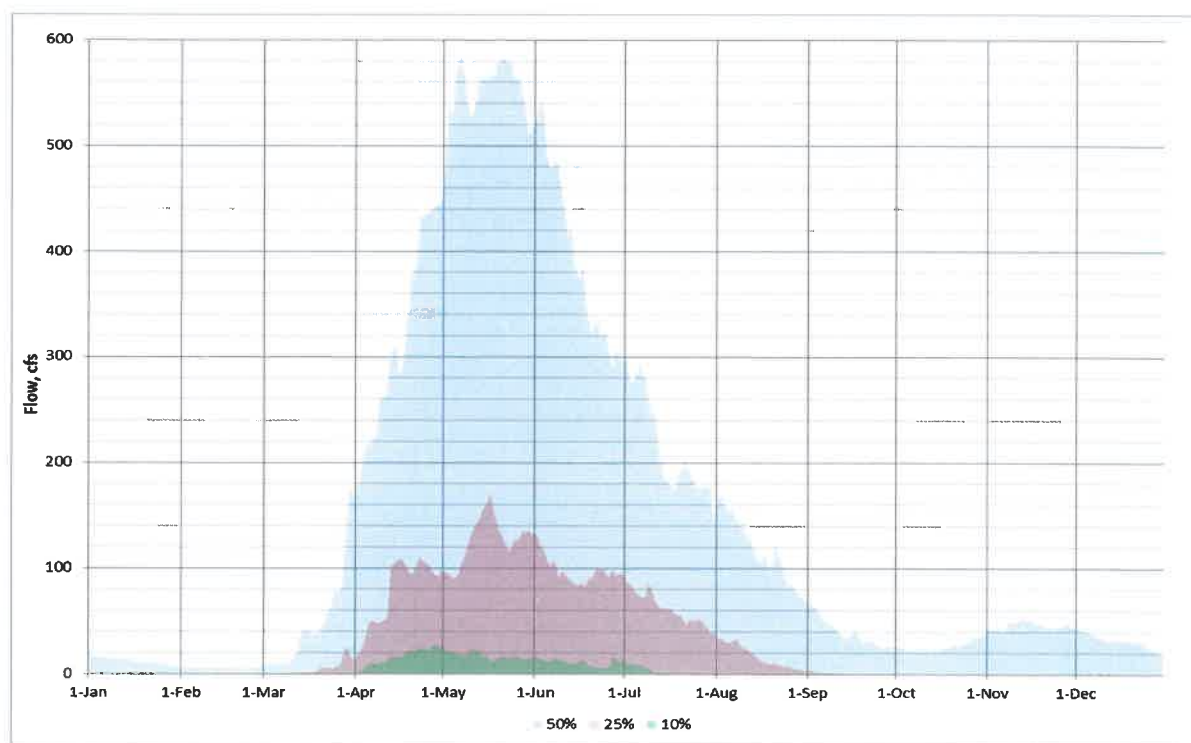


Figure 1. Daily percentile flow hydrograph for the USGS gaging station No. 06473000, 1945-2020, on the James River at Ashton, SD, contributing drainage area 8,333 mi², (USGS, 2021).

Review of the James River Water Management Regulation

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed maximum diversion limits over sections of the James River in South Dakota. A 300 cfs

diversion limit restriction applies to the river reach between the North Dakota border to the Yankton-Hutchinson County Line (Water Rights. 2021). Of this restriction, a 200 cfs diversion limit restriction was placed from the North Dakota border to the USGS gaging station in Huron, SD. The SD Water Management Board has adopted these diversion limits.

In 2007, the SD Water Management Board adopted standardized qualifications and amended the existing water rights/permits for current and future James River water rights/permits. In order to address times when water availability is scarce from the James River, the Water Management Board has placed the following qualifications on James River permits with diversions located above the Ashton gaging station:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20 cfs by-passing the gage at Ashton, SD, after pumping.

If this future use permit is approved, any water permit obtained the City of Aberdeen utilizing water reserved by this permit would contain these same qualifications.

Review of Existing Water Rights/Permits

Currently there are 74 water rights/permits appropriating 187.26 cfs of the 200 cfs diversion limit between North Dakota border and the USGS gaging station at Huron, SD, and there are 117 water rights/permits appropriating 290.39 cfs of the 300 cfs diversion limit between the North Dakota border and the Yankton-Hutchinson County Line. At the time this report was written there is 9.61 cfs available from the James River for appropriation (Water Rights. 2021)

There is Future Use Permit No. US594-3 bearing a priority date of November 7, 1963, held by the US Bureau of Reclamation for the reservation of 500 cfs from the James River and other sources. The majority of the water reserved by this permit and attributed to the James River would have come from runoff created by the defunded and non-constructed Oahe Project with the water being diverted at the James River pumping plant. Originally the reservation of water was by Future Use Permit No. 1067-3 held by the Oahe Conservancy Sub-District but was transferred to the Bureau of Reclamation under Future Use Permit No. US594-3 in 1974. The remainder of Future Use Permit No. 1067-3 was cancelled by the Water Management Board in 2012. The status of this future use permit should be reviewed since the source of the majority of the water reserved was to

be from a federal irrigation project that was never constructed and has been defunded (Water Rights. 2021).

Reported and Projected Water Use by the City of Aberdeen

As part of the application, the City provided an executive summary of a report completed by a consultant containing the City's recent water use information and projected needs up to the year 2045. The consultant compiled the actual water use by the City for the 10-year period 2009-2018. They found the year with the highest annual use occurred in 2017, which was used as the baseline for the study analysis (HR Green. 2020).

Table 1 shows the population served and water used for the year 2017 and projected served population projections and water use for the years 2030 and 2045 (HR Green. 2020). The analysis demonstrates the average annual use is expected to increase from 4,290 ac-ft in 2017 to 6,090 ac-ft by 2045.

Table 1. Reported and projected water use by the City of Aberdeen. (HR Green. 2020),

Reported and Projected Flow Projections By Populaton			
Year	2017	2030	2045
Population	28,415	34,400	40,000
Per-Capita Average Use (gal/pers/day)	135	135	135
Average Daily Use (MGD)	3.83	4.64	5.40
Average Daily Use (CFS)	5.93	7.18	8.35
Average Annual Use (Ac-Ft)	4,290	5,198	6,049
Per-Capita Maximum Use (gal/pers/day)	306	306	306
Maximum Day Production (MGD)	8.69	10.52	12.23
Maximum Day Production (CFS)	13.45	16.28	18.92

Discussion

The City of Aberdeen is requesting to reserve 8.5 cfs and 6,154 acre-feet of James River water under a future use permit. The water is to be reserved for future water supplies for municipal use by the city. In addressing the first two requirements specified in SDCL 46-2A-10 on whether a future use permit may be approved, first is there reasonable probability unappropriated water is available for appropriation? A review of USGS stream gaging data indicates a reasonable probability unappropriated water is available. In addition, the Water Management Board has continued to uphold a 300 cfs diversion limit restriction to the river reach between the North Dakota border to the Yankton-Hutchinson County Line and a 200 cfs diversion limit restriction from the North Dakota border to the USGS gaging station in Huron, SD as originally adopted in 1965. Currently 290.39 cfs of the 300 cfs diversion limit between the North Dakota border and the Yankton-Hutchinson County Line is appropriated leaving 9.61 cfs available. Second, will the

quantity of water to be reserved be needed by the entity? Current water use and future water needs provided by the applicant demonstrate that in order for the City to meet projected future water needs, the community needs to secure additional water supplies from water sources other than those currently being used.

Conclusions

1. The applicant proposes to reserve for future use 6,154 acre-feet of water at a diversion rate of 8.5 cubic feet of water per second (cfs) from the James River.
2. The water source for the proposed future use reservation is the James River in Brown County. Approval of this permit will leave 1.1 cfs of the 300 cfs limit, set by the Water Management Board, remaining for future appropriation for the river reach from the North Dakota border to the Yankton-Hutchinson County Line.
3. Based upon a review of USGS stream gaging data for the James River, the review indicates a reasonable probability unappropriated water is available for reservation of water while remaining under the Water Management Board set diversion limits.
4. The applicant has demonstrated that in order for the City of Aberdeen to meet projected future water needs, the community needs to secure additional water supplies from water sources other than those currently being used.



Mark D. Rath
Natural Resources Engineer III

References

1. HR Green. 2020. Executive Summary, Aberdeen Water Treatment Plant Facility Plan – 2020. HR Green, Inc. 431 N Phillips Ave, Sioux Falls SD.
2. Water Rights. 2021. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
3. USGS. 2021. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.

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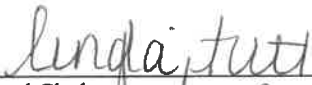
**WATER RIGHTS
PROGRAM**

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

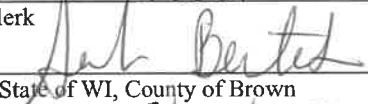
The AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, and has been such a newspaper during the times hereinafter mentioned; and personal knowledge of the facts herein state that the notice hereto annexed was Published in said newspapers in the issue:

08/25/2021

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.
Sworn to and subscribed before on 08/25/2021



Legal Clerk



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7/27/25

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NOTICE OF HEARING on Application No. 8512-3 to Appropriate Water Notice is given that the City of Aberdeen, c/o Robert Braun, Water Supt, 123 S Lincoln, Aberdeen SD 57401 has filed an application for a future use permit. Application No. 8512-3 proposes to appropriate 8.5 cubic feet of water per second and reserve for future use 6,154 acre-feet of water from the James River located in the SE 1/4 Section 14-T124N-R62W. The water is reserved for future water supplies for municipal use by the city. This application does not authorize construction of works or application of water to beneficial use. The James River diversion site is located approximately 10 miles northeast of Aberdeen SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8512-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:00 am (central time) on October 6, 2021 in the Legislative Conf. Room 414, State Capitol Bldg, 500 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The

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applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 27, 2021. The petition may be informal but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 6, 2021 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 27, 2021. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 7, 2021. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property

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right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board. As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01. Published once at an approximate cost of \$70.52..

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8523-3, Nick & Scott Bebo**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8523-3, Nick & Scott Bebo, 17061 390th Ave, Redfield, SD 57469.

The Chief Engineer is recommending APPROVAL of Application No. 8523-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board with the following qualifications:

1. This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
2. This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the gage at Huron, SD after pumping.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer
July 28, 2021

REPORT ON WATER PERMIT APPLICATION NO. 8523-3

Nick and Scott Bebo

July 27, 2021

Application No. 8523-3, proposes to appropriate 1.10 cubic feet of water per second (cfs) from the James River between points located in the SE 1/4 NE 1/4 Section 29 to SW1/4 NW1/4 Section 28 for irrigation of an additional 154.6 acres located in the S 1/2 SE 1/4 Section 20, N 1/2, SE 1/4 Section 29; all in T117N-R63W. Water Right No. 1172-3 authorizes 1.50 cfs from the James River to irrigate 105.4 acres. This application, if approved, and Water Right No. 1172-3 combined will authorize a total of 2.60 cfs and irrigation of 260 acres. The James River diversion site is located approximately 5 miles northeast of Redfield SD in Spink County.

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four criteria in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will analyze the available information to make a recommendation to the Chief Engineer on the first two criteria the Chief Engineer needs to consider in making an official recommendation to the Water Management Board.

Review of the Proposed Water Source

Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation, the James River experiences extremely low flows and cannot be considered a reliable source of water.

The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. The USGS collects realtime stream flow data and retains a historical record of the flow data for each of these stations (USGS. 2021). Water Rights staff uses this flow data to help regulate water usage during dry periods and for performing flow analyses in determining the likelihood of water availability at a particular location. The USGS provides an online statistical package to help analyze the flow data.

Two of the measures considered are Mean, often referred to as average, and Median, otherwise referred to as 50th percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean, often used to describe the middle value of a dataset, is calculated by determining the sum of the entries composing the dataset and then dividing that sum by the total number of entries in the dataset. Median, is the central value separating the higher half of values in a dataset from the lower half. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long-term flow data, large flood event data values skew the calculated mean value giving an unreasonable expectation of a higher flow value over a period of time.

The USGS operates stream flow gaging station No. 06476000, on the James River at Huron, SD (USGS, 2021). Figure 1 shows plots of historical percentile data from 1943 to 2020 for this stream flow gage. Looking at the requested period of use at the 50th percentile, with flows at or below this level on average one out of two years, the median daily flow values range from over 650 cfs throughout May before steadily dropping to a low of 60 cfs by mid-August. During the period of proposed use at the 25th percentile level, flow is at this level or below on average one out of four years, shows the daily flow values ranging between 210 cfs in May before dropping below 20 cfs by mid to late August. During the period of proposed use at the 10th percentile level, flow is at this level or below on average one out of ten years, shows the daily flow values ranging between 40 cfs in May before near zero cfs by mid-July. Based upon the historical stream gaging data, there will be times when shutoff orders will need to be issued for this reach of the James River.

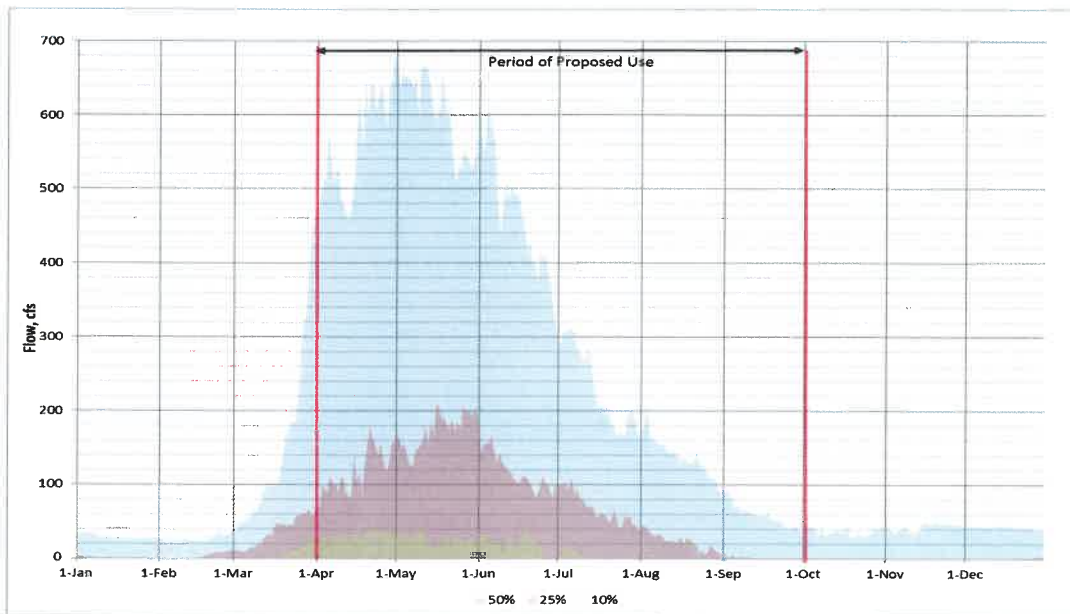


Figure 1. Daily percentile flow hydrograph for the USGS gaging station No. 06476000, 1943-2020, on the James River at Huron, SD, contributing drainage area 13,795 mi², (USGS, 2021).

Review of the James River Water Management Regulation

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed maximum appropriation limits over sections of the James River in South Dakota. A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota border to the Yankton-Hutchinson County Line (Water Rights. 2021). Of this restriction, a 200 cfs appropriation limit restriction was placed from the North Dakota border to the USGS gaging station in Huron, SD. The SD Water Management Board has adopted these appropriation limits.

In 2007, the SD Water Management Board adopted standardized qualifications and amended the existing water rights/permits for current and future James River water rights/permits. In order to address times when water availability is scarce from the James River, the Water Management Board has placed the following qualifications on James River permits with diversions located between the Ashton and Huron gaging stations:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20 cfs by-passing the gage at Huron, SD, after pumping.

If this application is approved, the water permit should contain these same qualifications.

Review of Existing Water Rights/Permits

Currently there are 74 water rights/permits appropriating 187.26 cfs of the 200 cfs appropriation limit between North Dakota border and the USGS gaging station at Huron, SD, and there are 117 water rights/permits appropriating 290.39 cfs of the 300 cfs appropriation limit between the North Dakota border and the Yankton-Hutchinson County Line. At the time this report was written there is 9.61 cfs available from the James River for appropriation (Water Rights. 2021). Although, there is one pending future use permit proposing to reserve 6,154 acre-feet of water at a diversion rate of 8.5 cfs. If this application and the pending future use permit are approved the 300 cfs appropriation limit will be reached.

There is Future Use Permit No. US594-3 bearing a priority date of November 7, 1963, held by the US Bureau of Reclamation for the reservation of 500 cfs from the James River and other sources. The majority of the water reserved by this permit and attributed to the James River would have come from runoff created by the defunded and non-constructed Oahe Project with the water being diverted at the James River pumping plant. Originally the reservation of water was by Future Use

Permit No. 1067-3 held by the Oahe Conservancy Sub-District but was transferred to the Bureau of Reclamation under Future Use Permit No. US594-3 in 1974. The remainder of Future Use Permit No. 1067-3 was cancelled by the Water Management Board in 2012. The status of this future use permit should be reviewed since the source of the majority of the water reserved was to be from a federal irrigation project that was never constructed and has been defunded (Water Rights. 2021).

Discussion

The applicant is proposing to appropriate an additional 1.1 cfs from James River to irrigate an additional 154.6 acres. This application supplements for an irrigation project authorizing 1.5 cfs to irrigate of 105.4 acres under Water Right No. 1172-3. A review of USGS stream gaging data indicates a reasonable probability unappropriated water is available. In addition the Water Management Board has continued to uphold a 300 cfs appropriation limit restriction applies to the river reach between the North Dakota border to the Yankton-Hutchinson County Line and a 200 cfs appropriation limit restriction was placed from the North Dakota border to the USGS gaging station in Huron, SD originally adopted in 1965. Currently 290.39 cfs of the 300 cfs appropriation limit between the North Dakota border and the Yankton-Hutchinson County Line is appropriated leaving 9.61 cfs available. At the time this report was written there is a pending future use permit No. 8512-3 by the City of Aberdeen proposing to reserve 8.5 cfs and a volume of 6,154 acre-feet. If both permits are approved the total amount of water appropriated from the James River will 299.99 cfs, just below the 300 cfs limit.

Conclusions

1. The applicant proposes to 1.1 cubic feet of water per second (cfs) from the James River.
2. The water source for the proposed irrigation project is the James River in Brown County. Approval of this permit will leave 0.01 cfs of the 300 cfs limit, set by the Water Management Board, remaining for future appropriation for the river reach from the North Dakota border to the Yankton-Hutchinson County Line.
3. Based upon a review of USGS stream gaging data for the James River, the review indicates a reasonable probability unappropriated water is available for this proposed project.
4. If approved the permit should contain the following qualifications:
 - This permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer.

Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.

- This permit does not authorize diversions from the James River when there is less than 20 cfs by-passing the gage at Huron, SD, after pumping.



Mark D. Rath

Natural Resources Engineer III

References

1. Water Rights. 2021. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
2. USGS. 2021. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.

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Aberdeen News
Watertown Public Opinion

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PROOF OF PUBLICATION

Sd Dept Of Agriculture
Sd Dept Of Agriculture
523 CAPITOL AVE E
Foss Building
Pierre SD 57501-3182

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STATE OF SOUTH DAKOTA, COUNTY OF BROWN

The AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, and has been such a newspaper during the times hereinafter mentioned; and personal knowledge of the facts herein state that the notice hereto annexed was Published in said newspapers in the issue:

08/04/2021

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper. Sworn to and subscribed before on 08/04/2021

Linda Pitt
Legal Clerk

Sarah Bertelsen
Notary, State of WI, County of Brown

7/27/25

My commission expires

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SARAH BERTELSEN
Notary Public
State of Wisconsin

NOTICE OF HEARING on
Application No. 8523-3 to
Appropriate Water

Notice is given that Nick & Scott Bebo, 17061 390th Ave, Redfield SD 57469 have filed an application for a water permit to appropriate 1.10 cubic feet of water per second (cfs) from the James River between points located in the NW 1/4 NW 1/4 Section 29 to SW 1/4 NW 1/4 Section 28 for irrigation of an additional 154.6 acres located in the S 1/2 SE 1/4 Section 20, N 1/2, SE 1/4 Section 29; all in T117N-R63W. Water Right No. 1172-3 authorizes 1.50 cfs from the James River to irrigate 105.4 acres. This application, if approved, and Water Right No. 1172-3 combined will authorize a total of 2.60 cfs and irrigation of 260 acres. This site is located approximately 5 miles northeast of Redfield SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8523-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

<https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:00 AM (Central Time) on October 6, 2021 in the Legislative Conference Rm 414, State Capitol Bldg, 500 E Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any person who intends to participate in the hearing shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by August 16, 2021.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 6, 2021 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by August 16, 2021. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engi-

neer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by August 16, 2021. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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Published once at the total approximate cost of \$85.06.
August 4, 2021 #6122427

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Talaya Purcell, being duly sworn on oath, say that THE REDFIELD PRESS is a weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS. I, Talaya Purcell, am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

#6014 NOTICE OF HEARING

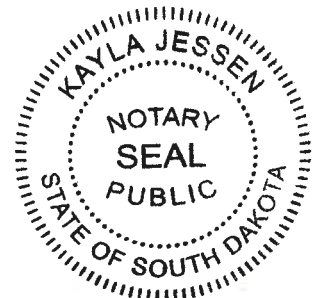
was printed and published in said newspaper in 1 issue, to wit: The first publication being made on AUGUST 25TH 2021. That the full amount of the fee charged for publishing SIXTY SIX and .58/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Talaya Purcell

Subscribed and sworn to before me this 25TH day of August, 2021

Kayla Jessen

Notary Public, South Dakota



My commission expires 09/26/2024

Notice of Hearing

#6014

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MOTION TO AMEND PROCEDURAL
ORDER

IN THE MATTER OF THE 2012
GROUNDWATER DISCHARGE PLAN
APPLICATION SUBMITTED BY
POWERTECH (USA) INC.

Powertech has been issued the Nuclear Regulatory Commission ("NRC") Source and Byproduct Materials License and the Environmental Protection Agency ("EPA") has made the required aquifer exemption determination and has issued the Underground Injection Control Class III and V permits. Additionally, financial assurances have been determined by both the NRC and EPA. Powertech, therefore, is ready to proceed with permitting in front of the Board.

Accordingly, Powertech respectfully requests this Board amend its Procedural Order entered by Everett Hoyt, Prehearing Chair, on February 14, 2013 to provide a prompt and reasonable schedule for the resolution of this matter. Filed herewith is a Proposed Amended Procedural Order, updating the Procedural Order previously entered by the Hearing Chair.

This motion is supported by Powertech's Brief in Support of Motion to Amend Procedural Order.

Dated: May 28, 2021.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By: 

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JUN 01 2021

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER
PERMIT APPLICATIONS 2685-2
And 2686-2, POWERTECH (USA) INC.

IN THE MATTER OF THE 2012
GROUNDWATER DISCHARGE PLAN
APPLICATION SUBMITTED BY
POWERTECH (USA) INC.

PROPOSED AMENDED
PROCEDURAL ORDER

Upon consideration of Powertech's Motion to Amend Procedural Order, the parties' arguments and comments, and the administrative record before this Board, it is hereby ORDERED that the PROCEDURAL ORDER entered into by Everett Hoyt as Prehearing Chair of the South Dakota Water Management Board on February 14, 2013 is hereby amended as follows:

1. Section 6(ii) shall be amended to read as follows: "Discovery supplementation deadline is 45 days prior to the date scheduled for re-commencement of the contested case hearing."
2. Section 6(iii) shall be amended to read as follows: "Each Party will supplement previous expert disclosures, by submitting, in writing sent to all other Parties, the names of expert witnesses, curricula vitae, and a copy of any supplementary expert report that it intends to offer on or before 45 days prior to the date scheduled for re-commencement of the contested case hearing."
3. Section 6(iv) shall be amended to read as follows: "Each party will disclose, in writing sent to all other Parties, the names of witnesses each Party expects to call during the contested case proceeding on or before 20 days prior to the date scheduled for re-commencement of the contested case hearing."
4. Section 6(v) shall be amended to read as follows: "Each Party will provide, by writing sent to all other Parties, a list identifying the exhibits together with a copy of each exhibit identified that Party expects to offer

into evidence during the contested case proceeding on or before 20 days prior to the date scheduled for re-commencement of the contested case hearing.”

5. Section 7 shall be amended to read as follows: “The contested case hearing before the Water Management Board will re-commence at the Board’s regularly scheduled October, 2021 meeting, at a location to be determined.”
6. Section 7(i) shall be added, which will read as follows: “All motions, including motions in limine, together with supporting briefs, shall be served on or before September 10, 2021. All responses to any motion, including motions in limine, together with supporting briefs shall be served on or before September 24, 2021.”
7. Section 8 shall be amended to delete subsections 8(i), 8(ii), and 8(iii), as those steps were previously completed prior to the order continuing these consolidated matters.
8. The PROCEDURAL ORDER entered on February 14, 2013 shall otherwise remain in full force and effect.

Dated this _____ day of May, 2021

Rodney Freeman, Hearing Chair
South Dakota Water Management Board

JUN 01 2021

**WATER RIGHTS
PROGRAM**

Powertech is ready to proceed with permitting in front of the Water Management Board ("Board") after receiving the necessary permits from the Environmental Protection Agency ("EPA") and its Nuclear Regulatory Commission ("NRC") license to conduct in-situ recovery of uranium at the Dewey-Burdock site near Edgemont, South Dakota. Accordingly, Powertech respectfully requests this Board amend its Procedural Order entered by Everett Hoyt, Prehearing Chair, on February 14, 2013, to provide a prompt and reasonable schedule for the resolution of this matter.

BACKGROUND

This matter originally came before the Board on Powertech's above-captioned water permit applications and groundwater discharge permit application. On June 12, 2012, Powertech submitted two applications to obtain water right permits.¹ On November 6, 2012, the Chief Engineer entered recommendations for the approval of both of Powertech's applications – Water Permit Applications No. 2685-2 and No. 2686-2.² Powertech submitted its Ground Water Discharge Plan Application on March 9, 2012, and received conditional approval of the same on December 12, 2012.³

Petitions to initiate contested case proceedings were filed in each of the cases. On February 8, 2013, the Board consolidated the water right permits and the ground water discharge permit application into the above-captioned matter.⁴ Hearings on the consolidated matter were conducted in October and November of 2013.⁵

Powertech submitted a large scale mine permit application to the South Dakota Department of Environment and Natural Resources on September 28,

¹<https://denr.sd.gov/powertech/wr/Inyankara/Application/Inyan%20Kara%20Water%20Right%20Application%20Form%202.pdf> and

<https://denr.sd.gov/powertech/wr/Madison/Application/Madison%20Water%20Right%20Application%20Form%202.pdf>

² <https://denr.sd.gov/powertech/wr/2685-2%20Report%20and%20Recommendation.pdf> and <https://denr.sd.gov/powertech/wr/2686-2%20Report%20and%20Recommendation.pdf>

³ https://denr.sd.gov/des/gw/Powertech/Dewey_Burdock_GDP.pdf and <https://denr.sd.gov/des/gw/Powertech/Powertech%20Dewey%20Burdock%20GWD%201-13%20Conditions.pdf>

⁴ https://denr.sd.gov/des/gw/Powertech/Powertech_GW_Discharge_Permit.aspx

⁵ https://denr.sd.gov/powertech_wmb.aspx

2012.⁶ At the conclusion of a week of hearing before the Board of Minerals and Environment (“BM&E”), the BM&E requested briefing on whether SDCL § 45-6B-32 required compliance with applicable local, state and federal laws as a condition precedent to granting Powertech a state large scale mining permit. Following briefing on the question, the BM&E continued its hearing “until such time as the NRC and EPA have ruled and set the federal surety, and the Water Management Board had decided the allocation rights and issues affecting SDCL § 45-6B-33(4).”⁷ For this reason, Powertech seeks to re-initiate the proceeding before this Board prior to re-initiating proceedings before the BM&E.

In order to complete the permitting process and allow it to begin in-situ recovery mining, Powertech was also required to obtain licenses and permits from the NRC and the EPA. During the hearings before this Board, questions regarding the various permitting and licensing obligations of the state and federal entities arose. On October 31, 2013, the Board requested briefing on, among other things, the effects of NRC licensing and EPA permitting on the state permitting process.⁸ On November 19, 2013, Powertech filed a brief addressing the Board’s questions.⁹

As part of Powertech’s briefing, it discussed the effects of the NRC license and the EPA permits on the Board’s ability to issue the requested permits.

⁶ On April 19, 2021, the South Dakota Department of Natural Resources (“DENR”) became the South Dakota Department of Agriculture and Natural Resources (“DANR”).

⁷ <https://denr.sd.gov/des/mm/documents/Powertech3/BMEOrder.pdf>

⁸ <https://denr.sd.gov/powertech/wmb/WMBbriefingquestions10312013.pdf>

⁹ <https://denr.sd.gov/powertech/wmb/11202013Powertechbrief.pdf>

Under Part 1 of the brief, Powertech concluded that the EPA's granting of its permits would illustrate "strong evidence that the proposed water use is beneficial and in the public interest because the EPA has primary enforcement authority over UIC Class III wells." Also, Powertech concluded that the issuance of the NRC license would likewise illustrate that "Powertech's proposed use of the water is beneficial and in the public interest." *Id.* at 5. Powertech reiterated these points under Part 2 of its brief and further added that the "NRC surety bond will cover the land application areas. This eliminates the need for the [Board] to require its own financial assurance." *Id.* at 6. It also notes that "Powertech has agreed to provide financial assurance to the NRC before construction or operation as required by ARSD 74:07:01:02." *Id.* at 6-7. Along with its briefing, Powertech filed a Motion to Continue the contested case hearing until the federal license and permits were issued.¹⁰ Parts 1 and 2 of its brief, discussed above, were cited as the basis for its motion. On November 25, 2013, the Board granted Powertech's Motion to Continue.¹¹

The body of the Board's Order explained the basis for the continuance including Powertech's request that the matter be continued until such time as the "[NRC] staff has *issued* a Source and Byproduct material License to Powertech..." and "has determined the financial assurance." With regard to the EPA, the matter was continued until such time as aquifer exemption

¹⁰ <https://denr.sd.gov/powertech/wmb/11202013Powertechmotiontocontinue.pdf>

¹¹ <https://denr.sd.gov/powertech/wmb/20131125PowertechContinuance.pdf>

determinations have been made and the EPA has *issued* “underground Injection Control Class [III]¹² and Class V permits” and determined financial assurance. In granting Powertech’s motion, the Board found that Powertech’s “Motion to Continue is legally and factually supportable...” Powertech has now been issued the NRC Source and Byproduct Materials License and the EPA has made the required aquifer exemption determination and has issued the UIC Class III and V permits set forth above. Additionally, financial assurances have been determined by both the NRC and EPA. Powertech, therefore, has achieved the goals set forth in its briefing and this Board’s Order. Powertech is ready to resume the hearing in this matter.

ISSUANCE OF FEDERAL LICENSES AND PERMITS

A. The NRC License

The NRC license was issued on April 8, 2014, under Source and Byproduct Materials License No. SUA-1600.¹³ The license authorizes Powertech to possess and use source byproduct material in connection with the Dewey-Burdock project. In the years following the issuance of the original license, challenges to the license were heard in front of the Atomic Safety and Licensing Board (“ASLB”). On December 12, 2019 the ASLB issued its Final Initial Decision upholding the issuance of the license.¹⁴ On October 8, 2020, the NRC denied the petitions to review the decision of the ASLB.¹⁵ The NRC

¹² The Board’s Order states Class II but both the Interveners’ and Powertech’s motions reference Class III wells. As such, the reference to Class II is likely a typo.

¹³ <https://www.nrc.gov/docs/ML1404/ML14043A347.pdf>

¹⁴ <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML19346F926>

¹⁵ <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20282A597>

license has been appealed to the United States Court of Appeals, District of Columbia Circuit.¹⁶ This appeal does not stay the NRC License.

License Amendment No. 1 included the approval of financial assurance.¹⁷ On October 7, 2020, the NRC issued Powertech Materials License Number SUA-1600, Amendment No. 3.¹⁸ This license amendment carries over the financial assurance approval from Amendment No. 1 and provides, in part, that Powertech:

[S]hall continuously maintain an approved surety for the Dewey-Burdock Project in the amount of no less than \$1,620,000, in favor of the NRC except for the plugging and abandoning of all Class III and Class V injection wells, which will be maintained in favor of the U.S. Environmental Protection Agency.

Id. at 4. The surety instrument “shall be submitted for NRC staff review and approval 90 days prior to commencing operations.” *Id.*

B. The EPA Permits

Powertech submitted its application to the EPA for its Class V permit in March of 2010, with a revision of January 2012.¹⁹ Its Class III permit was submitted on August 1, 2012.²⁰ Public comment on the permits began in 2017 with additional public comment in 2019. Based on public comment and the EPA’s review, the permits were revised over time. On November 24, 2020, the EPA issued Powertech Final Area Permit No. SD312331-00000 for the Class III

¹⁶ <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20346A051>

¹⁷ See letter to John Mays at <https://www.nrc.gov/docs/ML1620/ML16202A142.pdf>

¹⁸ <https://www.nrc.gov/docs/ML2027/ML20276A166.pdf>

¹⁹ https://www.epa.gov/sites/production/files/2016-11/documents/classvapplication_1.pdf

²⁰ https://www.epa.gov/sites/production/files/2015-08/documents/dbapplication_1.pdf

injection wells²¹ and Final Area Permit No. SD52173-00000 for the Class V Deep injection wells.²² Also, on November 24, 2020, the EPA issued Powertech an Aquifer Exemption for the project area.²³

Both permits require Powertech to “demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director...”. In order to satisfy the EPA’s financial responsibility requirements, Powertech entered into a Standby Trust Agreement. See Standby Trust Agreement, attached hereto as Exhibit 1. Pursuant to that Agreement, Powertech has placed \$133,208 into trust for plugging and abandonment of the Class V well and \$796,500 for plugging and abandonment of the Class III wells. *Id.* at 7.

On December 24, 2020, the Oglala Sioux Tribe petitioned the Environmental Appeals Board (“EAB”) to review the EPA’s decision to issue the Class III and Class V permits.²⁴ On February 16, 2021, the EPA, Region 8 (“Region”), filed a motion seeking a 120-day stay of the proceedings in order to brief the new administration – the Biden administration – on the matter and to review past EPA actions to determine if those decisions were consistent with President Biden’s Executive Order focused on public health and protection of

²¹ https://www.epa.gov/sites/production/files/2020-11/documents/dewey-burdock_class_iii_area_permit_final_nov_24_2020.pdf

²² https://www.epa.gov/sites/production/files/2020-11/documents/dewey_burdock_class_v_area_permit_final_nov_24_2020.pdf

²³ https://www.epa.gov/sites/production/files/2020-11/documents/epa_dewey-burdock_final_aquifer_exemption_decision_nov_24_2020.pdf

²⁴ [https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/33F2883933998A2A8525864C00554C62/\\$File/OST%20UIC%20Appeal%20FINAL%20Dec%2024%202020.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/33F2883933998A2A8525864C00554C62/$File/OST%20UIC%20Appeal%20FINAL%20Dec%2024%202020.pdf)

the environment.²⁵ Pursuant to an EAB Order issued on February 23, 2021, the proceedings were stayed for 60 days. The stay was granted in order to allow the Region, “additional time for the Region to brief the new Administration on this matter, and to allow time to conduct any review in light of the executive order.”²⁶

On April 19, 2021, the Region requested an additional stay in this matter until the resolution of the National Historic Preservation Act challenge pending before the D.C. Court of Appeals as part of the NRC license.²⁷ In response, Powertech filed a motion to extend its response to the EAB until May 18, 2021. Powertech requested this extension in order to address the prejudice that may occur at the State level because of the continued delays at the federal level.²⁸ Powertech’s motion was granted. Powertech was given until May 18, 2021, to address the Region’s motion for a further stay and to allow Powertech the opportunity to address this Board prior to responding to the EAB.²⁹ Powertech submitted its Opposition to [the Region’s] Motion for Further Stay on May 18, 2021 (“Powertech’s Opposition”).³⁰

²⁵[https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/F89B8CB3BBA6A11B8525867E0066E7E3/\\$File/R8%20Motion%20for%20Stay.signed.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/F89B8CB3BBA6A11B8525867E0066E7E3/$File/R8%20Motion%20for%20Stay.signed.pdf)

²⁶[https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/04810147E79DDB73852586850066EFC0/\\$File/Order%20Staying%20Proceedings%20for%2060%20Day.%20pdf.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/04810147E79DDB73852586850066EFC0/$File/Order%20Staying%20Proceedings%20for%2060%20Day.%20pdf.pdf)

²⁷[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/\\$File/R8%20Status%20Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/$File/R8%20Status%20Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf)

²⁸[https://yosemite.epa.gov/oa/eab_web_docket.nsf/Filings%20By%20Appeal%20Number/AC2D333E9A8735DE852586CA004428BA/\\$File/Powertech%20Motion%20for%20Extension.pdf](https://yosemite.epa.gov/oa/eab_web_docket.nsf/Filings%20By%20Appeal%20Number/AC2D333E9A8735DE852586CA004428BA/$File/Powertech%20Motion%20for%20Extension.pdf)

²⁹[https://yosemite.epa.gov/oa/eab_web_docket.nsf/E4599694BBEBB46B852586CA00642FB1/\\$File/Order%20Granting%20Powertechs%20Motion%20for%20Extension%20of%20Time.pdf](https://yosemite.epa.gov/oa/eab_web_docket.nsf/E4599694BBEBB46B852586CA00642FB1/$File/Order%20Granting%20Powertechs%20Motion%20for%20Extension%20of%20Time.pdf)

³⁰[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/296A7BDEEB91DCE7852586DA00444564/\\$File/Powertech%20Opposition%20to%20Motion%20to%20Stay%20May%2018%202021.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/296A7BDEEB91DCE7852586DA00444564/$File/Powertech%20Opposition%20to%20Motion%20to%20Stay%20May%2018%202021.pdf)

The Aquifer Exemption Record of Decision was appealed to the 8th Circuit in January of 2021. This proceeding has subsequently been held in abeyance pending the resolution of the EAB proceeding, but the issuance of the Aquifer Exemption is not stayed by this appeal. With the issuance of these permits by the EPA, including the financial assurance determination and bonding obligations already in place, Powertech has satisfied the Board's requirements as related to the EPA.

SOUTH DAKOTA WATER MANAGEMENT BOARD PROCEEDINGS

As noted above, Powertech is requesting that the proceedings in front of this Board be re-initiated. In furtherance of this process, Powertech requested a Status Conference with this Board. That Status Conference was held on May 5, 2021. Prior to the Status Conference, the Board received submissions from attorney Bruce Ellison, on behalf of the Clean Water Alliance, and attorney James Sword, on behalf of Susan Henderson.^{31 32} A number of additional intervenors also submitted statements to this Board.³³

The submissions received by this Board, and the positions taken in opposition to Powertech's permitting at the federal level, illustrate the need for this Board's hearing on this matter to move forward. For instance, the Response to Motion for Status Conference submitted by Susan Henderson argues that "Powertech has allowed its application to languish for too long."²³ Contrarily, the Clean Water Alliance believes that Powertech has not waited

³¹ https://denr.sd.gov/wrimage/pub/PT_rsp.pdf

³² https://denr.sd.gov/wrimage/pub/PT_noal.pdf

³³ https://denr.sd.gov/wrimage/pub/PT_rsp1.pdf

long enough.²² The Clean Water alliance states that “...the time is not ripe for this Board to consider scheduling a restarting of hearing...since the federal permitting process is far from completion.”

At the federal level, the Region argues that a stay of EAB proceedings will not prejudice Powertech because the State Boards have not acted. In the Region’s Motion for Stay of Proceedings the Region states:

Powertech will not be prejudiced by a stay because they have not secured necessary permits from the State of South Dakota and cannot proceed with the project until this occurs.³⁴

The Region made the same argument in its Status Report and Motion for Stay of Proceedings wherein it again provided at page 5:

Powertech will not be prejudiced because they have not secured necessary permits from the State of South Dakota and cannot proceed with the project until receiving those permits.³⁵

In Powertech’s Opposition, it outlines the reasons why further delay in the EAB proceeding would continue to cause it prejudice. Powertech’s opponents at the federal level continue to argue that no prejudice would result in delaying the EAB proceedings because the State permits have not been issued. At the same time, intervenors at the State level – as seen in the responses to Powertech’s Motion for Status Conference – continue to argue that the State proceedings should not be held until all federal appeals are exhausted. *Id.* at 17. This is a classic Catch-22 that cannot be sustained. If

³⁴[https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/F89B8CB3BBA6A11B8525867E0066E7E3/\\$File/R8%20Motion%20for%20Stay.signed.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/F89B8CB3BBA6A11B8525867E0066E7E3/$File/R8%20Motion%20for%20Stay.signed.pdf)

³⁵[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/\\$File/R8%20Status%20Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/$File/R8%20Status%20Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf)

each argument were to be accepted, no permitting process – federal or State – would go forward. Of course, this is the exact result desired by the intervenors.

Moreover, when Powertech made its Motion to Continue in front of this Board, it did not envision that it would be required to completely exhaust every potential avenue of appeal that could be filed by the intervenors. Powertech's motion specifically requested that the hearings be continued until:

1. The United States Nuclear Regulatory Commission staff has issued a Source and Byproduct Material License to Powertech for the Dewey-Burdock Project, and has determined the financial assurance; and
2. The United States Environmental Protection Agency has made aquifer exemption determinations and issued Underground Injection Control Class III and Class V permits to Powertech for the Dewey-Burdock Project, and has determined financial assurance.

Powertech made this motion, in addition to the reasons described above, to “significantly narrow and focus the issues before the Board.”³⁶ Powertech's request for continuance was specifically tied to the *issuance* of the license by the NRC, the *issuance* of the permits from the EPA, and a determination of financial assurance on those matters.

In granting Powertech's motion, the Board essentially restated Powertech's motion within the body of the Order and found that “Powertech's Motion to Continue is legally and factually supportable...”³⁷ The Order concluded:

³⁶ <https://denr.sd.gov/powertech/wmb/11202013Powertechmotiontocontinue.pdf>

³⁷ <https://denr.sd.gov/powertech/wmb/20131125PowertechContinuance.pdf>

[T]hat “Powertech’s Motion to Continue is granted that the administrative hearings on Powertech’s applications pending before the Board is continued until resolution *by the federal agencies* of Powertech’s pending applications...”

As provided within the body of the Order and Powertech’s Motion for Continuance, the federal agencies referred to are very specific – the United States Nuclear Regulatory Commission staff for the issuance of a Source and Byproduct Material License and the United States Environmental Protection Agency for the issuance of the aquifer exemption determinations and Underground Injection Control Class III and Class V permits. Powertech has been issued the necessary license and permits, and financial assurances have been determined.

The intervenors argue that as long as any appeal is proceeding at the federal level, Powertech is not entitled to a resumption of the State permitting process. But, as discussed above, this argument is contrary to the Board’s Order and Powertech’s Brief and Motion for Continuance. The Order references Powertech’s motion and refers to resolution by the *federal agencies*. The Board did not order that the license and permits had to be resolved by the 8th Circuit Court of Appeals, the D.C. Circuit Court, the EAB appeals process, or even the United States Supreme Court. The Order could have so stated, but that was not the request of Powertech in its Motion to Continue nor is it consistent with this Board’s previous ruling. Prior to Powertech’s Motion to Continue, the Board denied Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde’s Motion to Continue finding that “there is no legal or persuasive factual basis to continue the Water Management Board’s hearing on Powertech’s applications

until after Powertech obtains required permits from the EPA and NRC.”³⁸ For the same reasons, and the language found within the Order itself, there is no legal or factual basis that requires the continuance of the State Board proceedings until intervenors have exhausted every possible option to delay Powertech’s permitting by appeal or otherwise.

In the event this Board agrees with Powertech to move forward with the proceedings, intervenors will continue to be granted due process at both the State and federal levels. A denial of Powertech’s motion to resume proceedings, however, works to significantly prejudice Powertech. Powertech should not be denied its due process rights, including an opportunity for a hearing at the State level, while the federal permits work their way through myriad federal appeals.³⁹ Nor does Powertech believe that the Board’s Order Granting Powertech’s Motion to Continue was intended to operate in such a manner. Instead, as Powertech suggested in its Motion to Continue, the NRC license and the EPA permits that have been issued will aid this Board in defining its role in the overall permitting process.

CONCLUSION

The Board continued the hearing in this matter until such time as the NRC and EPA issued the appropriate licenses and permits to Powertech and financial assurance determinations were made. Powertech has now been

³⁸ <https://denr.sd.gov/powertech/wmb/PowertechNotice09232013.pdf> at p.4

³⁹ See SDCL 1-26-1(2) as defining “Contested case” as a proceeding which includes an opportunity for hearing.

issued those licenses and permits and the financial assurance determinations have been made; therefore, Powertech respectfully requests that this Board amend its previously-entered Procedural Order to provide a prompt and reasonable schedule for the resolution of this matter. Furthermore, because the EPA permits and the NRC license set forth the parameters of federal permitting, the Board will be able to significantly narrow and focus the remaining issues relevant to the State permits.

Filed herewith is a Proposed Amended Procedural Order, updating the Procedural Order entered by Everett Hoyt, Prehearing Chair, on February 14, 2013. Should the Hearing Officer determine that a hearing before the full Water Management Board is appropriate on Powertech's Motion, Powertech respectfully requests this Motion be scheduled for Hearing during the Board's regularly scheduled July meeting.

Dated: May 28, 2021.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

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Attorneys for Powertech (USA) Inc.

STANDBY TRUST AGREEMENT

U.S. ENVIRONMENTAL PROTECTION AGENCY UNDERGROUND INJECTION CONTROL PROGRAM FINANCIAL RESPONSIBILITY REQUIREMENT

To: Mail Code: 8ENF-W-SWD
UIC Financial Coordinator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

TRUST AGREEMENT, the "Agreement", entered into as of August 11, 2020
(date)

by and between Powertech USA Inc.
(name of owner or operator)
a South Dakota Corporation, the "Grantor",
(name of state) (corporation, partnership, association, or proprietorship)
and Trust Bank, incorporated in the State of North Carolina, the "Trustee",
(name of corporate trustee)

WHEREAS, the United States Environmental Protection Agency (EPA), an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an injection well shall provide assurance that funds will be available when needed for plugging and abandonment of the injection well(s),

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility or facilities identified herein, and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW THEREFORE, the Grantor and Trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "underground injection well" or any other facility or activity that is subject to regulation under the Underground Injection Control Program.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (attached). (Schedule A lists, for each facility, the EPA identification number, name, address, and the current plugging and abandonment cost estimate, or portions thereof, for which financial assurance is demonstrated.)



Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the purpose of assuring compliance with the plugging and abandonment requirements established by EPA for the facilities identified on Schedule A. The Underground Injection Control regulations which govern the authorization to inject include a requirement for such financial assurance that the well or wells shall be plugged and abandoned at the time designated by EPA. The Grantor and Trustee acknowledge that the Fund and all expenditures from the Fund shall be to fulfill the legal obligations of the Grantor under such regulations, and not any obligation of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amount or adequacy of any additional payments necessary to discharge any liabilities of the Grantor established by EPA, nor shall the Trustee have any duty to collect such additional amounts from the Grantor.

Section 4. Payment for Plugging and Abandonment. The Trustee shall make payments from the Fund only for the costs of plugging and abandonment (P&A) of the injection wells covered by this Agreement and the associated P&A Plan, only after EPA has advised the Trustee that work has been completed under the P&A Plan that complies with 40 C.F.R. § 144.28 and/or § 144.52. The Trustee shall not refund to the Grantor any amounts from the Fund unless and until EPA has advised the Trustee that the P&A Plan has been successfully completed. The Trustee shall not release any funds to the Grantor that are necessary to cover liability for any injection wells covered by this Agreement that remain unplugged.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion: (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered: (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition; (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted; (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund; (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11 Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such changes become effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to prove such defense.

Section 18. Choice of Law. This agreement shall be administered, construed, and enforced according to the laws of the State of Colorado.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of the Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective representatives duly authorized and their seals to be hereunto affixed and attested as of the date first above written.

GRANTOR

By: John Mays 8/7/2020
[Signature] [Date]

By: John Mays
[Print name]

Its: COO
[Title]

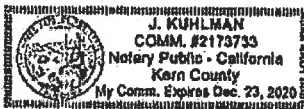
Address: P.O. Box 440
Edgemont, SD
57735

[Phone]
jmay@powerchuriantm.com
[E-Mail]

Attest: [Signature]

Its: Legal Secretary
[Title]

[SEAL]



Before me came the individual
whose identity I confirmed as
John Mays
and whose true signature is set
forth above; wherefore have I set
my hand and seal this
7th day of August, 2020.

[Signature]
Notary Public

TRUSTEE

By: Cristina G. Rhodebeck 8/11/20
[Signature] [Date]

By: Cristina G. Rhodebeck
[Print name]

Its: Vice President
[Title]

223 West Nash Street
2nd Floor
Wilson, NC 27893

[Phone]
crhodebeck@bbandt.com
[E-Mail]

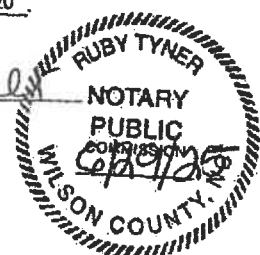
Attest: [Signature]

Its: Tom Clower, Vice President
[Title]

[SEAL]

Before me came the individual
whose identity I confirmed as
Cristina G. Rhodebeck
and whose true signature is set
forth above; wherefore have I set
my hand and seal this
11th day of August, 2020.

[Signature]
Notary Public



SCHEDULE A

Identification of Facilities and Cost Estimates

Schedule A is referenced in the Trust Agreement dated August 11, 2020 by and between Powertech USA Inc., the "Grantor" and (name of owner or operator)

Trust Bank, the "Trustee".
(name of the trustee)

[illegible]

SCHEDULE B

Description of Property / Financial Instrument

[Surety, Letter of Credit, etc.]

Schedule B is referenced in the Standby Trust Agreement (Section 3) dated August 11, 2020

by and between Powertech USA Inc., the "Grantor,"
(name of owner or operator)

and Truist Bank, the "Trustee."
(name of the trustee)

Description of Property / Financial Instrument:

1. Cash of \$929,708

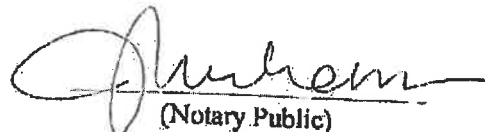
2. _____

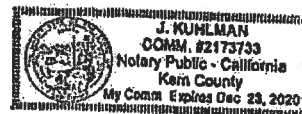
**CERTIFICATE OF ACKNOWLEDGEMENT
FOR
STANDY TRUST FUND AGREEMENT**

STATE OF : CA
COUNT OF : Kern

On this 17th day of August, 2020, before me personally came
John Mays to me known, who, being by me duly sworn, did depose
(Owner or Operator) 85517 12th St.
and say that he/she resides at TRONA, CA 93592, that he/she is
(Address)
COO of PowerTech USA Inc.
(Title) (Corporation)

the corporation described in and which executed the above instrument; that he/she knows
the seal of said corporation; that the seal affixed to such instrument in such corporation
seal; that is was so affixed by order of the Board of Directors of said corporation, and that
he/she signed his/her name thereto by like order.


(Notary Public)



(Seal)

RECEIVED

JUN 01 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
And 2686-2, POWERTECH (USA), INC.)

CERTIFICATE OF SERVICE

IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

I hereby certify on May 28, 2021, originals of the following documents were served upon Rob Duvall, DANR for filing and a true and correct copy of the following documents:

**MOTION TO AMEND PROCEDURAL ORDER
BRIEF IN SUPPORT OF MOTION TO AMEND PROCEDURAL ORDER
PROPOSED AMENDED PROCEDURAL ORDER**

were served upon the following individuals by U.S. Mail, postage prepaid:

Michael M. Hickey Bangs, McCullen, Butler, Foye & Simmons, LLP P.O. Box 2670 Rapid City, SD 57709-2670	Bruce Ellison Law Office of Bruce Ellison P.O. Box 2508 Rapid City, SD 57709
Ron Duvall, DANR 523 E. Capitol Ave. Pierre, SD 57501-8501	David McVey, Board Counsel Office of the Attorney General 1302 E. Highway 14, #1 Pierre, SD 57501-8501
Ann Bailey – Attorney for DANR Water Rights Program Office of the Attorney General 1302 E. Highway 14, #1 Pierre, SD 57501-8501	Rebecca R. Leas Rick V. Summerville 6509 Seminole Lane Rapid City, SD 57702
W. Cindy Gillis Gonzalez Law Firm 522 7 th Street, #202	Sabrina King 917 Wood Avenue Rapid City, SD 57701

Rapid City, SD 57701	
Douglas C. Uptain 3213 W. Main #112 Rapid City, SD 57702	Brenda Gamache 2337 Wilson Avenue Hot Springs, SD 57747
Gena M. Parkhurst P.O. Box 1914 Rapid City, SD 57709	Andy & Forest Johnson 610 Nellie Lane Spearfish, SD 57783
Cindy Brunson 11122 Fort Igloo Road Edgemont, SD 57735	Roger and Cheryl A. Rowe 7950 Dark Canyon Road Rapid City, SD 57702
Rebecca M. Lord P.O. Box 952 Hill City, SD 57745	Lilias Jones-Jarding 418 N 44 th Street Rapid City, SD 57702
Dahl M. McLean 11853 Acorn Ridge Road Spearfish, SD 57783	Marvin Kammerer 22198 Elk Vale Road Rapid City, SD 57701
Frank J. Kloucek 29966 423 rd Avenue Scotland, SD 57059	Rodney G. Knudson P.O. Box 25 Upton, WY 82720
Susan R. Henderson c/o Sword Law Office – Jim Sword 702 Jennings Ave. Hot Springs, SD 57747	Marc Boddicker 13850 Battle Creek Road Hermosa, SD 57744
Rick Draeger 617 St. Cloud Rapid City, SD 57701	Angelia Baldwin P.O. Box 191 Pierpont, SD 57468-0191
Fall River County State's Attorney 906 N. River Street, Suite 301 Hot Springs, SD 57747	Jillian Anawaty 2804 Willow Road Rapid City, SD 57701
Attn: Cindy Messenger Hot Springs Public Library 2005 Library Drive Hot Springs, SD 57747	Gwen E. Kaneshiro William M. Cing Eloise Kaneshiro 1446 Evanston Avenue Hot Springs, SD 57747

Attn: Michelle May Woksape Tipi Oglala Lakota College P.O. Box 310 Kyle, SD 57752	Attn: Ashley Cortney Edgemont Public Library P.O. A / 412nd Edgemont, SD 57735
Shirley Frederick 3411 Idlewild Court Rapid City, SD 57702	Attn: Government Documents Rapid City Public Library 610 Quincy Street Rapid City, SD 57701
Patricia Jenkins & Jeremy Smith 287 Evans Lane Spearfish, SD 57783	Attn: Doris Ann Mertz Custer County Library 447 Crooks Street, Suite 4 Custer, SD 57730
Donald L. Ackerman Sr. 27128 Wonderland Rd. Hot Springs, SD 57747	Tom Emanuel 19 N. Pine Street Vermillion, SD 57069
Edward F. Harvey 1545 Albany Avenue Hot Springs, SD 57747	Juli Ames-Curtis 11936 Hay Creek Road Custer, SD 57730
Rodney Freeman – Prehearing Chair P.O. Box 176 Huron, SD 57350	Karla R. Larive 839 Almond Street Hot Springs, SD 57747
Keith & Kim Alarie 840 Spruce Street, Lot 320 Rapid City, SD 57701	Mark K. Tubbs 10891 River Road Edgemont, SD 57735
Harold Arns 22723 Tawney Court Box Elder, SD 57719	Resident 12560 Beaver Creek Road Hot Springs, SD 57747
Brandon Bad Wound 639 Pahasapa Road Rapid City, SD 57701	Twyla Amiatte P.O. Box 125 Buffalo Gap, SD 57722
Jerri Baker 705 N. River Street Hot Springs, SD 57747	Jacqueline Arpen 2004 Maple Avenue Rapid City, SD 57701

Bernard & Laurie Barnaud 12129 Sagebrush Road Nisland, SD 57762	Brianna Badure P.O. Box 971 Hot Springs, SD 57747
Joe Bassingham 10985 Pleasant Valley Road Hot Springs, SD 57747	Anna K. Ball P.O. Box 46 Piedmont, SD 57769
Mark & Jennifer Belitz 28233 Cascade Road Hot Springs, SD 57747	Thomas F. Barnes 11778 Pleasant Valley Road Custer, SD 57730
Annabelle Between Lodge P.O. Box 118 Oglala, SD 57764	Sudhi Baumberger 12374 Baumberger Road Deadwood, SD 57732
Jerry Bloomer 2146 Minnekahta Avenue Hot Springs, SD 57747	Eddie Berford 241 Galveston Avenue Hot Springs, SD 57747
Wayne & Mary Boots 25588 Mt. Shadow Road Edgemont, SD 57735	Edward H. Binns 408 N. 17 th Street Hot Springs, SD 57747
Rick Britton P.O. Box 53 Hot Springs, SD 57747	Hannah Bochert Sherman Street Hot Springs, SD 57747
Mary R. Burrows 2309 Wilson Avenue Hot Springs, SD 57747	Karl W. Bothul 338 S. 17 th Hot Springs, SD 57747
Mary Kay Carle 5821 Michael Court St Cloud, MN 56303	Michelle Brock 26846 Hwy 385 Hot Springs, SD 57747
Julie & Emily Christensen 603 N. River Street Hot Springs, SD 57747	Wally Caln 690 S. 6 th Street Hot Springs, SD 57747
Charles Cox P.O. Box 84 Hot Springs, SD 57747	Allen Chesson 545 N. River Street Hot Springs, SD 57747

Teresa Daiss 28423 Old Hwy 79 Hot Springs, SD 57747	Sharon & Alex Christie P.O. Box 74 Buffalo Gap, SD 57722
Jeremiah J. Davis 130 E. Centennial St Rapid City, SD 57701	Georgiana Cross 2045 Canton Avenue, #530 Hot Springs, SD 57747
Don DeVries City of Hot Springs 303 N. River Road Hot Springs, SD 57747	Lynda Davies P.O. Box 1204 Hot Springs, SD 57747
Ross Dexter P.O. Box 883 Hot Springs, SD 57747	Joel & Peggy Detmers 13488 Shelter Drive Rapid City, SD 57702
Leora Drapper (Doppen) 13174 Fall River Road Hot Springs, SD 57747	Kendra Dexter 23278 Pebble Court Hot Springs, SD 57747
Rose Elmore P.O. Box 886 Hot Springs, SD 57747	Francis Dicesare 1501 11 th Street Rapid City, SD 57701
M. & T. Engle 115 Scott Street Edgemont, SD 57735	Kathy Durrum 10374 Dryland Drive Edgemont, SD 57735
Elaine Everhart 545 N. River Street Hot Springs, SD 57747	Lisa Freshour 2045 Canton Avenue, #535 Hot Springs, SD 57747
Jeannie Fine P.O. Box 153 Pringle, SD 57773	Wade Evans 27338 Taylor Lane Hot Springs, SD 57747
Ronald Fischer 711 6 th Avenue East Mobridge, SD 57601	Cheryl Fair 12909 Sheps Canyon Road Hot Springs, SD 57747
Gary Friendshuh 27098 Elk Road Buffalo Gap, SD 57722	Jana Firkins 244 Galveston Avenue Hot Springs, SD 57747

Rich & Jackie Gericke 305 S. 14 th Street Hot Springs, SD 57747	Donna M. Fisher 12311 Whitetail Road Deadwood, SD 57732
Mary Goulet 338 S. 5 th Street Hot Springs, SD 57747	Amber Gill 718 Harney Custer, SD 57730
Jesse Grant 1938 Detroit Avenue Hot Springs, SD 57747	May Gozelet 338 S. River Street Hot Springs, SD 57747
Diane Gross P.O. Box 389 Hot Springs, SD 57747	Gardner & Lynn Gray P.O. Box 153 Pringle, SD 57773
William R. Hansen 1201 Oakridge Drive, #250 Fort Collins, CO 80525	Jake Haacke 1026 Evanston Avenue Hot Springs, SD 57747
Joel Hawkins 504 16 th Street Hot Springs, SD 57747	Edward Harvey 1545 Albany Avenue Hot Springs, SD 57747
Kip, Clifford & Virginia Heinzen 309 S. 6 th Street Hot Springs, SD 57747	Ellen Heafner 504 S. 19 th S Hot Springs, SD 57747
Patricia Hernandez 71 Apache Plume Drive Santa Fe, NM 87508	Moses-Ciser & Veronica Hernandez 410 ½ South Street Hot Springs, SD 57747
Luella J. Hicks P.O. Box 144 Buffalo Gap, SD 57722	Carolyn Hertel 27615 Country View Road Hot Springs, SD 57747
Georgia Holmes 838 Birch Hot Springs, SD 57747	Terry Holcomb 105 S. 23 rd Street Hot Springs, SD 57747
BJ Hunter 353 Bears Avenue Hot Springs, SD 57747	Jeremy A. & Roger K. Horton P.O. Box 629 Edgemont, SD 57735

Richardo Jacoue 601 Albany Avenue Hot Springs, SD 57747	Mike & Angela Jarding 27201 Valley Road Hot Springs, SD 57747
Cheryl & John Jarding 202 E. Nebraska Street Rapid City, SD 57701	Patricia Jenkins 287 Evans Lane Spearfish, SD 57783
Dianna Jensen 27999 Cascade Road Hot Springs, SD 57747	Dan & Maxine Jensen 806 Galveston Hot Springs, SD 57747
Terry Johnson 26680 Buffalo Butte Drive Hot Springs, SD 57747	Dawn Johnson P.O. Box 1123 Hot Springs, SD 57747
Lorna Just 21939 464 th Avenue Volga, SD 57071	Angie Keierleber 447 Crook Street, #1 Custer, SD 57730
Don & Kim Kelley 12637 Merritt-Estes Road Deadwood, SD 57732	Corey & Shawntera Kennedy 140 Adonia Lane Rapid City, SD 57701
Jewell Keown 410 S. 4 th Street Hot Springs, SD 57747	Stanley T. Keys 224 E. Minnesota Street, Apt. 205 Rapid City, SD 57702
Judith Klein 238 N. 6th Street Hot Springs, SD 57747	Dennis & Penny Knuckles 12484 Willow Creek Road Custer, SD 57730
Sylvia Lambert P.O. Box 78 Interior, SD 57750	Laurence & Margaret Lamont P.O. Box 53 Buffalo Gap, SD 57722
Dan Lang 27564 Ponderosa Road Hot Springs, SD 57747	Greg Langer P.O. Box 141 Buffalo Gap, SD 57722
Matt Lanz 27927 Cascade Spring Road Hot Springs, SD 57747	Calvin Larive 713 N. River Street Hot Springs, SD 57747

John E. Larson 10374 Dryland Drive Edgemont, SD 57738	Karla Larive P.O. Box 752 Hot Springs, SD 57747
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Carla Rae Marshall P.O. Box 3184 Rapid City, SD 57709	Lisa Masterson 445 S. 6 th Street Hot Springs, SD 57747
DeAnn McComb P.O. Box 254 Hot Springs, SD 57747	James B. McGrath 8403 Pioneer Circle Rapid City, SD 57702
Daria McGrath 8403 Pioneer Circle Rapid City, SD 57701	Billy Jack McLaughlin P.O. Box 25 Buffalo Gap, SD 57722
Jim McKean 27317 Hidden Ct. Hot Springs, SD 57747	Cynthia Messenger 12750 Merchen Road #18 Hot Springs, SD 57747
Steven & Lexxie Meyer 13050 Lakeview Drive Hot Springs, SD 57747	Martin H & Elsa Meyer 102 S. Connor St. Hot Springs, SD 57747
Gary Miles 27528 Rathbun Road Hot Springs, SD 57747	Karen Miller 3119 Turtle Creek Court Rapid City, SD 57703
Marsha Miller 27316 Hidden Center Hot Springs, SD 57747	Neal Miller 486 Almond Street Hot Springs, SD 57747
Glenn Mushaney P.O. Box 272 Hot Springs, SD 57747	Jason Nachtigall 12749 Country Road Hot Springs, SD 57747

Jean Nachtigall 12749 Country Road Hot Springs, SD 57747	Valerie Naylor 23201 Custer Trails Road Rapid City, SD 57702
Casey Neugebauer 27552 S Buffalo Gap Road Oral, SD 57766	Richard Nowlan 202 Dakota St. Hot Springs, SD 57747
Michael O'Rourke 4513 Leo Drive #4 Madison, WI 53716	Madeline Ortego P.O. Box 861 Pine Ridge, SD 57773
Otis Osborn 523 Francis St. Rapid City, SD 57701	Raymond Palmer 27221 Windy Road Hot Springs, SD 57747
Jason Parker 1005 S River St. Hot Springs, SD 57747	Valerie A Parker, MD 4814 Cliff Drive Rapid City, SD 57702
Mary Helen Pederson P.O. Box 646 Hot Springs, SD 57747	Mel Pence 2330 Washington Ave. Hot Springs, SD 57747
Jim Petersen 1203 11 th Street Rapid City, SD 57701	Sarah Peterson 510 Jennings Hot Springs, SD 57747
Sarah & AJ Phillips 4099 S. 570 E Apt. 15F Salt Lake City, UT 84107	Chris Pierce 101 N. Chicago Hot Springs, SD 57747
Rex & Mildred Piper 1609 Detroit Ave. Hot Springs, SD 57747	Linda Pirales 311 S. Wisconsin Ave. Casper, WY 82609
Cindy Powell 1637 38 th St. Rapid City, SD 57702	Gary Putnam 204 4 th Ave. Hot Springs, SD 57747
Jim Red Cloud 13084 Gray Drive Hot Springs, SD 57747	Rick Rewe 28149 Sheps Canyon Road Hot Springs, SD 57747

Charleton T. Reynar 28025 Cascade Road Hot Springs, SD 57747	Dorothy Richards 340 N 23 rd St. Hot Springs, SD 57747
Craig Romey 342 N. 4 th Hot Springs, SD 57747	Elray Rosaaen P.O. Box 125 Buffalo Gap, SD 57722
Katie Roseland 5811 Gemini St. Rapid City, SD 57703	Grant Rush P.O. Box 172 Hot Springs, SD 57747
Betty Runzerel P.O. Box 836 Hot Springs, SD 57747	Frank Ruther 545 N River #413 Hot Springs, SD 57747
Betty Russell P.O. Box 836 Hot Springs, SD 57747	Gail M. Saxonis 745 Happy Hollow Hot Springs, SD 57747
Mary and Jason Salway 910 S 6 th Street Hot Springs, SD 57501	John & Connie Schwarzenbach 2229 Minnekahta Ave. Hot Springs, SD 57747
Gary Schweigert 279 Cascade Road Hot Springs, SD 57747	Marsha Seabolt 4435 Dolphin Rapid City, SD 57701
Peggy Semler P.O. Box 245 Hot Springs, SD 57747	Robert V. Shannon 24705 Timber Ridge Road Hermosa, SD 57744
Barbara Sharp 445 S. 3 rd Street Hot Springs, SD 57747	Russ Sick 12619 Booke Canyon Road Hot Springs, SD 57747
Ashley Simpson P.O. Box 587 Hot Springs, SD 57747	Jerry Simunter 22769 Jenny Road Hot Springs, SD 57747
Charlene J. Smith P.O. Box 481 Rapid City, SD 57709	J. Smith 2728 Hoot Brook Hot Springs, SD 57747

Jeremey Smith 287 Evans Lane Spearfish, SD 57783	Maura Smith 306 Joplin #8 Hot Springs, SD 57747
Jason & Mary Solway P.O. Box 424 Allen, SD 57714	Dale Steineke 13130 Greg Dr. Hot Springs, SD 57747
Darla Stevens 1622 Evanston Hot Springs, SD 57747	Susan Stolarcek P.O. Box 686 Hot Springs, SD 57747
Richard Stone 12959 Buffalo Circle Hot Springs, SD 57747	Lila Streff 12379 Beaver Den Dr. Custer, SD 57730
Linda M. Styger 11962 Sundance Dr. Hot Springs, SD 57747	Michelle Sugeg P.O. Box 139 Hot Springs, SD 57747
Dennis Sutherland 2202 University Hot Springs, SD 57747	Alison Swan 703 N. River Street Hot Springs, SD 57747
Paula Tonemah 306 Thompson Hot Springs, SD 57747	Niklaus Towne 28423 Old Highway 79 Hot Springs, SD 57747
Lorraine Tucker P.O. Box 1129 Hot Springs, SD 57747	Mary Ellen Uptain 3213 W. Main #112 Rapid City, SD 57702
Judith R. Van Cleave 7711 Dark Canyon Road Rapid City, SD 57702	Milli Vong 333 N. River Street Hot Springs, SD 57747
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JUN 21 2021

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 17, 2021

Jim Hutmacher, Chairman
DANR – Water Management Board
Foss Building
523 East Capitol Ave.
Pierre, SD 57501-3182

Re: *In the Matter of Water Permit Application Nos. 2685-2 and 2686-2, and In the Matter of the 2012 Groundwater Discharge Plan Application Submitted by Powertech (USA) Inc.*

Dear Chairman Hutmacher:

Enclosed please find a copy of the Water Right Program's and Surface Water Quality Program's Response in Opposition to Proposed Amendment of the Procedural Order in regard to the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/jm
Enclosures

cc/encl: All Parties of Record Noted in Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

RECEIVED
JUN 21 2021
WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER PERMIT)	
APPLICATIONS NOS. 2685-2 AND)	
2686-2, POWERTECH (USA), INC.)	WATER RIGHT PROGRAM'S AND
	SURFACE WATER QUALITY
	PROGRAM'S RESPONSE IN
IN THE MATTER OF THE 2012)	OPPOSITION TO PROPOSED
GROUNDWATER DISCHARGE PLAN)	AMENDMENT OF THE
APPLICATION SUBMITTED BY)	PROCEDURAL ORDER
POWERTECH (USA), INC.)	

Pending before the Board is Powertech's Motion to Amend the Procedural Order in which Powertech proposes a number of quickly approaching deadlines and a resumption, at the Water Management Board's regularly scheduled meeting in October 2021, of the previously-stayed hearing held to consider Powertech's pending applications. For the reasons set forth below, the Water Rights Program and the Surface Water Quality Program² (Programs) oppose the proposed amendments.

¹ On April 19, 2021, the South Dakota Department of Environment and Natural Resources (DENR) became the South Dakota Department of Agriculture and Natural Resources (DANR). Accordingly, the Department name has been altered.

² During the merger of the South Dakota Department of Environment and Natural Resources and the South Dakota Department of Agriculture, the Groundwater Quality Program was subsumed by the Surface Water Quality Program. Thus, while the underlying authority to review the application, propose a recommendation and conditions, and issue and oversee the pertinent permit have not been altered, the Program name has been changed.

First, the Programs disagree with the inference left by Powertech's motion that, but for the acquisition of the necessary state permits, it would be able to commence its mining activity.³ As provided in the brief submitted by the Programs setting forth the procedural background and current status of this matter, and in Powertech's brief in support of its instant motion, Powertech is required to obtain several federal permits before it may commence its project.

As previously set forth, Powertech is required to obtain a materials license from the Nuclear Regulatory Commission. Powertech submitted its application to the NRC on August 10, 2009. According to the NRC Application Review Schedule, licensing action was completed on April 8, 2014. *See* Application Review Schedule for Dewey Burdock at <https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock/dewey-burdock-schedule.html>. The matter was then brought before the Atomic Safety Licensing Board (ASLB). Review was then sought in the United States Court of Appeals for the District of Columbia Circuit. In 2018, the Court of Appeals remanded the matter to the NRC for further proceedings. *Oglala Sioux Tribe v.*

³In its brief, Powertech asserts that "Powertech submitted its Ground Water Discharge Plan Application on March 9, 2012, and received conditional approval of the same on December 12, 2012." Brief in Support of Motion to Amend Procedural Order dated May 28, 2021, p. 2. This statement, however, is inaccurate. Powertech has not received conditional approval of its Groundwater Discharge Plan Application. Rather, the Secretary has recommended conditional approval. *See* <https://denr.sd.gov/powertech/wmb/NoticeofRecommendationGWDP.pdf>. The purpose of this hearing is to determine whether the application should, in fact, be approved.

U.S. Nuclear Regulatory Commission, et al., 896 F.3d 520 (D.C. Cir. 2018). After subsequent agency proceedings, the matter is currently before the Court of Appeals once again. See *Oglala Sioux Tribe, et al. v. U.S. Nuclear Regulatory Commission, et al.*, No. 20-1489, D.C. Cir. Petitioners' Brief was submitted on April 19, 2021. Respondent's brief was filed on June 3, 2021. The remainder of the briefing schedule is as follows: Petitioners' reply brief is due July 1, 2021; the deferred appendix is due July 8, 2021; and the final briefs are due July 22, 2021. Petitioners are alleging a variety of violations involving NEPA and NHPA as well as errors in the technical analysis of the license and the final supplemental environmental impact study.

Powertech is also required to obtain from the Environmental Protection Agency permits for the Class III and Class V wells to be used in the project. The permits were issued by the EPA on November 24, 2020, with an effective date of December 24, 2020. See <https://www.epa.gov/uic/epa-dewey-burdock-class-iii-and-class-v-injection-well-final-area-permits>. However, the matter was appealed to the Environmental Appeals Board (EAB). Given the change in presidential administration, EPA requested a stay of proceedings. On February 23, 2021, the EAB granted a 60 day stay and required a status update on April 19, 2021. On April 19, 2021, EPA filed a status report and requested a further stay of proceedings. See Status Report and Motion for Stay of Proceedings, dated April 19, 2021 at [https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/\\$File/R8%20Status%20](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/$File/R8%20Status%20)

[0Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf](#). In its report and motion, EPA explained that NRC was designated as the lead agency for issues involving NHPA and that, given those issues were currently being reviewed by the D.C. Court of Appeals, the outcome could result in EPA requesting a remand of these permits. In its Motion, EPA contends that a stay would not result in prejudice to Powertech as Powertech has yet to obtain the necessary state permits to commence the project. Though the parties in the proceeding before the EAB have subsequently filed several other pleadings and responses, the EAB issued an Order on June 2, 2021, reiterating that the matter is currently stayed.

Powertech must also obtain an aquifer exemption from the EPA. The aquifer exemption was requested in January of 2013 and EPA issued the grant of the exemption on November 24, 2020. It is currently being appealed before the United States Court of Appeals for the Eighth Circuit. *See Oglala Sioux Tribe v. U.S. Environmental Protection Agency*, No. 21-1167. Though initially scheduled for briefing, the matter is currently being held in abeyance pending the outcome of the agency review of the Class III and Class V permits. The Eighth Circuit has ordered that the parties submit a status report by July 12, 2021.

Finally, a portion of the project involves federal lands. Accordingly, Powertech must obtain the approval of the Plan of Operations by the Bureau of Land Management (BLM). BLM accepted public comments on the Plan of

Operations in August of 2020. No further information was found regarding the status of this approval.

While the NRC permit has issued and EPA has granted the aquifer exemption, it cannot be said that final agency action has occurred with respect to the Class III and Class V permits. *See* 40 C.F.R. § 124.15(b) (providing “A final permit decision. . . shall become effective 30 days after the service of notice of the decision unless . . . [r]eview is requested on the permit [by the Environmental Appeals Board]” *See also* 40 C.F.R. § 124.19(m). In this instance, review by the EAB was requested, and thus, the permits are not effective and will not be effective until such time as the EAB has ruled. Moreover, Powertech may not conduct activities on a portion of the site until it receives approval from the BLM. Thus, while Powertech has moved through a portion of the federal permitting process, the process is not finalized.

While there is no legal impediment to restarting these proceedings at this time, there is no legal obligation to do so either. It is within the Board’s discretion to determine the appropriate time to resume these proceedings. An examination of the recitation of the federal proceedings illustrates not only how lengthy federal proceedings can be, but also how a permit can be remanded and required to be altered. The Board would be within its authority to determine that it is more efficient to continue the stay of these proceedings until such time as the permits are finalized or even until such time as the federal appeals have concluded.

Moreover, Powertech's proposed amendments to the procedural order are inadequate and far too time restrictive in many respects. A number of considerations that are not included in Powertech's proposal must be entertained and determinations made in the course of setting the schedule to resume these proceedings. For instance, it is clear that the contact information for over 100 of the 300+ intervenors is not accurate. The Programs' last mailing resulted in a return of 108 envelopes as undeliverable. While it may be common sense to update one's contact information in these situations, intervenors/petitioners were not admonished to do so. Additionally, it is believed that some intervenors/petitioners have passed away. The Programs would urge the Board to make a determination as to how to proceed regarding these intervenors/petitioners who have not provided current contact information.

Powertech proposes that supplementation of discovery and experts be completed 45 days prior to the hearing date. While the Programs agree that there should be a limited period of supplementation of discovery, mere supplementation is not the reality of the situation when it comes to experts. The expert originally designated by Water Rights who also authored the initial report regarding the applications, Ken Buhler, has since retired. Water Rights will be unable to call Mr. Buhler to testify. Accordingly, another engineer must be assigned to review the initial report and author his or her findings in a new report. Based upon that review, the current Chief Engineer will have to issue a

new recommendation.⁴ It is highly probable that other parties will also have to secure new experts and have those experts review the materials and provide their own reports. While there should not be an unlimited time to secure experts and produce expert reports, it will take more than the approximate 45 days provided under Powertech's proposal.⁵

The Water Rights Program would request a minimum of ninety days from the date the Board issues an order that would result in the resumption of these proceedings to complete these reports and recommendations given the fact that this is the busiest time of the year for the Program. A number of tasks can only be completed during the warmer months and some of those important tasks were unable to be completed last year given the COVID-19 pandemic. Additionally, most of South Dakota is currently in a drought thus requiring more manpower to manage complaints and an increased number of other filings and necessary on-site visits.

⁴ Chief Engineer, Garland Eberle, who initially recommended approval has retired. His successor, Jeanne Goodman, adopted Chief Engineer Eberle's recommendation after consultation with Mr. Buhler and reviewing his report. The position of the Chief Engineer is now held by Eric Gronlund. While Chief Engineer Gronlund has reviewed Mr. Buhler's report, he does not have the opportunity to consult with Mr. Buhler. Accordingly, Chief Engineer Gronlund will necessarily have to base his recommendation upon the most current assessment provided by the engineer assigned to conduct the review.

⁵ Under Powertech's proposal, the hearing would be held at October 6, 2021. "Supplemental" expert disclosure would be due 45 days prior (August 20, 2021). Assuming that a scheduling order would not issue until the Board's July 6 meeting, that would allow the parties 45 days to secure experts and provide expert reports.

Given that it is the report and the recommendation upon which the proceedings are based, it makes little sense to conduct supplemental discovery or “supplemental” disclosures of experts until such time as those reports and recommendations are issued.

Additionally, under the previous procedural order, the intervenors/petitioners were not only allowed to elect their level of participation, but they were also able to change that selection until a reasonable time prior to the proceedings. As previously noted, the Board received testimony from all Class B participants and had just commenced the taking of evidence from the Class A participants. Determinations should be made as to whether intervenors/petitioners should be allowed to re-elect their level of participation – especially once a decision is made regarding contact information and how to proceed if current contact information is not provided. Depending on what the Board concludes and what contact information is received or not received, it may be necessary to re-open the Class B testimony portion of these proceedings.

Powertech’s proposed order also fails to account for the need for the Board to determine the location of the hearings. Previously, the Board determined that the hearings should be held in Rapid City, SD. The Programs believe that the Board should revisit this determination in light of technological issues and the guidelines issued by the Centers for Disease Control regarding COVID-19. Though many have received vaccination, there are still many who have not been vaccinated. The current CDC guidelines vary based upon

vaccination status. Accordingly, the hearings must be held in a location that would allow for at least some level of social distancing. Furthermore, not every location has the same technologic capabilities. While arrangements could be made in many locations to livestream the audio of the hearings, not every location will afford the opportunity to allow Board members or participants to appear remotely. Over the last year, some investigation has been done to locate a facility outside of Pierre, SD that would afford the space necessary for some social distancing and the technological capability to allow Board members to appear remotely without success. Thus, the Board should revisit the determination of the location of the hearings and what technology should be available during the course of these hearings.

Finally, the composition of the Board has changed somewhat since the commencement of these proceedings. A new Board member has been appointed who was not in attendance when the Board heard testimony from the Class B participants or the commencement of evidence from the Class A participants. It is also likely that those Board members who were present may not recall the evidence that was received approximately eight years ago. To that end, transcripts of the prior proceedings should be produced. Time should be allotted for the production of those transcripts and for Board members and the parties to review. Under the proposed amendment, there would only be 90 days allotted for this. Inquiry should be made as to how long it would take the court reporter(s) to produce the necessary transcripts before

setting the schedule in order to afford sufficient time for review before the resumption of taking evidence.

This matter has been stayed for approximately eight years at the request of Powertech so that it could obtain the necessary federal permits. During that time, Powertech's federal permits still have not been finalized. While Powertech feels that the federal process is far enough along to warrant resumption of the state permitting process, the Board may not find it to be in the interests of efficiency to proceed prior to the finalization of the federal permits given the eight-year interruption. Furthermore, it seems only fair to allow sufficient time (more than 60-90 days) for the parties to prepare for hearing after an eight-year hiatus. For these reasons, the Programs oppose Powertech's proposed amendments to the procedural order and will be ready to discuss these concerns whenever the matter is scheduled for hearing.

Dated this 17th day of June, 2021.



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JUN 21 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	
APPLICATIONS NOS. 2685-2 AND)	
2686-2, POWERTECH (USA), INC.)	
)	CERTIFICATE OF
)	SERVICE
IN THE MATTER OF THE 2012)	
GROUNDWATER DISCHARGE PLAN)	
APPLICATION SUBMITTED BY)	
POWERTECH (USA), INC.)	

The undersigned hereby certifies that a true and correct copy of WATER RIGHT PROGRAM'S AND SURFACE WATER QUALITY PROGRAM'S RESPONSE IN OPPOSITION TO PROPOSED AMENDMENT OF THE PROCEDURAL ORDER in the above entitled matter was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on June 17, 2021:

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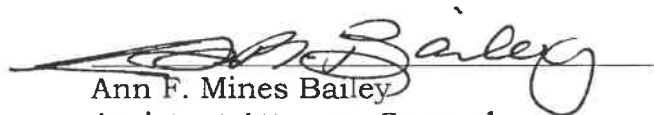
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And on the same date the original was mailed interoffice to Ron Duvall, Joe Foss Building, 523 E. Capitol Ave, Pierre, SD 57501, a copy was mailed interoffice to Jim Hutmacher, Chairman, DANR – Water Management Board Foss Building, 523 East Capitol Ave., Pierre, SD 57501 and a copy was hand delivered to David McVey, Assitant Attorney General, Counsel for Water Mangement Board, Office of the Attorney General 1302 E. HWY 14, Suite 1, Pierre, SD 57501.



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JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED

JUN 30 2021

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 29, 2021

Jim Hutmacher, Chairman
DANR – Water Management Board
Foss Building
523 East Capitol Ave.
Pierre, SD 57501-3182

Re: *In the Matter of Water Permit Applications Nos. 2685-2 and 2686-2, and In the Matter of the 2012 Groundwater Discharge Plan Application Submitted by Powertech (USA) Inc.*

Dear Chairman Hutmacher:

Enclosed please find a copy of the Notice of Entry of Order, the Order Regarding Motion to Amend Procedural Order and the Certificate of Service in regard to the above-entitled matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. M. McVey".

David M. McVey
Assistant Attorney General

DMM/mn
Enclosures

cc/encl: All Parties of Record Noted in Certificate of Service

RECEIVED

JUN 30 2021

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER PERMIT)
APPLICATIONS NOS. 2685-2 AND)
2686-2, POWERTECH (USA), INC.)

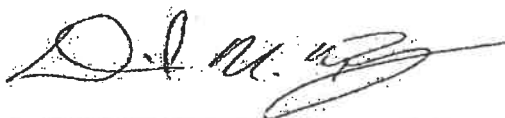
NOTICE OF ENTRY OF ORDER

IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

TO: ALL PARTIES OF RECORD as detailed in the attached Certificate of Service:

Notice is hereby given that on June 24, 2021, the Water Management Board, through Hearing Officer Rodney Freeman, entered its Order Regarding Motion to Amend Procedural Order in the above-entitled matters. This Order was filed with the Department of Agriculture and Natural Resources. A true and correct copy of the Order is attached and hereby served upon you.

Dated this 29th day of June 2021.



David M. McVey
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Telephone: (605) 773-3215
Counsel for Water Management Board

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JUN 30 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	
APPLICATIONS NOS. 2685-2 AND)	
2686-2, POWERTECH (USA), INC.)	ORDER REGARDING
)	MOTION TO AMEND PROCEDURAL
	ORDER
IN THE MATTER OF THE 2012)	
GROUNDWATER DISCHARGE PLAN)	
APPLICATION SUBMITTED BY)	
POWERTECH (USA), INC.)	

On May 28, 2021, Powertech filed a Motion to Amend Procedural Order along with a Brief in Support of the Motion and a proposed amended Procedural Order. On June 17, 2021, the Water Rights Program and the Surface Water Quality Program filed a Response in Opposition to Powertech's Motion.

Having reviewed the briefs submitted by the Applicant and the DANR programs, it seems that it would be appropriate for the Water Management Board (the "Board") to consider the Applicant's Motion *en masse*. Considering the complexity of the issues, the number of interested parties and the due process issues involved, it is hereby ORDERED that this Motion be argued at the regularly scheduled October meeting of the Board (October 6-7, 2021). Further, it is ORDERED that all interested parties file memoranda in support or opposition or motions, in writing delivered by regular mail, no later than five o'clock p.m. on August 1, 2021 addressed to:

Ron Duvall
Department of Agriculture and Natural Resources
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501

Responses to any motions must be filed at the same address no later than five o'clock p.m. on September 1, 2021 filed

Dated this June 24th, 2021.

A handwritten signature in dark ink, appearing to read 'Rodney Freeman', is written over a horizontal line.

Rodney Freeman, Hearing Officer
South Dakota Water Management Board

RECEIVED

JUN 30 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATIONS NOS. 2685-2 AND)
2686-2, POWERTECH (USA), INC.)

CERTIFICATE OF
SERVICE

IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

The undersigned hereby certifies that true and correct copies of the
NOTICE OF ENTRY OF ORDER and ORDER REGARDING MOTION TO
AMEND PROCEDURAL ORDER in the above entitled matter were served upon
the following by enclosing the same in envelopes with first class postage
prepaid and affixed thereto, and depositing said envelopes in the United States
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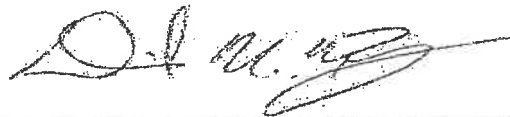
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**STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD**

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
2686-2 POWERTECH (USA) INC.	) MOTION TO PERMIT
	) ELECTRONIC SERVICE
IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

RECEIVED

JUL 06 2021

**WATER RIGHTS
PROGRAM**

The Clean Water Alliance (CWA) hereby respectfully moves this Board for an order or authorization for the parties and the intervenors to serve each other with pleading electronically where possible, in lieu of sending paper copies by U.S. Mail.¹

With approximately 180 intervenors, allowing for electronic service will substantially reduce the cost of duplication,² mailing, and be a waste of paper of documents which, when received, will not have to be then scanned to become part of the official record in this matter.

Dated this 30th day of June, 2021.

Respectfully submitted



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¹ Under this proposal, a paper original copy of all pleadings or submissions would still need to be mailed to the Chief Engineer for filing.

² This one page Motion and accompanying Certificate of Service for this pleading alone requires the making of nearly 1,500 copies for service.

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

RECEIVED

JUL 06 2021

WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER PERMIT
APPLICATIONS 2685-2 2686-2
POWERTECH (USA) INC.

CERTIFICATE OF SERVICE

IN THE MATTER OF THE 2012
GROUNDWATER DISCHARGE PLAN
APPLICATION SUBMITTED BY
POWERTECH (USA) INC.

It is hereby certified that a true a correct copy of CWA's Motion for Electronic Service was mailed for filing on the 1st day of July, 2021, U.S. postage paid and addressed to: Chief Engineer, DANR, 523 E. Capitol Ave., Pierre, SD 57501 and served by US mail to:

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Shirley	Frederick	5216	Rapid City	SD	57701
Rodney	Freeman	PO Box 176	Huron	SD	57350

Lisa	Freshour	2045 Canton Ave., #535	Hot Springs Buffalo	SD	57747
Gary	Friendshuh	27098 Elk Rd.	Gap	SD	57722
Brenda	Gamache	2337 Wilson Ave.	Hot Springs	SD	57747
Rich & Jackie	Gericke	305 S. 14th St.	Hot Springs	SD	57747
Cindy Gillis	Gonzalez Law Firm	522 - 7th Street, #202	Rapid City	SD	57701
May	Gozelet	338 S. River St.	Hot Springs	SD	57747
Jesse	Grant	1938 Detroit Ave.	Hot Springs	SD	57747
Gardner & Lynn	Gray	20228 Avalanche Rd.	Whitewood	SD	57793
Diane	Gross	27426 Cedar Rd.	Hot Springs	SD	57747
Matthew Naasz	Gunderson Palmer	PO Box 8045	Rapid City	SD	57709
Jake	Haacke	1026 Evanston Ave.	Hot Springs	SD	57747
William	Hansen	1201 Oakridge Dr., #250	Fort Collins	CO	80525
Edward	Harvey	1545 Albany Ave.	Hot Springs	SD	57747
Joel	Hawkins	1901 Wilson	Hot Springs	SD	57747
Ellen	Heafner	504 S. 19th St.	Hot Springs	SD	57747
Kip, Clifford & Virginia	Heinzen	309 S. 6th St.	Hot Springs	SD	57747
Susan	Henderson	Box 731	Edgemont	SD	57735
Patricia	Hernandez	71 Apache Plume Dr.	Santa Fe	NM	87508
Carolyn	Hertel	27615 Country View Rd.	Hot Springs	SD	57747
Michael	Hickey	Bangs McCullen, PO Box 2670	Rapid City	SD	57709-2670
Luella	Hicks	PO Box 144	Buffalo Gap	SD	57722
Terry	Holcomb	105 S. 23rd St.	Hot Springs	SD	57747
Georgia	Holmes	838 Birch	Hot Springs	SD	57747
Jeremy & Roger	Horton	PO Box 629	Edgemont	SD	57735
BJ	Hunter	353 Bears Ave.	Hot Springs	SD	57747
Richardo	Jacoue	601 Albany Ave.	Hot Springs	SD	57747
Cheryl & John	Jarding	2469 Broadmoor Ct.	Rapid City	SD	57702
Mike & Angela	Jarding	27201 Valley Rd.	Hot Springs	SD	57747

Dianna	Jensen	27999 Cascade Rd.	Hot Springs	SD	57747
Patricia Jenkins and	Jeremy Smith	287 Evans Ln.	Spearfish	SD	57783
Andy & Forest	Johnson	610 Nellie Lane	Spearfish	SD	57783
Terry	Johnson	26680 Buffalo Butte Dr.	Hot Springs	SD	57747
Dawn	Johnson	PO Box 1123	Hot Springs	SD	57747
Lorna	Just	21939 - 464th Ave.	Volga	SD	57071
Marvin	Kammerer	22198 Elk Vale Rd.	Rapid City	SD	57701
Gwen	Kaneshiro	1446 Evanston Ave.	Hot Springs	SD	57747
Angie	Keierleber	447 Crook St., #1	Custer	SD	57730
Don & Kim	Kelley	12637 Merritt-Estes Rd.	Deadwood	SD	57732
Jewell	Keown	410 S. 4th St.	Hot Springs	SD	57747
Stanley	Keys	224 E. Minnesota St.,	Apt. 205	Rapid City	SD
Sabrina	King	PO Box 1538	Lander	WY	85250
Judith	Klein	238 N. 6th St.	Hot Springs	SD	57747
Frank J.	Kloucek	29966 - 423rd Avenue	Scotland	SD	57059
Dennis & Penny	Knuckles	12484 Willow Creek Rd.	Custer	SD	57730
Rodney	Knudson	PO Box 25	Hulett	WY	82720
Sylvia	Lambert	PO Box 78	Interior	SD	57750
Margaret &			Buffalo		
Laurence	Lamont	PO Box 53	Gap	SD	57722
Dan	Lang	27564 Ponderosa Rd.	Hot Springs	SD	57747
Greg	Langer	PO Box 141	Buffalo Gap	SD	57722
Karla	LaRive	839 Almond Street	Hot Springs	SD	57747
Calvin	LaRive	142 N. 6th St.	Hot Springs	SD	57747
John E.	Larson	10374 Dryland Dr.	Edgemont	SD	57738
Karla	Larvie	PO Box 752	Hot Springs	SD	57747
Robert	Lee	338 S. 5th St.	Hot Springs	SD	57747
Rebecca M.	Lord	23789 Maggie Way	Rapid City	SD	57702
Pam	Ludweg	810 Gordon	Custer	SD	57730
Carla Rae	Marshall	PO Box 3184	Rapid City	SD	57709
Lisa	Masterson	445 S. 6th St.	Hot Springs	SD	57747
DeAnn	McComb	PO Box 254	Hot Springs	SD	57747
James	McGrath	8403 Pioneer Circle	Rapid City	SD	57702

Daria	McGrath	8403 Pioneer Circle	Rapid City	SD	57702
Dahl	McLean	11853 Acorn Ridge Rd.	Spearfish	SD	57783
Cynthia	Messenger	12750 Merchen Rd., #18	Hot Springs	SD	57747
Martin & Elsa	Meyer	102 S. Connor St.	Hot Springs	SD	57747
Steven & Lexxie	Meyer	13050 Lakeview Dri.	Hot Springs	SD	57747
Gary	Miles	27528 Rathbun Road	Hot Springs	SD	57747
Neil	Miller	846 Almond St.	Hot Springs	SD	57747
Marsha	Miller	27316 Hidden Center	Springs	SD	57747
Valerie	Naylor	23201 Custer Trails Rd.	Rapid City	SD	57702
Casey	Neugebauer	27552 S. Buffalo Gap Rd.	Oral	SD	57766
Ricard	Nowlan	421 Galveston	Hot Springs	SD	57747
Ann F. Mines Bailey	Office of Atty. Genl.	1302 E. Highway 14, #1	Pierre	SD	57501
Michael	O'Rourke	4513 Leo Drive., #4	Madison	WI	53716
Otis	Osborn	523 St. Francis St.	Rapid City	SD	57701
Raymond	Palmer	27221 Windy Rd.	Hot Springs	SD	57747
Jason	Parker	1005 S. River St.	Hot Springs	SD	57747
Valerie A.	Parker, MD	4814 Cliff Dr.	Rapid City	SD	57702
Gena M.	Parkhurst	PO Box 1914	Rapid City	SD	57709
Mary Helen	Pederson	437 N. 6th St.	Hot Springs	SD	57747
Mel	Pence	2330 Washington Ave.	Hot Springs	SD	57747
Jim	Petersen	1203 - 11th St.	Rapid City	SD	57701
Sarah	Peterson	510 Jennings	Hot Springs	SD	57747
Sarah & AJ	Phillips	4099 S. 570 E., Apt. 15F	Salt Lake City	UT	84107
Chris	Pierce	101 N. Chicago	Hot Springs	SD	57747
Rex & Mildred	Piper	1609 Detroit Ave.	Hot Springs	SD	57747
Cindy	Powell/Girard	1637 - 38th St.	Rapid City	SD	57702
Steve	Preheim	2317 Washington Ave.	Hot Springs	SD	57747
	Resident	12560 Beaver Creek Rd.	Hot Springs	SD	57747
Rick	Rewe	28149 Sheps Canyon Rd.	Hot Springs	SD	57747

Charleton	Reynar	28025 Cascade Rd.	Hot Springs	SD	57747
Dorothy	Richards	340 N. 23rd St.	Hot Springs	SD	57747
Craig	Romey	342 N. 4th	Hot Springs	SD	57747
Elray	Rosaaen	PO Box 125	Buffalo Gap	SD	57722
Katie	Roseland	5811 Gemini St.	Rapid City	SD	57703
Roger and Cheryl	Rowe	7950 Dark Canyon Road	Rapid City	SD	57702
Betty	Runzerel	PO Box 836	Hot Springs	SD	57747
Betty	Russell	PO Box 836	Hot Springs	SD	57747
Frank	Ruther	545 N. River St., #413	Hot Springs	SD	57747
Gail	Saxonis	745 Happy Hollow	Hot Springs	SD	57747
John & Connie	Schwarzenbach	2229 Minnekahta Ave.	Hot Springs	SD	57747
Marsha	Seabolt	4435 Dolphin	Rapid City	SD	57701
Peggy	Semler	PO Box 245	Hot Springs	SD	57747
Robert	Shannon	24705 Timber Ridge Rd.	Hermosa	SD	57744
Barbara	Sharp	445 S. 3rd St.	Hot Springs	SD	57747
Jerry	Simunter	22769 Jenny Rd.	Hot Springs	SD	57747
Charlene	Smith	PO Box 481	Rapid City	SD	57709
Dale	Steineke	13130 Greg Dr.	Hot Springs	SD	57747
Susan	Stolarcek	PO Box 686	Hot Springs	SD	57747
Lila	Streff	12376 Beaver Den Dr.	Custer	SD	57730
Rebecca Leas and Rick	Summerville	21287 Sandal Foot Dr.	Venice	FL	34293
Dennis	Sutherland	2202 University	Hot Springs	SD	57747
Rebecca	Terk	8265 Dark Canyon Road	Rapid City	SD	57702
Jo Beth	Troxel	303 E. Morse St.	Callaway	NE	68825
Mark	Tubbs	10891 River Rd.	Edgemont	SD	57735
Douglas	Uptain	1805 W. 10th St.	Loveland	CO	80537
Mary Ellen	Uptain	1805 W. 10th St.	Loveland	CO	80537
Judith	Van Cleave	7711 Dark Canyon Rd.	Rapid City	SD	57702
Milli	Vong	146 S. 19th	Hot Springs	SD	57747
Alan	Walker	303 Cedar St.	Buffalo Gap	SD	57722

Kellee	Walton	1005 S. River St.	Hot Springs	SD	57747
Susan	Watt	PO Box 790	Hot Springs	SD	57747
Wendolyn	Weimers	306 N. 19th St.	Hot Springs	SD	57747
Debra	Weishaupl	110 N. 3rd St.	Hot Springs	SD	57747
Charmaine	White Face	PO Box 2003	Rapid City	SD	57709
Bette	Wilkinson	3718 Redwood St.	Rapid City	SD	57701
Jerry	Wilson	30959 Frog Creek Rd.	Vermillion	SD	57069
Russell	Witte	301 S. Chicago	Hot Springs	SD	57747
Julia	Woodard	639 Pahasapa Rd.	Rapid City	SD	57701
Robin	Wynia	12750 Merchen Rd.	Hot Springs	SD	57747
Elton	Zornes	12742 Highway 18	Hot Springs	SD	57747
Alica		PO Box 861	Pine Rige	SD	57773


 Lillias Jones Jarding

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WATER RIGHTS
PROGRAM

**STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD**

IN THE MATTER OF WATER)	
PERMIT APPLICATIONS 2685-2)	
2686-2 POWERTECH (USA) INC.	)	CWA RESPONSE AND
	)	OPPOSITION TO MOTION
IN THE MATTER OF THE 2012	)	TO AMEND SCHEDULING
GROUNDWATER DISCHARGE PLAN	)	ORDER
APPLICATION SUBMITTED BY)	
POWERTECH (USA), INC.)	

INTRODUCTION.

Powertech (PT), a foreign uranium mining and processing investment company, has moved the Water Management Board (Board) to amend its 2013 scheduling order which continued the Hearing on PT's Application for Water Appropriation Permits and its 2012 Ground Water Discharge Plan for a proposed large-scale uranium in-situ leach (ISL) mines and a regional yellow-cake producing processing plant in the Dewey-Burdock area of the southern Black Hills. Powertech further wants the Board to establish a number of quickly approaching pre-hearing dates, appointment of a pre-hearing chairman, and restart the Hearing in the Fall of 2021. See, Motion to Amend Scheduling Order.

Intervenor Clean Water Alliance (CWA) opposes Powertech's Motion in its entirety since restarting the Hearing would be premature in light of pending and incomplete federal permit license applications and as such contrary to the

principles of judicial economy. The Motion should be denied and the 2013 Order continuing the Hearing remain in effect.

Powertech's Motion is based upon the incorrect assertion that the federal licensing and approval process has been completed.

Powertech has moved this Board to restart the Hearing on its Applications for Water Appropriation Permits and approval of its hazardous waste disposal plan, contending that it has obtained final permits and assurance approval from the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA). It infers, therefore, that if it were to obtain the requisite State permits from this Board (and then the Board of Minerals and Environment), that it has all needed federal licenses and approvals to begin operations. As discussed below, neither is the actual status of the current permitting process.¹

The ISL mining company seeks to restart the Hearing by urging this Board to adopt its narrow perspective on what the Board meant to be the conditions precedent in the 2013 Order prior to such a restart and the context of both.

The record before this Board reflects that while Powertech formally filed the Motion to Continue in 2013, it followed the already expressed consensus of the

¹ In a further inaccurate proffer, Powertech represented to this Board that the Ground Water Discharge Plan Application had received "conditional approval" by the Water Rights Program. See, Brief in Support of Motion to Amend Procedural Order dated May 28, 2021, p. 2. As the Water Rights and the Surface Water Quality Programs noted in their Response to Powertech's Motion, "the purpose of this hearing is to determine whether the application should, in fact, be approved. See, Water Rights and Waste Disposal Programs' [WR&WDP] Response in Opposition to Motion to Proposed Amendment of the Procedural Order, p. 2, fn.3.

parties and intervenors. As the Board in its 2013 Order noted: “**all intervenors** who recently filed submissions regarding the Board’s jurisdiction and authority over Powertech’s pending applications **have requested** that the **Board continue** the hearing **pending resolution of Powertech’s pending federal applications** regarding the Dewey-Burdock Project. **Intervenor’s position is consistent with their previous motions to continue the hearing this matter.**” (Emphasis added).

The 2013 Board’s Order granted the continuance motion “**until resolution** by the federal agencies of Powertech’s pending applications for the Dewey-Burdock project.” (Emphasis added). Despite Powertech’s effort to persuade this Board that it has received final permits and approvals from all necessary federal agencies necessary to begin its mining and milling operations, the Code of Federal Regulations defines what actually constitutes a resolution constituting a final federal agency action: “A final permit decision...shall become effective 30 days after the service of the notice of the decision unless...[r]eview is requested on the permit [to the Environmental Appeals Board]...” 40 C.F.R. §124.15(b). See, also, 40 C.F.R. §124.19(m). Thus, any permit under appeal would not be finalized.

In a status hearing regarding Powertech’s pending large scale mining permit application, held earlier this year before the Department of Agriculture and Natural Resources (DANR)’s Board of Minerals and Environment (related Hearing also

continued by the Parties in 2013), an Assistant Attorney General advised that Powertech's related federal permit process was yet to be completed. The AAG described how the mining permit before the Nuclear Regulatory Commission (NRC) was currently under appeal to the U.S. Court of Appeals on the sufficiency of the limited Tribal consultations held and the pending arrangements for consultation with local Tribal Nations. As the Water Rights & Waste Disposal Programs (WR&WDP) reported to the Board in their Response to Powertech's instant Motion, that appeal also involves raised issues including National Environmental Protection Act (NEPA) and National Historic Preservation Act (NHPA) violations, as well as errors in the technical analysis of the license and Final Supplemental Environmental Impact Study. WR&WDP Response, p. 2. The Programs' Response further noted that the pending appeal of the NRC's latest decision after remand, is before the D.C. Circuit Court of Appeals with a current briefing schedule through July 22, 2021. Response, p. 3. Counsel for NRC Intervenor-Appellant Oglala Sioux Tribe has advised the below-signed Counsel that an opinion by the DC Circuit could take well until 2022.

In addition to obtaining the NRC license, Powertech is must also obtain Class III permits for injection mining in the Inyan Kara formation and for Class V wells for disposal of hazardous waste in the Madison or Deadwood formations from the Environmental Protection Agency. Although the EPA permits were

issued late November, 2020, the matter was appealed to the Environmental Appeals Board (EAB). Shortly thereafter, the EPA requested a 60 day stay of proceedings to allow for consultation with the new Presidential administration and to file an update on the EPA's position on the matter. On February 23, 2021, the EAB granted the EPA's Motion for Stay, requiring the EPA to file a status update by April 29, 2021. This status report was filed on April 19, 2021 along with a motion for a further stay of proceedings "in light of the potential for this action to be affected by litigation pending in the D.C. Circuit Court of Appeals". Status Report and Motion to Stay of Proceedings at 3 (April 19, 2021), see, [https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/\\$File/R8%20Status%20Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/BEFF4030DBE5B79D852586BD0045370C/$File/R8%20Status%20Update%20%26%20Motion%20for%20Stay%20-%204-19-2021.pdf),

A May 18, 2021 Motion by Powertech opposed to any further stay was denied by the EAB on June 2, 2021, which reiterated that the EAB proceedings are currently stayed until the D.C. Circuit makes its decision.

In addition to the Class III and Class V permits that Powertech must obtain an aquifer exemption from the EPA to permanently remove the mined waterbody from ever being used as a domestic water source. On November 24, 2021, the EPA issued an aquifer exemption, which was promptly appealed and remains pending before the U.S. Court of Appeals for the Eighth Circuit. As the

WR&WDPs' Response points out, the briefing schedule for the parties was stayed pending the EAB review of the Class III and Class V permits. The parties have been ordered to submit a status report to the Eighth Circuit by July 12, 2021.

Powertech in its Motion to Amend the Scheduling Order somehow neglected to mention or discuss that before the federal permitting process would be complete, it still must further obtain approval of its operating plans by the Bureau of Land Management (BLM). Other than receiving public comment on Powertech's plan last August, no further action has been recorded on the matter by the BLM.

With the NRC permits pending judicial review by the DC Circuit, the EPA aquifer exemption pending appeal to the Eighth Circuit Court of Appeals (stayed until the EPA Class III and V permit process is completed), the EAB process stayed until a decision by the DC Circuit, and the BLM determination of whether to approve Powertech's plan of operations on hold pending the above, Powertech has not shown how the federal permitting and approval process has been finalized. If issuance of any one of the federal permits or aquifer exemption is voided or reversed and remanded on appeal, Powertech would not be able to conduct its desired ISL uranium mining and milling operations and would not need daily appropriation of millions of gallons of public water or a waste disposal permit.

Contrary to Powertech's representations to this Board, the time is not ripe and may never be ripe to restart the WMB hearings. CWA contends that to do so

in these circumstances would be a tremendous waste of time and contrary to the notion of judicial economy. The federal process is likely to take years more to complete and may not end in Powertech's favor, the latter decision of which would obviate the need for any further state agency proceedings on the matter.

The Motion to Amend should be denied as premature.²

Dated this 27th day of June, 2021.

Respectfully submitted



BRUCE ELLISON

8265 Dark Canyon Road

Rapid City, SD 57702

belli4law@aol.com

Attorney for Clean Water Alliance

² The Clean Water Alliance applauds the position of the WR&WDPs position that when, or if the WMB decides to restart hearings on Powertech's water appropriation and disposal permits, that the process be opened to allow for new intervenors or for current intervenors to change their intervenor status.

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATIONS 2685-2 2686-2
POWERTECH (USA) INC.

IN THE MATTER OF THE 2012
GROUNDWATER DISCHARGE PLAN
APPLICATION SUBMITTED BY
POWERTECH (USA) INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true a correct copy of CWA's Response to the Motion to Amend Scheduling Order was mailed for filing on the 1st day of July, 2021, U.S. postage paid and addressed to: Chief Engineer, DANR, 523 E. Capitol Ave., Pierre, SD 57501 and served by US mail to:

Donald	Ackerman, Sr.	27128 Wonderland Rd.	Hot Springs	SD	57747
Keith & Kim	Alarie	840 Spruce St., Lot 320	Rapid City	SD	57701
Juli	Ames-Curtis	11936 Hay Creek Rd.	Custer	SD	57730
			Buffalo		
Twyla	Amiotte	PO Box 125	Gap	SD	57722
Jillian	Anawaty	2804 Willow Rd.	Rapid City	SD	57701
Harold	Arns	22723 Tawney Ct.	Box Elder	SD	57719
Jacqueline	Arpen	2004 Maple Ave.	Rapid City	SD	57701
Brandon	Bad Wound	639 Pahasapa Rd.	Rapid City	SD	57701
Angelia	Baldwin	PO Box 191	Pierpont	SD	57468
Anna	Ball	PO Box 46	Piedmont	SD	57769
Bill	Barlaw	PO Box 811	Edgemont	SD	57735
Bernard & Laurie	Barnaud	12129 Sagebrush Ln.	Nisland	SD	57762
		11778 Pleasant Valley Rd.			
Thomas F.	Barnes		Custer	SD	57730
Sudhi	Baumberger	12374 Baumberger Rd.	Deadwood	SD	57732
Mark & Jennifer	Belitz	2311 Woodlawn Ave.	Missoula	MT	59804
			Hot		
Eddie	Berford	241 Galveston Ave.	Springs	SD	57747
Annabelle	Between Lodge	PO Box 118	Oglala	SD	57764
			Hot		
Edward	Binns	408 N. 17th St.	Springs	SD	57747

Hannah	Bochert	Sherman St.	Hot Springs	SD	57747
Mark	Boddicker	13850 Battle Creek Rd.	Hermosa	SD	57744
Wayne & Mary	Boots	25588 Mt. Shadow Rd.	Edgemont	SD	57735
Cindy	Brunson	11122 Fort Igloo Rd.	Edgemont	SD	57735
Mary	Burrows	545 N. River St., #211	Hot Springs	SD	57747
Wally	Caln	690 S. 6th Street	Hot Springs	SD	57747
Mary Kay	Carle	5821 Michael Court	St. Cloud	MN	56303
Julie & Emily	Christensen	603 N. River St.	Hot Springs	SD	57747
Sharon & Alex	Christie	PO Box 74	Buffalo Gap	SD	57722
Don DeVries	City of Hot Springs	303 N. River Rd.	Hot Springs	SD	57747
Doris Ann Mertz	Custer County Library	447 Crook St., Suite 4	Custer	SD	57730
Rube	D	104 Jefferson Street	Edgemont	SD	57735
Eric Gronlund	DANR	523 E. Capitol	Pierre	SD	57501
Ron Duvall	DANR	523 E. Capitol	Pierre	SD	57501
Jim Hutmacher, Chair	DANR - WMB	523 E. Capitol	Pierre	SD	57501
Lynda	Davies	PO Box 1204	Hot Springs	SD	57747
Jeremiah J.	Davis	130 E. Centennial St.	Rapid City	SD	57701
Joel & Peggy	Detmers	13488 Shelter Dr.	Rapid City	SD	57702
Ross	Dexter	PO Box 883	Hot Springs	SD	57747
Francis	Dicesare	1501 - 11th St.	Rapid City	SD	57701
Leora	Doppen	745 N. River St.	Hot Springs	SD	57747
Rick	Draeger	617 St. Cloud	Rapid City	SD	57701
Kathy	Durrum	10374 Dryland Dr.	Edgemont	SD	57735
Tom	Emanuel	19 N. Pine St.	Vermillion	SD	57069
M & T	Engle	115 Scott St.	Edgemont	SD	57735
Wade	Evans	27338 Taylor Ln. 12909 Sheps Canyon Rd.	Hot Springs	SD	57747
Cheryl	Fair	906 N. River St., Suite 301	Hot Springs	SD	57747
	Fall River County State's Atty.		Hot Springs	SD	57747
Donna	Fisher	12311 Whitetail Rd. 2002 Promise Rd., Apt.	Deadwood	SD	57732
Shirley	Frederick	5216	Rapid City	SD	57701
Rodney	Freeman	PO Box 176	Huron	SD	57350

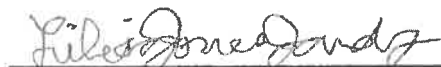
Lisa	Freshour	2045 Canton Ave., #535	Hot Springs Buffalo	SD	57747
Gary	Friendshuh	27098 Elk Rd.	Gap	SD	57722
Brenda	Gamache	2337 Wilson Ave.	Hot Springs	SD	57747
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Patricia	Hernandez	71 Apache Plume Dr.	Santa Fe	NM	87508
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Michael	Hickey	Bangs McCullen, PO Box 2670	Rapid City	SD	57709-2670
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Terry	Johnson	26680 Buffalo Butte Dr.	Springs	SD	57747
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Dawn	Johnson	PO Box 1123	Springs	SD	57747
Lorna	Just	21939 - 464th Ave.	Volga	SD	57071
Marvin	Kammerer	22198 Elk Vale Rd.	Rapid City	SD	57701
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Gwen	Kaneshiro	1446 Evanston Ave.	Springs	SD	57747
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Don & Kim	Kelley	12637 Merritt-Estes Rd.	Deadwood	SD	57732
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Jewell	Keown	410 S. 4th St.	Springs	SD	57747
		224 E. Minnesota St.,			
Stanley	Keys	Apt. 205	Rapid City	SD	57701
Sabrina	King	PO Box 1538	Lander	WY	85250
			Hot		
Judith	Klein	238 N. 6th St.	Springs	SD	57747
Frank J.	Kloucek	29966 - 423rd Avenue	Scotland	SD	57059
Dennis & Penny	Knuckles	12484 Willow Creek Rd.	Custer	SD	57730
Rodney	Knudson	PO Box 25	Hulett	WY	82720
Sylvia	Lambert	PO Box 78	Interior	SD	57750
Margaret &			Buffalo		
Laurence	Lamont	PO Box 53	Gap	SD	57722
			Hot		
Dan	Lang	27564 Ponderosa Rd.	Springs	SD	57747
			Buffalo		
Greg	Langer	PO Box 141	Gap	SD	57722
			Hot		
Karla	LaRive	839 Almond Street	Springs	SD	57747
			Hot		
Calvin	LaRive	142 N. 6th St.	Springs	SD	57747
John E.	Larson	10374 Dryland Dr.	Edgemont	SD	57738
			Hot		
Karla	Larvie	PO Box 752	Springs	SD	57747
			Hot		
Robert	Lee	338 S. 5th St.	Springs	SD	57747
Rebecca M.	Lord	23789 Maggie Way	Rapid City	SD	57702
Pam	Ludweg	810 Gordon	Custer	SD	57730
Carla Rae	Marshall	PO Box 3184	Rapid City	SD	57709
			Hot		
Lisa	Masterson	445 S. 6th St.	Springs	SD	57747
			Hot		
DeAnn	McComb	PO Box 254	Springs	SD	57747
James	McGrath	8403 Pioneer Circle	Rapid City	SD	57702

Daria	McGrath	8403 Pioneer Circle	Rapid City	SD	57702
Dahl	McLean	11853 Acorn Ridge Rd.	Spearfish	SD	57783
			Hot		
Cynthia	Messenger	12750 Merchen Rd., #18	Springs	SD	57747
			Hot		
Martin & Elsa	Meyer	102 S. Connor St.	Springs	SD	57747
			Hot		
Steven & Lexxie	Meyer	13050 Lakeview Dri.	Springs	SD	57747
			Hot		
Gary	Miles	27528 Rathbun Road	Springs	SD	57747
			Hot		
Neil	Miller	846 Almond St.	Springs	SD	57747
			Hot		
Marsha	Miller	27316 Hidden Center	Springs	SD	57747
Valerie	Naylor	23201 Custer Trails Rd.	Rapid City	SD	57702
		27552 S. Buffalo Gap			
Casey	Neugebauer	Rd.	Oral	SD	57766
			Hot		
Ricard	Nowlan	421 Galveston	Springs	SD	57747
Ann F. Mines Bailey	Office of Atty. Genl.	1302 E. Highway 14, #1	Pierre	SD	57501
Michael	O'Rourke	4513 Leo Drive., #4	Madison	WI	53716
Otis	Osborn	523 St. Francis St.	Rapid City	SD	57701
			Hot		
Raymond	Palmer	27221 Windy Rd.	Springs	SD	57747
			Hot		
Jason	Parker	1005 S. River St.	Springs	SD	57747
Valerie A.	Parker, MD	4814 Cliff Dr.	Rapid City	SD	57702
Gena M.	Parkhurst	PO Box 1914	Rapid City	SD	57709
			Hot		
Mary Helen	Pederson	437 N. 6th St.	Springs	SD	57747
			Hot		
Mel	Pence	2330 Washington Ave.	Springs	SD	57747
Jim	Petersen	1203 - 11th St.	Rapid City	SD	57701
			Hot		
Sarah	Peterson	510 Jennings	Springs	SD	57747
			Salt Lake		
Sarah & AJ	Phillips	4099 S. 570 E., Apt. 15F	City	UT	84107
			Hot		
Chris	Pierce	101 N. Chicago	Springs	SD	57747
			Hot		
Rex & Mildred	Piper	1609 Detroit Ave.	Springs	SD	57747
Cindy	Powell/Girard	1637 - 38th St.	Rapid City	SD	57702
			Hot		
Steve	Preheim	2317 Washington Ave.	Springs	SD	57747
			Hot		
	Resident	12560 Beaver Creek Rd.	Springs	SD	57747
		28149 Sheps Canyon	Hot		
Rick	Rewe	Rd.	Springs	SD	57747

Charleton	Reynar	28025 Cascade Rd.	Hot Springs	SD	57747
Dorothy	Richards	340 N. 23rd St.	Hot Springs	SD	57747
Craig	Romey	342 N. 4th	Hot Springs	SD	57747
Elray	Rosaaen	PO Box 125	Buffalo Gap	SD	57722
Katie	Roseland	5811 Gemini St.	Rapid City	SD	57703
Roger and Cheryl	Rowe	7950 Dark Canyon Road	Rapid City	SD	57702
Betty	Runzerel	PO Box 836	Hot Springs	SD	57747
Betty	Russell	PO Box 836	Hot Springs	SD	57747
Frank	Ruther	545 N. River St., #413	Hot Springs	SD	57747
Gail	Saxonis	745 Happy Hollow	Hot Springs	SD	57747
John & Connie	Schwarzenbach	2229 Minnekahta Ave.	Hot Springs	SD	57747
Marsha	Seabolt	4435 Dolphin	Rapid City	SD	57701
Peggy	Semler	PO Box 245	Hot Springs	SD	57747
Robert	Shannon	24705 Timber Ridge Rd.	Hermosa	SD	57744
Barbara	Sharp	445 S. 3rd St.	Hot Springs	SD	57747
Jerry	Simunter	22769 Jenny Rd.	Hot Springs	SD	57747
Charlene	Smith	PO Box 481	Rapid City	SD	57709
Dale	Steineke	13130 Greg Dr.	Hot Springs	SD	57747
Susan	Stolarcek	PO Box 686	Hot Springs	SD	57747
Lila	Streff	12376 Beaver Den Dr.	Custer	SD	57730
Rebecca Leas and Rick	Summerville	21287 Sandal Foot Dr.	Venice	FL	34293
Dennis	Sutherland	2202 University	Hot Springs	SD	57747
Rebecca	Terk	8265 Dark Canyon Road	Rapid City	SD	57702
Jo Beth	Troxel	303 E. Morse St.	Callaway	NE	68825
Mark	Tubbs	10891 River Rd.	Edgemont	SD	57735
Douglas	Uptain	1805 W. 10th St.	Loveland	CO	80537
Mary Ellen	Uptain	1805 W. 10th St.	Loveland	CO	80537
Judith	Van Cleave	7711 Dark Canyon Rd.	Rapid City	SD	57702
Milli	Vong	146 S. 19th	Hot Springs	SD	57747
Alan	Walker	303 Cedar St.	Buffalo Gap	SD	57722

Kellee	Walton	1005 S. River St.	Hot Springs	SD	57747
Susan	Watt	PO Box 790	Hot Springs	SD	57747
Wendolyn	Weimers	306 N. 19th St.	Hot Springs	SD	57747
Debra	Weishaupt	110 N. 3rd St.	Hot Springs	SD	57747
Charmaine	White Face	PO Box 2003	Rapid City	SD	57709
Bette	Wilkinson	3718 Redwood St.	Rapid City	SD	57701
Jerry	Wilson	30959 Frog Creek Rd.	Vermillion	SD	57069
Russell	Witte	301 S. Chicago	Hot Springs	SD	57747
Julia	Woodard	639 Pahasapa Rd.	Rapid City	SD	57701
Robin	Wynia	12750 Merchen Rd.	Hot Springs	SD	57747
Elton	Zornes	12742 Highway 18	Hot Springs	SD	57747
Alica		PO Box 861	Pine Rige	SD	57773



Lillas Jones Jarding

City of Hot Springs

Bob Nelson

Mayor

Phone: 605-745-3135

bobnelson@hs-sd.org



To: South Dakota Department of Agriculture and Natural Resources Water Management Board

Date: June 12, 2021

Re: Restart of PowerTech Uranium Mining Water Permit Hearings

I'm writing to express the City of Hot Springs strong opposition to the restart of the Powertech uranium mining water permit hearings before the State Water Management Board.

The City of Hot Springs is obligated to preserve and protect the public health, safety and welfare by preventing the pollution of, and maintaining the quality of the water entering in, held within and removed from aquifers serving as the City's water source.

Powertech is requesting to use up to 9,000 gallons of water per minute from area aquifers. Rapid City, SD, Hot Springs nearest large community with a population of 77,503 people uses only about 6,500 gallons of water per minute. Powertech wants to use more water per minute for uranium extraction than an entire city uses to meet the water needs of its citizens. Water is the lifeblood our community and our rural partners. Any risk, however small, to the availability of water is unacceptable.

The water table of these aquifers is constantly changing and prolonged drought conditions only worsen the situation. A water level perceived to be adequate today may result in a dry well if that water table is reduced by as little as a few feet due to over pumping of the aquifers. It's not uncommon for a functioning well to not be much deeper than the local groundwater level. The transition from a functioning well to a dry well can happen without any warning.

The effect of allowing Powertech to extract water from our local aquifers comes down to their profit over the risk of losing our local water supply. Powertech has options, the people who depend on the water from these aquifers don't have acceptable options. The result of a reduced groundwater level from the over pumping of the aquifers would require drilling a well to reach the new groundwater level and would place an unfair financial burden on the affected property owners.

In summary, the City of Hot Springs strongly opposes the restart of the Powertech uranium mining water permit hearings before the State Water Management Board.

Robert Nelson

Mayor of Hot Springs, SD

Town of Buffalo Gap

Daniel Frieden

President- Buffalo Gap Town Board of Trustees

Phone: (816) 868-4343

Frieden.daniel44@gmail.com

To: South Dakota Department of Agriculture and Natural Resources Water Management Board

Date: June 18, 2021

Re: Restart of PowerTech Uranium Mining Water Permit Hearings

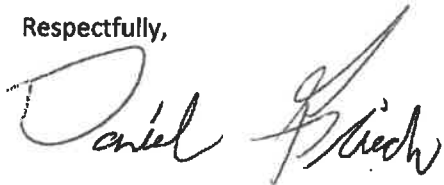
I'm writing to express the Town Of Buffalo Gap's strong opposition to the restart of the PowerTech uranium mining water permit hearings before the State Water Management Board.

The Buffalo Gap Town board of trustees are obligated to preserve and protect the public health, safety and welfare by preventing the pollution of, and maintaining the quality of the water entering in, held within and removed from aquifers serving as the town's water source.

- We the people of the town of Buffalo Gap have read, and are under the impression that "Water at an in situ leach uranium mine has never been returned to its original condition".
And,
- We the people of the town of Buffalo Gap have read, and are under the impression that "Pollutants that have been left in the water at in situ leach uranium mines after "restoration" include toxic heavy metals and radioactive materials".
And,
- We the people of the town of Buffalo Gap have read, and are under the impression that "Uranium mining projects consume over two and a half Billion gallons of water during its lifetime according to a company's own figures.

For these reasons, I would like to respectfully express the strong concern for the water quality for the citizens' of the Town of Buffalo Gap in the Inyan Kara aquifer, and oppose the restart of the PowerTech uranium mining water permit hearings before the State Water Management Board. We oppose the pollution of both the Inyan Kara aquifer, the Madison aquifer, and any other aquifer or combination thereof that would negatively affect the quality of our town's water.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel Frieden", written over a horizontal line.

Daniel Frieden

President – Buffalo Gap Town Board of Trustees

To the Water Management Board:

June 25, 2021

I am strongly opposed to the resumption of water permit hearings for the Dewey-Burdock uranium project, which seems inappropriate while federal permits are contested and not finally granted.

From my perspective as a South Dakota physician, ISL uranium mining poses irreducible public health risks, including increased heavy metal concentrations in manipulated aquifers. This may become increasingly critical as this semi-arid region continues to feel the effects of global climate change, and all available water sources must be utilized. Likewise, assurances that aquifer disruption would be confined to the project area are not convincing, in view of the fractured nature of the Black Hills rock structure. In addition, the mining, processing and transport of radioactive materials leads to increased radiation exposure above background levels for those involved in these operations as well as others. As many scientific bodies have emphasized, there is no "safe" level of radiation dose, so all unnecessary exposure should be avoided.

I also respectfully request that, if and when hearings resume, they be held in the Black Hills, where the many interested parties could more easily provide input. It would also be helpful if all official correspondence pertaining to such hearings were distributed via electronic mail.

Thank you for consideration of these matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don H. Kelley M.D.", with a stylized flourish at the end.

Don H. Kelley, M.D.
12637 Merritt-Estes Rd.
Deadwood, SD 57732

Rodney Knudson
PO Box 25
Hulett, WY 82720
June 25, 2021

To:
State of South Dakota
Dept. of Agriculture and Natural Resources
The Water Management Board

Subject: I oppose Powertech's motion to restart hearings and their attempt to amend the procedures by circumventing Federal protocols by going directly to state agencies. If or when such hearings are conducted I would recommend that they be held close to the population most affected by the outcome of such hearings; such as, cities within the Black Hills area. Given the expense of direct mailing documents to the intervenors it would seem that emailing such documents would be most economic and prompt. What follows is edited version of a paper I had delivered in 2017 at an EPA hearing held at the Rapid City Best Western Ramkota Inn, hoping that its content is relevant to the present situation.

Dear Sirs,

I printed off the 151 page EPA summation entitled "Draft Cumulative Effects Analysis of the Dewey-Burdock Uranium in-situ Recovery, Underground Injection Control Area Permits" and took most of the day to read it because I wanted to be as fair as I could about this process. The report painted a rather benign picture of the mining process ending with kudos for the small carbon footprint left by the power plants that produced the electricity from the enriched uranium. Not mentioned was the enormous amounts of electricity required to isolate U234, U235 from U238 generated by coal or gas fired power plants but more importantly the toxic products of this process that we are creating with no safe place to put them. The entire nuclear industry has left behind a toxic nightmare that has to be dealt with and has been systematically ignored and made the responsibility for a future generation.

With regard to the ISR mining operation, many people might be concerned that sedimentation ponds will leak and contaminate ground water (which they have in other ISR locations), migratory birds will land in these ponds, insects will obtain water from them to become food for birds, West Nile virus will become more prevalent because of the breeding opportunities for mosquitoes among other things. Another concern is the in-situ mining process itself which uses a lixiviant solution to release and suspend uranium in solution but also does the same for a number of other toxic heavy metals including arsenic, vanadium, selenium, et.al that are withdrawn with the uranium and wind up being precipitated out in the settlement pond or sprayed onto fields or sent to a class V deep well. But another concern is that even with numerous sweeps in the restoration phase they remain in solution and without the reducing field formerly provided by the mined out ore body will migrate down gradient within the aquifer to find at some point a breccia column, unplugged bore hole, fracture, mining tunnel or fissure. We are told that TVA did a wonderful job of plugging the bore holes but alas there are some that weren't. The radioactive remains like thorium, radium and presumably non-radioactive elements like lead, arsenic and selenium, products of the RO process that weren't disposed of by spraying on the land or placed in a deep disposal well are sent to White Mesa even though they are trying to detoxify that site as well. Another issue is water consumption where the water is poisoned beyond any future use, although according to EPA report that might be kept to a minimum in the mining process by stripping the lixiviant

by RO and reinjecting most of that water back into the Inyan Kara aquifer to repeat the cycle. The restoration phase might be another matter though where multiple pore volumes are required to bring concentrations of these toxic elements even close to baseline levels which has never occurred in any ISR mining operation.

What I see is the worst part of this question though is that the mining phase is just the start of a horrifying development that results in ever more toxic next phases of the uranium story. The UF₆ leaks in the separation phase, the electrical generation requirements to separate U₂₃₅ from U₂₃₈ is quite large. The military uses that have poisoned countless people worldwide from the fallout and bio-accumulation of radioactive nuclides especially Cs₁₃₇, Sr₉₀, I₁₃₁, Pu₂₃₉ et.al. have been responsible for ever increasing incidents of cancers; such as, lymphoma/leukemia, bone, pancreatic, liver, lung, brain, colon, skin and breast which have seen dramatic increases after the 1300 open air nuclear tests. Exploding nuclear power plants like Three Mile Island, Chernobyl and now Fukushima that is an ongoing disaster that won't be stabilized for 40 to a 100 years and continues to gush 100's of tons of radioactive water into the Pacific every day ultimately biologically magnifying into the fish and the humans that eat them. Cancer rates in Japan are just now becoming apparent as we see children being affected by what is referred to as Chernobyl heart disease caused by Cs₁₃₇. We have our own Fukushima potentially waiting for us at the Indian Point reactor just above NY City which would be subject to the effects of an earthquake. Given the artificially extended lives of our aging nuclear power plants, are more such events going to happen? It is just a matter of time before we find out. And now we have high level nuclear waste with no place to go. Oh, yes of course we have Yucca Mountain which will be a disaster because it is not sealed off from water incursions. But we would have to have dozens of Yucca Mountains to take care of all the waste sitting around just for the 104 nuclear reactors in the United States. And then it has to be safely transported. The American built sheet metal casks last about 30 years in comparison to the German built cast iron ones that seem to last much longer and don't seem to crack with age for on-site storage. And don't leave out the military uses of course. The Nagasaki/Hiroshima experiment is still with us as are the depleted uranium (U₂₃₈ without the U₂₃₅) particulates being enjoyed by the Iraqi people to the point where they are afraid to have children in some places. The high level waste from WWII is still sitting in giant pools and with time leaking into the Columbia River. And now "we" want to invest a trillion dollars in making nuclear weapons over a 30 year program to make them more user friendly. We have made a Faustian bargain by creating problems no one will be able to solve and in the process engaged in a collective death wish that might be granted earlier than we thought given a Trump administration's tendency of having filled the agencies at the top with administrators who were encouraged to be hostile to their missions. Hopefully, the Biden administration has enabled these administrators to fulfill the needs required.

Like the people on the trains to Auschwitz we have to ask ourselves "where are we going?" before it is too late.

Sincerely,


Rodney Knudson

State of South Dakota
Department of Agriculture & Natural Resources
Water Management Board

Re: Water Permit Application Nos. 2005-2 & 2006-2, PowerTech (USA), Inc.
Re: 2002 Groundwater Discharge Plan Application, PowerTech (USA), Inc.

Jul Ames-Curtis, Intervenor, Response to Opposition to Proposed Amendment of Procedural Order

I am writing to communicate my opposition to PowerTech's Motion to Amend Procedural Order and Proposed Procedural Order, both dated 28 May 2021.

In reading the statement (DNR Counsel Response to Opposition dated 17 June 2021) from Assistant Attorney General Ann F. Mines Bailey, it is clear that PowerTech has not finalized its federal permits, which were a condition of a re-start at the time these state proceedings were halted in 2015. While PowerTech has been granted certain federal permits, permit challenges and review processes of those permits may take months or even years to complete, if in fact they are ever completed. Further, PowerTech has not received final approval for its Plan of Operations from the Bureau of Land Management. The fast-tracked timeline provided in PowerTech's Proposed Procedural Order is not reasonable and will cost the state greatly in money and employee time.

The state process for securing water rights was put on hold eight years ago. It is apparent that additional time and research is needed to identify intervenors who may have moved or passed away, as well as consideration for adding additional intervenors who have acquired or identified a stake in these proceedings during the interim. In addition, all pleadings and WMB orders in this matter should be served by electronic mail (it will cut down on paper and postage waste and streamline a cumbersome process) unless there is no email address for an intervenor, due to the high number of intervenors.

When and if the proceedings occur, the Water Management Board should hold all hearings in this matter in the Black Hills. It was decided previously that this be the case. I am confident that the board can find the requested technology somewhere in the Black Hills.

Re-starting State proceedings ahead of finalization of federal permits risks a great expenditure of both the State's and individual intervenors' time and money that could be for naught should any of those federal permits be rescinded. I ask the Water Management Board to deny PowerTech's Motion to Amend Procedural Order.

Respectfully,
Jul Ames-Curtis

11936 Hay Creek Rd, Custer SD 57730

Dated this 26th day of June, 2021

Brenda Gamache A Intervenor

June 23, 2021

Re: In the matter of Water Permit App. Nos. 2685-2 and 2686-2, and In the Matter of the 2012 Groundwater Discharge Plan Application Submitted by Powertech.

Jim Hutmacher, Chairman DANR-Water Management Board

Foss Building, 523 East Capitol Ave., Pierre, SD 57501-3182

Enclosed please find a letter from Hot Springs Mayor and Buffalo Gap Mayor, I agree with both townships and their concern of safety to water supplies. I am entering these 2 letters to be on record, also that the hearings should not be continued.

Thank You,


Brenda Gamache

2337 Wilson Ave., Hot Springs, SD 57747

brendagamache49@gmail.com

June 23, 2021

Jim Hutmacher, Chairman
DANR Water Management Board
523 East Capitol Ave.
Pierre, SD 57501-3182

Re: Powertech's wishes for a hurried restart of the water permit hearing process


Dear Chairman Hutmacher:

I oppose restarting the hearings on Powertech's water permit applications because the company has not yet received full NRC and EPA permitting, as there is ongoing legal action.

These necessary federal permits, and a complete NEPA/BLM environmental impact study, should have priority over any pressure to restart the process that Powertech wants.

Also, I request the Water Management Board to hold all hearings on this matter in the Black Hills where this issue affects the people most strongly.

Sincerely,

A handwritten signature in cursive script that reads "Sylvia Lambert".

Sylvia Lambert
PO Box 78
Interior, SD 57750

Gena M. Parkhurst
P.O. Box 1914
Rapid City, SD 57709
(224) 715-8405

June 27, 2021

James Hutmacher, Chairman
Water Management Board
523 E. Capitol Avenue
Pierre, SD 57501

Dear Chairman Hutmacher,

Now is not the time to restart the hearings on Powertech's water permit applications. The company has changed names since the last hearing, and the company has not met the requirements needed to restart the permit process as set forth by this Board.

If the hearings should restart at some point, all hearings should be held in the Black Hills. Rapid City offers many meeting locations outfitted with the latest communication technology.

Finally, I respectfully request that all pleadings and Water Management Board orders regarding this matter should switch from regular mail to electronic mail, unless there is no email address for an intervenor.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gena M. Parkhurst', with a stylized flourish at the end.

Gena M. Parkhurst
Intervenor

To Whom It May Concern:

I am adamantly opposed to Water Management Board resuming the permitting hearing process for PowerTech/ Azarga to leach-mine yellowcake uranium in West River (Fall River and Custer counties) South Dakota. The waters that flow from the Southern Hills are already polluted by waste from past extraction enterprises that have never been reclaimed.

The porous nature of the sandstone geology makes it impossible to truly capture any future radiation-polluted waters because there are no crystalline structures between sandstone layers. Our area frequently experiences drought, and this form of extraction will take millions of gallons of water from the Madison formation and the Inyan Kara aquifer, which aquifer supplies water to much of the Southern Hills and on east to Buffalo Gap and beyond. This is ludicrous, just on the face of it.

Since the question at hand is a project located in the Southern Black Hills, I respectfully but determinedly ask that future hearings on this and similar matters be held in the Black Hills.

Because there are so many intervenors on this subject, please send all pleadings and other information by electronic mail. Save paper and postage! Thank you!

545 North River Street, #211

Hot Springs, SD 57747

25 June 2021

Water Management Board

Department of Agriculture and Natural Resources Joe

Foss Building

523 E Capitol Avenue

Pierre, SD 57501

Sincerely,

A handwritten signature in cursive script that reads "Mary Burrows". The signature is written in dark ink and is positioned above the printed name.

Mary Burrows

June 26 2021

SD DENR Water Mgt Board
500 Foss Bldg 523 East Capitol
Pierre SD 57501

Dear Water Mgt Board Members:

Please consider this a letter of opposition
to Restarting the hearing process for the
PowerTech project in the Black Hills.

I ask that all hearings concerning this
issue be held in the Black Hills.

Water quality, lack of ability to safely
reclaim the mining sites, financial solvency,
possible processing out of the United States,
radioactive waste in aquifers, possible use
in nuclear weapons by our adversaries and
many other issues are involved in this project.
Please do not Restart the hearing process,
as stated earlier, for the long term best interest
of the Black Hills, water quality & our states' citizens.

Sincerely:

Frank J Klowick
29966423 Ave
Scotland SD 57059

Frank J Klowick

email fklowick@hotmail.com
phone 605 5834468

**State of South Dakota
Department of Agriculture & Natural Resources
Water Management Board**

**Re: Water Permit Application Nos. 2685-2 & 2686-2, Powertech (USA), Inc.
Re: 2012 Groundwater Discharge Plan Application, Powertech (USA), Inc.**

Richard Draeger, Intervenor, Response in Opposition to Proposed Amendment of Procedural Order

I am writing to communicate my opposition to Powertech's Motion to Amend Procedural Order and Proposed Procedural Order, both dated 28 May 2021.

It is clear that Powertech has not finalized its federal permits, which were a condition of a re-start at the time these state proceedings were halted in 2013. While Powertech has been granted certain federal permits, court challenges and review processes of those permits may take months or even years to complete, if in fact they are ever completed. Further, Powertech has not received final approval for its Plan of Operations from the Bureau of Land Management.

Re-starting a process that was put on hold eight years ago may require additional time and research to identify intervenors who may have moved or passed away, as well as consideration for adding additional intervenors who have acquired or identified a stake in these proceedings during the interim.

Additionally (as noted in DANR Counsel Response in Opposition dated 17 June 2021), the substantial amount of time that has passed since this case was put on hold necessitates a review of testimony and evidence submitted during the 2013 hearings (potentially through the development of transcripts), and will likely necessitate new expert witnesses who will need to review the previous materials. The fast-tracked timeline outlined in Powertech's Proposed Procedural Order is inadequate to accomplish these tasks.

Re-starting State proceedings ahead of finalization of federal permits risks a great expenditure of both the State's and individual intervenors' time and money that could be for naught should any of those federal permits be rescinded. I ask the Water Management Board to deny Powertech's Motion to Amend Procedural Order.

Respectfully,

A handwritten signature in black ink that reads "Richard Draeger". The signature is written in a cursive, flowing style.

Richard Draeger
617 Saint Cloud Street
Rapid City, SD 57701-4626

Dated this 26th day of June, 2021

State of South Dakota
Department of Agriculture and Natural Resources
Water Management Board

Re: Water Permit Application Nos. 2685 & 2686-2 Powertech, (USA), Inc.
Re: Groundwater Discharge Plan Application, Powertech, (USA), Inc.

I, Eileen Ohliger, Intervenor, Response in Opposition to Proposed Amendment of Procedural Order

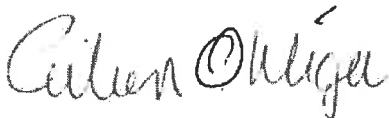
I am writing in opposition to Powertech's motion to the Proposed Procedural Order and to their motion to Amend Procedural order date May 28, 2021. I am respectfully requesting the Water Management Board to deny Powertech's Motion to Amend Procedural Order.

First and foremost, Powertech has not finalized its federal permits. Secondly, Powertech has not received approval for its Plans of Operations from the Bureau of Land Management. Additionally, what permits previously have been granted to them, may take months to years to completely process.

Re-starting a process that has been on hold for 8 years deserves some extra time and research. During that period of time some of the intervenors have passed away or moved. I feel it only fair to allow new intervenors to take their place.

Thank you for your time and consideration,

Eileen Ohliger



446 S. 5th Street

Hot Springs, S. D. 57747

June 26, 2021

State of South Dakota

Department of Agriculture and Natural Resources

Water Management Board

Re: Water Permit Application Nos. 2685 & 2686-2, Powertech, (USA), Inc.

Re: Groundwater Discharge Plan Application, Powertech, (USA), Inc.

I, Patricia E. Ohliger, Intervenor, Response in Opposition to Proposed Amendment of Procedural Order


I am writing about my concern over the use of our water source. I would like to communicate my opposition to Powertech's Motion to Amend Procedural Order and Proposed Procedural Order, both dated May 28, 2021.

Please deny Powertech's motion to Amend Procedural Order.

Thank you.

Sincerely,

Patricia E. Ohliger

A handwritten signature in black ink, appearing to read "Patricia E. Ohliger". The signature is written in a cursive, flowing style.

446 S. 5th Street

Hot Springs, S. D. 57747

June 26, 2021

June 27, 2021

WATER MANAGEMENT BOARD, State of South Dakota
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182

Dear Water Management Board.

I oppose any uranium mining in South Dakota. I oppose this uranium project by Powertech, which is to be located in the Treaty Territory of the Great Sioux Nation. I oppose restarting any water permit hearing for this project. Also, it is in the Best Interest of the People that you hold any and all future meetings regarding the Project in the Black Hills (Rapid City or Hot Springs). I also ask that pleadings and orders be served by electronic mail, unless no email address is available, due to the large number of intervenors. And, lastly, if some of those intervenors are deceased that you allow their family members to become their proxies.

Now, please let history be your guide and don't repeat it. Past uranium mining, the Legacy that has been left behind, are hundreds of abandon uranium mines just here in South Dakota, left for the State or Federal Government, to deal with (or not). Ask yourselves, "what Legacy do I want to leave behind"? Clean-up those abandon mines before entertaining the notion that another uranium mine is in the "Best Interest of the People." It's not!

Please take a hard look at the Crow Butte Uranium Mine in Neb (now in reclamation stage for the next 20+ yrs), or right here in South Dakota, the Riley Pass uranium mine (closed in 1964), which was abandon. "Clean Up" that began 51 years later and will continue up to 2026 based on a \$2.27 million Government Settlement. But the State also had to pay dearly. "Clean-up" will never be fully realized from the damage it already caused the land, waters, and people.

In a 2016 Rapid City Journal Article; "The mining unearthed a toxic and radioactive mix of chemical elements, including arsenic, molybdenum, selenium, uranium, radium and thorium. cattle drank from the polluted streams and suffered weakened immune systems. Routine illnesses became fatal, and cow fertility declined."

"Ranchers tried for years to counteract the pollutants by administering mineral supplements to their cattle, with limited success. Finally,...[they] got help from state government to drill deep wells and build pipelines, so cattle could drink clean well water instead of polluted stream water." https://rapidcityjournal.com/news/local/righting-a-wrong-at-riley-pass-after-51-years-mine-cleanup-finally-begins/article_3f59cbd8-6dcf-57fc-81bd-835ebad3737c.html

Federal update. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd860609.pdf

The decisions that you make today will effect the next seven generations of not only Cattle Ranchers (Agriculture), but all the people who depend on their water wells from the aquifers, and those connecting waterways. We can't control how the waters flows, especially underground. Keep Uranium in the ground! WATER IS LIFE! RESPECT WATER!

Thank you.



Carla R. Marshall, Intervenor, P.O. Box 3184, Rapid City, SD 57709-3184

Ron Duvall
DANR Water Rights
523 E. Capitol
Pierre, Sd 57501

June 26, 2021

Re: Powertech USA, Inc Water Permit Applications 2685-2 & 2686-2 and Ground-
Water Discharge Plan Application

Dear Mr. Duvall:

I am opposed to restating the hearings on Powertech's water permit application. First and foremost, we have lost some of our Certified Federal Expert Witnesses to various issues, including death. We have not found replacements for them at this time. There are too many unresolved permits, contrary to what Powertech's statement indicates. The NRC and EPA have granted permits which are in litigation. Powertech has no permits. The Water Board stated they would wait for the NRC and EPA decision before going forward with the Powertech hearings.

The Water Management Board should hold all hearings in the matter in the Black Hills. This is where the hearings were held in 2013. We are confident that they can find the requested technology somewhere in the Black Hills.

All pleadings and WMB orders in the matter should be served by electronic mail, unless there is no email address for an intervenor, due to the high number of intervenors.

Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Sarah Peterson", with a long horizontal flourish extending to the right.

Sarah Peterson
510 Jennings
Hot Springs, SD 57747

June 25, 2021

Ron Duvall
DANR Water Rights
523 E Capitol
Pierre, SD 57501

Re: Powertech USA, Inc Water Permit Applications 2685-2 & 2686-2
and Groundwater Discharge Plan Application

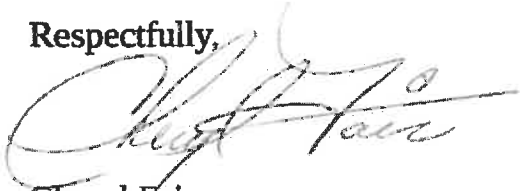
Dear Mr. Duvall:

I understand the Water Management Board will be meeting on July 6, 2021. I would like you to know as an Intervenor, I object to the Board allowing Powertech to restart the above captioned permit process since there are numerous appeals before various courts that have not been concluded. It would be a waste of taxpayers money to restart just to have any of the appeals be successful and Federal permit(s) be voided.

Additionally almost all of the people who will be impacted by allowing the above captioned permits live in the Black Hills and West River, therefore all Water Management Board hearings should be held in the Black Hills.

Lastly, since there are so many Intervenorers in this issue it seems to be more efficient to use email for future pleadings and Water Management Board orders. To that end my email address is jf314cf@goldenwest.net.

Respectfully,

A handwritten signature in cursive script, appearing to read "Cheryl Fair", written in dark ink.

Cheryl Fair
12909 Sheps Canyon Road
Hot Springs, SD 57747

Mr Ron Duvall
DANR water rights
523 East Capitol
Pierre SD , 57501
RE; Powertech USA / Azarga Uranium Mining Water Permit

Edward F Harvey
1545 Albany Ave
Hot Springs, SD 57747

By this letter I object to restarting the water permit application process Mr Hollenbeck correctly stated that the proposed insitu recovery project would not remove large amounts of water from the aquifer. The reality is that the project could not afford to dispose of that much water under EPA surface disposal regulations. The assertion that the sandstone formation would not be altered is not totally correct. The calcium carbonate binder will need to be dissolved in an acid solution for the trapped minerals to be released. In this operation the acid will be carbonic acid created by the carbon dioxide overpressure in the injection system. Again they will not remove the sand granules from the recovery area due to the cost of meeting EPA surface disposal regulations for contaminated materials. If removed the requirements would be the same as for isolating the mill tailings pile, from the old milling operation in Edgemont, from the ground water. INSITU recovery basically creates this mill tailings pile in the aquifer. The proposal is injection of any contaminated waste fluids back into the aquifers with deep injection wells, again to circumvent surface disposal regulations. Given the projected water stresses, compromising the quality of our water resources may not be in our best interest.



Edward F Harvey

June 24, 2021

Water Management Board
Ron Duvall
DANR Water Rights

Ron:

This letter is to let you know I am objecting to the reopening of the Water Board hearings on the Powertech water permit applications. When you use and pollute 9000 gallons of water per MINUTE, there is not much left for positive use. The climate will suffer severely- flowers, livestock, people, crops. Just think about it, there are complaints about how high the grocery bill is now, what will happen when our crops are cut short from no good water? Do you want to eat a carrot or a potato or an ear of corn that was watered with uranium polluted water? I surely do not. Please consider the health of the people, animals and crops in our state.

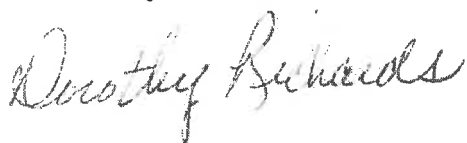
Also, the Water Management Board should hold all hearings in this matter in the Black Hills. This is where the affected area will be. We are confident that they can find the requested technology somewhere in the Black Hills. We do have a nationally acclaimed School of Mines and Technology right here close.

I beseech you to put the money aside, money will not replace the people harmed by the polluted water. It will not replace the cattle afflicted by the polluted water. It will not replace the crops grown with polluted water that will affect many citizens in the United States. Our crops are shipped out of state.

Again, please do not reopen the Water Board hearings on the Powertech water permit application. To desecrate our natural resources is just plain wrong.

Sincerely,

Dorothy Richards

A handwritten signature in cursive script that reads "Dorothy Richards".

Ron Richards

A handwritten signature in cursive script that reads "Ron Richards".

Susan R. Henderson
P.O. Box 731
Edgemont, SD 57735
Phone: 605-890-2093
Srhenderson814@gmail.com
June 25, 2021

Mr. Ron Duvall
DANR Water Rights
523 E. Capitol
Pierre, SD 57501

Re: Powertech USA Azarga Water Right Application

This letter is in opposition to Powertech's brief asking to restart its water right application for the Dewey Burdock Uranium Mining Project.

Water Right Usage:

Currently SD towns, ranchers, farmers, outlying homes, and the City of Rapid City all use the underground water supplies for drinking water, much needed livestock water and municipal water needs. If the underground supplies became overused or polluted, all these entities would have to cease to exist.

This project asks for a huge amount of water over a 20 plus year period and when the uranium in situ leach mining process is implemented will pollute the aquifers with radioactivity and dangerous fracking like compounds which cannot be cleaned up or remediated.

If we grant this project this huge water right it will have a calamitous effect on the area and its water sources.

Ownership of Powertech:

This water right application by Powertech USA has been on hold for 8 years. During that time Powertech has been swallowed up by a Hong Kong Company, Azarga which has extensive ties to Chinese interests. Vladimir Putin, the Russian head of government has a company in the US called Uranium One.

During Hillary Clinton's tenure as Secretary of State, she convened a government panel which allowed Putin to completely own Uranium One. He subsequently bought a company called Energy Metals Corporation which held a large stake in the Dewey Burdock proposed uranium mine mineral leases.

If South Dakota grants these companies a huge water right, we will have enabled enemy foreign companies, from China and Russia to use the water and mine uranium.

Stock Manipulations:

Over the last 10 years or so the Powertech Management has actively promoted the sale of stock in its company, promising huge profits to early investors. Stock selling in the \$20 per share range would ultimately be worth \$600 per share. These promotions were bolstered by investment "Forward Looking" reports generated by the company or accountants they controlled.

Many hapless investors lost their money on the stock which now barely trades at 2 cents a share.

Among these investors were well connected people in SD and around the world, among them, Fall River County Commissioners, SD State Legislators, members of the press and many others. The more they invested, the more they lost. The Powertech stock was marketed to little old ladies, retired on small pensions, in the Edgemont area. They lost too.

The stock was marketed out of the Toronto, Canada exchange and sold out of the US, largely beyond the jurisdiction of the American SEC.

Repeal of SB 158 (2011):


The repeal of this SD law orchestrated by legislators sympathetic to Powertech, effectively removes any meaningful oversight SD might have over the mining operations or the use of the water. Now there is no law to protect the public.

Logistics of the WMB Process:

There are still hundreds of intervenors and general citizens who oppose this project and struggle to be heard. This pleadings of this case and the communications of the WMB should be handled by E-mail due to the cumbersome nature of the objections. Asking a general citizen to prepare 400 copies and mail it out only serves to limit free speech and deny people a way to object.

Due to the large number of objectors, any WMB Hearings should be held in the Rapid City area in a COVID Safe arena to allow public participation.

Sincerely yours,



Susan R. Henderson

Edgemont, SD

418 N. 44th Street
Rapid City, SD 57702
June 27, 2021

James Hutmacher
SD Water Management Board
Department of Agriculture and Natural Resources
523 East Capitol
Pierre, SD 57501

Dear Mr. Hutmacher:

I oppose re-starting the water permit process for Powertech Uranium's Dewey-Burdock project. The re-start of that process is contingent upon the company's federal permits. Those permits are either on hold, under litigation, or at an early stage in the permitting process. If the WMB decided to restart the hearing now and the company was to lose in any of the current legal proceedings, the hearing process would be an unnecessary expense borne by the citizens of South Dakota. I object to that prospect.

If this project received all permits, and if the company actually decided to mine uranium and if it found enough money to move forward or a buy-out, the project would have rights to use well over ten million gallons of water per day. While the company complains that it is not "really" going to use that much water and offers varying alternative amounts, the reality is that Issuing permits for this purpose would give the company the rights to use well over ten million gallons of water per day. This would be an atrocity in an area that is semi-arid and has a growing population and economy. It would also be an atrocity because remaining water in the proposed mine area would be contaminated. In situ leach uranium mines are not fully cleaned up.

This is a critical issue for the Black Hills. We need you to hold all hearings on this matter in the Black Hills. With colleges, state agencies, and federal agencies in the area, I'm sure that an appropriate location can be found, especially as CDC guidelines have changed. The vast majority of intervenors live in the Black Hills. We are not state-supported or client-supported to travel to other locations, and we have the right to be able to be full participants in this process. Being required to travel to Pierre to participate means we cannot be full participants in this process.

I also request that all pleadings and Water Management Board orders be allowed to be served by electronic mail, when an email address is available. This also means that more intervenors can be full participants in the WMB process, because more of them would be able to financially support sending large files to lots of people.

Thank you for your consideration of these requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilius Jarding".

Lilius Jarding, PhD

JAY DAVIS LAW OFFICE

710 N. LaCrosse St. #1
Rapid City, SD 57701

JEREMIAH J. DAVIS, ATTORNEY AT LAW

Telephone: (605) 519-5128
Fax: (605) 355-9319

June 22, 2021

Jim Hutmacher, Chair
Water Management Board
523 E. Capitol Ave.
Pierre, SD 57501

RE: Water Permit Application # 2685-2 and 2686-2 (Powertech USA, Inc.)

Dear Mr. Hutmacher:

Having lived in Fall River County in the 1990's and in the Black Hills for most of my adult life, I write in opposition to Powertech's pending water permit applications. Fall River County's natural beauty make it a magnet for the tourism industry, and it also has a vibrant ranching economy. Uranium mining has caused environmental damage in the past, and the proposed uranium mining operation could seriously jeopardize the future of the area. We must remember that western South Dakota is semi-arid, and increasingly scarce water is our lifeblood.

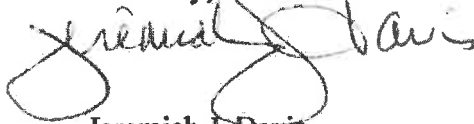
Powertech's federal EPA permits, which were hastily issued late last year, are now subject to an appeal before the Environmental Appeals Board, in which the EPA has requested a stay. The aquifer exemption, while initially granted, has been appealed to the 8th. Circuit Court of Appeals. Furthermore, the Bureau of Land Management has not approved Powertech's proposal.

Therefore, if the Water Management Board fails to grant the water permits that Powertech seeks, this does not jeopardize a project which is not ready to proceed anyway, a project that poses grave environmental and economic risks to the southern Black Hills. Originally, it was Powertech that requested a stay of its state water permit applications, until the controversy over its federal water permits was resolved.

Since this is an intense controversy, in which literally hundreds of Black Hills residents have intervened, I would request that any further public hearings be held in the Black Hills, to facilitate maximum public participation.

Thank you for your consideration in this matter.

Sincerely,



Jeremiah J. Davis
Attorney at Law

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

RECEIVED
JUL 06 2021
WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER PERMIT)	
APPLICATIONS 2685-2 2686-2)	
POWERTECH (USA) INC.)	
	)	CERTIFICATE OF SERVICE
IN THE MATTER OF THE 2012)	
GROUNDWATER DISCHARGE PLAN)	
APPLICATION SUBMITTED BY)	
POWERTECH (USA) INC.)	

The undersigned hereby certifies that true and correct copies of the following documents in the above matter were served by U.S. mail, first class, postage prepaid, upon the following on this 15th day of July 2021: Resolution by the City of Hot Springs; Resolution by the Town of Buffalo Gap; and letters from Intervenor Don H. Kelley MD, Rodney Knudson, Juli Ames-Curtis, Brenda Gamache, Sylvia Lambert, Gena M. Parkhurst, Mary Burrows, Frank J. Kloucek, Richard Draeger, Eileen Ohliger, Patricia E. Ohliger, Carla R. Marshall, Sarah Peterson, Cheryl Fair, Edward F. Harvey, Dorothy Richards, Susan R. Henderson, Jay Davis, and Lillas Jarding PhD.

Donald	Ackerman, Sr.	27128 Wonderland Rd.	Hot Springs	SD	57747
Keith & Kim	Alarie	840 Spruce St., Lot 320	Rapid City	SD	57701
Juli	Ames-Curtis	11936 Hay Creek Rd.	Custer	SD	57730
			Buffalo		
Twyla	Amiotte	PO Box 125	Gap	SD	57722
Jillian	Anawaty	2804 Willow Rd.	Rapid City	SD	57701
Harold	Arns	22723 Tawney Ct.	Box Elder	SD	57719
Jacqueline	Arpen	2004 Maple Ave.	Rapid City	SD	57701
Brandon	Bad Wound	639 Pahasapa Rd.	Rapid City	SD	57701
Angelia	Baldwin	PO Box 191	Pierpont	SD	57468
Anna	Ball	PO Box 46	Piedmont	SD	57769
Bill	Barlaw	PO Box 811	Edgemont	SD	57735
Bernard & Laurie	Barnaud	12129 Sagebrush Ln.	Nisland	SD	57762
		11778 Pleasant Valley			
Thomas F.	Barnes	Rd.	Custer	SD	57730
Sudhi	Baumberger	12374 Baumberger Rd.	Deadwood	SD	57732
Mark & Jennifer	Belitz	2311 Woodlawn Ave.	Missoula	MT	59804
Eddie	Berford	241 Galveston Ave.	Hot Springs	SD	57747

Hannah	Bochert	Sherman St.	Hot Springs	SD	57747
Mark	Boddicker	13850 Battle Creek Rd.	Hermosa	SD	57744
Wayne & Mary	Boots	25588 Mt. Shadow Rd.	Edgemont	SD	57735
Cindy	Brunson	11122 Fort Igloo Rd.	Edgemont	SD	57735
Mary	Burrows	545 N. River St., #211	Hot Springs	SD	57747
Wally	Caln	690 S. 6th Street	Hot Springs	SD	57747
Mary Kay	Carle	5821 Michael Court	St. Cloud	MN	56303
Julie & Emily	Christensen	603 N. River St.	Hot Springs	SD	57747
Sharon & Alex	Christie	PO Box 74	Buffalo Gap	SD	57722
Don DeVries	City of Hot Springs	303 N. River Rd.	Hot Springs	SD	57747
Doris Ann Mertz	Custer County Library	447 Crook St., Suite 4	Custer	SD	57730
Rube	D	104 Jefferson Street	Edgemont	SD	57735
Eric Gronlund	DANR	523 E. Capitol	Pierre	SD	57501
Ron Duvall	DANR	523 E. Capitol	Pierre	SD	57501
Jim Hutmacher, Chair	DANR - WMB	523 E. Capitol	Pierre	SD	57501
Lynda	Davies	PO Box 1204	Hot Springs	SD	57747
Jeremiah J.	Davis	130 E. Centennial St.	Rapid City	SD	57701
Joel & Peggy	Detmers	13488 Shelter Dr.	Rapid City	SD	57702
Ross	Dexter	PO Box 883	Hot Springs	SD	57747
Francis	Dicesare	1501 - 11th St.	Rapid City	SD	57701
Leora	Doppen	745 N. River St.	Hot Springs	SD	57747
Rick	Draeger	617 St. Cloud	Rapid City	SD	57701
Kathy	Durrum	10374 Dryland Dr.	Edgemont	SD	57735
Tom	Emanuel	19 N. Pine St.	Vermillion	SD	57069
M & T	Engle	115 Scott St.	Edgemont	SD	57735
Wade	Evans	27338 Taylor Ln. 12909 Sheps Canyon	Hot Springs	SD	57747
Cheryl	Fair	Rd.	Hot Springs	SD	57747
	Fall River County State's Atty.	906 N. River St., Suite 301	Hot Springs	SD	57747
Donna	Fisher	12311 Whitetail Rd.	Deadwood	SD	57732
Shirley	Frederick	2002 Promise Rd., Apt. 5216	Rapid City	SD	57701
Rodney	Freeman	PO Box 176	Huron	SD	57350

Lisa	Freshour	2045 Canton Ave., #535	Hot Springs Buffalo	SD	57747
Gary	Friendshuh	27098 Elk Rd.	Gap	SD	57722
Brenda	Gamache	2337 Wilson Ave.	Hot Springs	SD	57747
Rich & Jackie	Gericke	305 S. 14th St.	Hot Springs	SD	57747
Cindy Gillis	Gonzalez Law Firm	522 - 7th Street, #202	Rapid City	SD	57701
May	Gozelet	338 S. River St.	Hot Springs	SD	57747
Jesse	Grant	1938 Detroit Ave.	Hot Springs	SD	57747
Gardner & Lynn	Gray	20228 Avalanche Rd.	Whitewood	SD	57793
Diane	Gross	27426 Cedar Rd.	Hot Springs	SD	57747
Matthew Naasz	Gunderson Palmer	PO Box 8045	Rapid City	SD	57709
Jake	Haacke	1026 Evanston Ave.	Hot Springs	SD	57747
William	Hansen	1201 Oakridge Dr., #250	Fort Collins	CO	80525
Edward	Harvey	1545 Albany Ave.	Hot Springs	SD	57747
Joel	Hawkins	1901 Wilson	Hot Springs	SD	57747
Ellen	Heafner	504 S. 19th St.	Hot Springs	SD	57747
Kip, Clifford & Virginia	Heinzen	309 S. 6th St.	Hot Springs	SD	57747
Susan	Henderson	Box 731	Edgemont	SD	57735
Patricia	Hernandez	71 Apache Plume Dr.	Santa Fe	NM	87508
Carolyn	Hertel	27615 Country View Rd.	Hot Springs	SD	57747
Michael	Hickey	Bangs McCullen, PO Box 2670	Rapid City	SD	57709-2670
Luella	Hicks	PO Box 144	Buffalo Gap	SD	57722
Terry	Holcomb	105 S. 23rd St.	Hot Springs	SD	57747
Georgia	Holmes	838 Birch	Hot Springs	SD	57747
Jeremy & Roger	Horton	PO Box 629	Edgemont	SD	57735
BJ	Hunter	353 Bears Ave.	Hot Springs	SD	57747
Richardo	Jacoue	601 Albany Ave.	Hot Springs	SD	57747
Cheryl & John	Jarding	2469 Broadmoor Ct.	Rapid City	SD	57702
Mike & Angela	Jarding	27201 Valley Rd.	Hot Springs	SD	57747

Dianna	Jensen	27999 Cascade Rd.	Hot Springs	SD	57747
Patricia Jenkins and	Jeremy Smith	287 Evans Ln.	Spearfish	SD	57783
Andy & Forest	Johnson	610 Nellie Lane	Spearfish	SD	57783
Terry	Johnson	26680 Buffalo Butte Dr.	Hot Springs	SD	57747
Dawn	Johnson	PO Box 1123	Hot Springs	SD	57747
Lorna	Just	21939 - 464th Ave.	Volga	SD	57071
Marvin	Kammerer	22198 Elk Vale Rd.	Rapid City	SD	57701
Gwen	Kaneshiro	1446 Evanston Ave.	Hot Springs	SD	57747
Angie	Keierleber	447 Crook St., #1	Custer	SD	57730
Don & Kim	Kelley	12637 Merritt-Estes Rd.	Deadwood	SD	57732
Jewell	Keown	410 S. 4th St.	Hot Springs	SD	57747
Stanley	Keys	224 E. Minnesota St.,	Apt. 205	Rapid City	SD
Sabrina	King	PO Box 1538	Lander	WY	85250
Judith	Klein	238 N. 6th St.	Hot Springs	SD	57747
Frank J.	Kloucek	29966 - 423rd Avenue	Scotland	SD	57059
Dennis & Penny	Knuckles	12484 Willow Creek Rd.	Custer	SD	57730
Rodney	Knudson	PO Box 25	Hulett	WY	82720
Sylvia	Lambert	PO Box 78	Interior	SD	57750
Margaret &			Buffalo		
Laurence	Lamont	PO Box 53	Gap	SD	57722
Dan	Lang	27564 Ponderosa Rd.	Hot Springs	SD	57747
Greg	Langer	PO Box 141	Buffalo Gap	SD	57722
Karla	LaRive	839 Almond Street	Hot Springs	SD	57747
Calvin	LaRive	142 N. 6th St.	Hot Springs	SD	57747
John E.	Larson	10374 Dryland Dr.	Edgemont	SD	57738
Karla	Larvie	PO Box 752	Hot Springs	SD	57747
Robert	Lee	338 S. 5th St.	Hot Springs	SD	57747
Rebecca M.	Lord	23789 Maggie Way	Rapid City	SD	57702
Pam	Ludweg	810 Gordon	Custer	SD	57730
Carla Rae	Marshall	PO Box 3184	Rapid City	SD	57709
Lisa	Masterson	445 S. 6th St.	Hot Springs	SD	57747
DeAnn	McComb	PO Box 254	Hot Springs	SD	57747
James	McGrath	8403 Pioneer Circle	Rapid City	SD	57702

Daria	McGrath	8403 Pioneer Circle	Rapid City	SD	57702
Dahl	McLean	11853 Acorn Ridge Rd.	Spearfish	SD	57783
Cynthia	Messenger	12750 Merchen Rd., #18	Hot Springs	SD	57747
Martin & Elsa	Meyer	102 S. Connor St.	Hot Springs	SD	57747
Steven & Lexxie	Meyer	13050 Lakeview Dri.	Hot Springs	SD	57747
Gary	Miles	27528 Rathbun Road	Hot Springs	SD	57747
Neil	Miller	846 Almond St.	Hot Springs	SD	57747
Marsha	Miller	27316 Hidden Center	Hot Springs	SD	57747
Valerie	Naylor	23201 Custer Trails Rd.	Rapid City	SD	57702
Casey	Neugebauer	27552 S. Buffalo Gap Rd.	Oral	SD	57766
Ricard	Nowlan	421 Galveston	Hot Springs	SD	57747
Ann F. Mines Bailey	Office of Atty. Genl.	1302 E. Highway 14, #1	Pierre	SD	57501
Michael	O'Rourke	4513 Leo Drive., #4	Madison	WI	53716
Otis	Osborn	523 St. Francis St.	Rapid City	SD	57701
Raymond	Palmer	27221 Windy Rd.	Hot Springs	SD	57747
Jason	Parker	1005 S. River St.	Hot Springs	SD	57747
Valerie A.	Parker, MD	4814 Cliff Dr.	Rapid City	SD	57702
Gena M.	Parkhurst	PO Box 1914	Rapid City	SD	57709
Mary Helen	Pederson	437 N. 6th St.	Hot Springs	SD	57747
Mel	Pence	2330 Washington Ave.	Hot Springs	SD	57747
Jim	Petersen	1203 - 11th St.	Rapid City	SD	57701
Sarah	Peterson	510 Jennings	Hot Springs	SD	57747
Sarah & AJ	Phillips	4099 S. 570 E., Apt. 15F	Salt Lake City	UT	84107
Chris	Pierce	101 N. Chicago	Hot Springs	SD	57747
Rex & Mildred	Piper	1609 Detroit Ave.	Hot Springs	SD	57747
Cindy	Powell/Girard	1637 - 38th St.	Rapid City	SD	57702
Steve	Preheim	2317 Washington Ave.	Hot Springs	SD	57747
	Resident	12560 Beaver Creek Rd.	Hot Springs	SD	57747
Rick	Rewe	28149 Sheps Canyon Rd.	Hot Springs	SD	57747

Charleton	Reynar	28025 Cascade Rd.	Hot Springs	SD	57747
Dorothy	Richards	340 N. 23rd St.	Hot Springs	SD	57747
Craig	Romey	342 N. 4th	Hot Springs	SD	57747
Elray	Rosaaen	PO Box 125	Buffalo Gap	SD	57722
Katie	Roseland	5811 Gemini St.	Rapid City	SD	57703
Roger and Cheryl	Rowe	7950 Dark Canyon Road	Rapid City	SD	57702
Betty	Runzerel	PO Box 836	Hot Springs	SD	57747
Betty	Russell	PO Box 836	Hot Springs	SD	57747
Frank	Ruther	545 N. River St., #413	Hot Springs	SD	57747
Gail	Saxonis	745 Happy Hollow	Hot Springs	SD	57747
John & Connie	Schwarzenbach	2229 Minnekahta Ave.	Hot Springs	SD	57747
Marsha	Seabolt	4435 Dolphin	Rapid City	SD	57701
Peggy	Semler	PO Box 245	Hot Springs	SD	57747
Robert	Shannon	24705 Timber Ridge Rd.	Hermosa	SD	57744
Barbara	Sharp	445 S. 3rd St.	Hot Springs	SD	57747
Jerry	Simunter	22769 Jenny Rd.	Hot Springs	SD	57747
Charlene	Smith	PO Box 481	Rapid City	SD	57709
Dale	Steineke	13130 Greg Dr.	Hot Springs	SD	57747
Susan	Stolarcek	PO Box 686	Hot Springs	SD	57747
Lila	Streff	12376 Beaver Den Dr.	Custer	SD	57730
Rebecca Leas and Rick	Summerville	21287 Sandal Foot Dr.	Venice	FL	34293
Dennis	Sutherland	2202 University	Hot Springs	SD	57747
Rebecca	Terk	8265 Dark Canyon Road	Rapid City	SD	57702
Jo Beth	Troxel	303 E. Morse St.	Callaway	NE	68825
Mark	Tubbs	10891 River Rd.	Edgemont	SD	57735
Douglas	Uptain	1805 W. 10th St.	Loveland	CO	80537
Mary Ellen	Uptain	1805 W. 10th St.	Loveland	CO	80537
Judith	Van Cleave	7711 Dark Canyon Rd.	Rapid City	SD	57702
Milli	Vong	146 S. 19th	Hot Springs	SD	57747
Alan	Walker	303 Cedar St.	Buffalo Gap	SD	57722

Kellee	Walton	1005 S. River St.	Hot Springs	SD	57747
Susan	Watt	PO Box 790	Hot Springs	SD	57747
Wendolyn	Weimers	306 N. 19th St.	Hot Springs	SD	57747
Debra	Weishaupl	110 N. 3rd St.	Hot Springs	SD	57747
Charmaine	White Face	PO Box 2003	Rapid City	SD	57709
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June 28, 2021

Ron Duvall
Water Rights Permitting Administrator
SD DANR, Water Rights Program
Foss Building 523 East Capitol Ave.
Pierre, SD 57501-3182

Matthew E. Naasz
Email: mnaasz@gpna.com
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Re: In the Matter of Water Permit Application #2685-2 and 2686-2;
In the Matter of 2012 Ground Water Discharge Plan Application Submitted by
Powertech, USA, Inc.

Dear Mr. Duvall:

Enclosed please find a copy of Powertech's reply to the Water Right Program and Surface Water Quality Program's Response in Opposition to Powertech's Motion to Amend the Procedural Order.

As of the mailing of this correspondence, Powertech has received no indication as to when their Motion to Amend Scheduling Order will be considered. Powertech's Motion does not currently appear as an agenda item on the July 7, 2021 Water Management Board meeting agenda currently available on the DANR website. Powertech respectfully requests guidance regarding when its Motion to Amend the Procedural Order will be considered so that appropriate arrangements can be made to participate in the hearing on that Motion.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Naasz', is written over a horizontal line.

Matthew E. Naasz

Enclosures

MEN:eah

cc: All Parties of Record Noted on Certificate of Service

cc via e-mail: Ann Bailey and Steve Blair, Assistant Attorneys General, David McVey, Assistant Attorney General, Ron Duvall

Offices in Rapid City and Pierre, South Dakota

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STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	
PERMIT APPLICATIONS 2685-2)	
and 2686-2, POWERTECH (USA) INC.)	
	)	POWERTECH'S REPLY TO THE
IN THE MATTER OF THE 2012	)	PROGRAMS' RESPONSE IN
GROUNDWATER DISCHARGE PLAN	)	OPPOSITION TO PROPOSED
APPLICATION SUBMITTED BY	)	AMENDMENT OF THE PROCEDURAL
POWERTECH (USA) INC.	)	ORDER
)	

Powertech (USA) Inc. ("Powertech"), by and through its attorneys, Matthew E. Naasz and Richard M. Williams of Gunderson, Palmer, Nelson & Ashmore, LLP, hereby submits this Reply to the Programs' Response in Opposition to Proposed Amendment of the Procedural Order.

INTRODUCTION

This Brief is filed in reply to the Water Right Program's and Surface Water Quality Program's ("Programs") Response in Opposition to Proposed Amendment of the Procedural Order ("Response").

ARGUMENT

1. The hearing in this matter is ripe to resume upon a timely schedule.

Powertech made its Motion to Continue on November 19, 2013. That motion was granted by the Water Management Board ("Board") on November 25, 2013. As discussed in previous briefing on this issue, Powertech provided the basis for its motion by means of a written brief and within the body of the motion to continue. Powertech's motion specifically requested that the hearing be continued until:

1. The United States Nuclear Regulatory Commission staff has *issued* a Source and Byproduct Material License to Powertech for the Dewey-Burdock Project, and has determined the financial assurance; and
2. The United States Environmental Protection Agency has made aquifer exemption determinations and *issued* Underground Injection Control Class III and Class V permits to Powertech for the Dewey-Burdock Project, and has determined financial assurance.

(emphasis added).¹ Powertech's request for continuance was specifically tied to the *issuance* of the license by the Nuclear Regulatory Commission ("NRC"), the *issuance* of the permits from the Environmental Protection Agency ("EPA"), and a determination of financial assurance on those matters.² On November 24, 2020, the EPA issued Powertech Final Area Permit No. SD312331-00000 for the Class III injection wells³ and Final Area Permit No. SD52173-00000 for the Class V Deep injection wells.⁴

The fact that the EPA issued the above-described permits is not disputed by the Programs. Nonetheless, the Programs' Response implies the Board can indefinitely delay this matter because there has been no "final agency action" by the EPA on the Class III and Class V Final Permits because they are not "effective" as they are currently under review by the Environmental Appeals Board ("EAB"). See Response of Programs at 5. The Board granted Powertech's motion and ordered the hearing continued "until resolution" by the federal agencies of Powertech's pending federal applications. While we could discuss the meaning of "resolution" within the context of Powertech's Motion to Continue for pages, it is not up for debate that the terms "final agency action" and "effective" are wholly absent from Powertech's

¹ <https://denr.sd.gov/powertech/wmb/11202013Powertechmotiontocontinue.pdf>

² Although the Programs discuss the issuance and appeals of the NRC Source and Byproduct Materials License and the EPA's aquifer exemption determination, the Programs do not appear to argue the appeals of the NRC License and the EPA's aquifer exemption determination form a basis to delay the State proceedings. Accordingly, Powertech will only address the EPA's issuance of the Class III and Class V permits.

³ https://www.epa.gov/sites/production/files/2020-11/documents/dewey-burdock_class_iii_area_permit_final_nov_24_2020.pdf

⁴ https://www.epa.gov/sites/production/files/2020-11/documents/dewey_burdock_class_v_area_permit_final_nov_24_2020.pdf

Motion to Continue. Powertech very clearly articulated, in its motion, that it was requesting a continuance until the permits were *issued*. That has undisputedly occurred.

It should also not go un-noticed that the terms “final agency action” and “effective” are conspicuously absent from the Board’s Order Granting Powertech’s Motion to Continue. “Final agency action” is a term of art used to describe when the action of an agency may be subject to appeal.

Final agency action “is a term of art that does not include all [agency] conduct such as, for example, constructing a building, operating a program, or performing a contract,” but instead refers to an “agency’s [final] *determination* of rights and obligations whether by rule, order, license, sanction, relief, or similar action.” And each of the two components — agency action and finality of agency action — narrows the scope of judicial review.

Nat’l Veterans Legal Servs. Program v. United States Dep’t of Def., 990 F.3d 834, 839 (4th Cir. 2021)(citations omitted). And when a final permit decision from the EPA regarding Class III and Class V wells becomes “effective” is defined in federal code. *See* Response of Programs at 5 (citing to 40 C.F.R § 124.15(b)). These terms have very specific meanings that carry with them resultant legal consequences. If the Board wished to burden Powertech with the significant legal consequences that flow from the imposition of these terms on the permitting process, it would have used these terms in its Order Granting Powertech’s Motion to Continue. But it didn’t. And Powertech certainly didn’t request them. Instead, as noted above, Powertech requested the hearing be continued until such times as the permits were *issued*. And nobody disputes the final permits have been issued.

The Programs’ Response would suggest the Board now apply additional terms that were not requested by Powertech and that do not appear in the Board’s Order Granting Powertech’s Motion to Continue. With regard to legal consequences, the addition of the terms “final agency action” and “effective”, as suggested by the Programs, would materially alter the effect of the

Board's Order. The Programs cannot now suggest additions to the Board's Order that, at the time of issuance, would have put Powertech on notice that it could not continue with the hearing until "final agency action" and its permits became "effective." Again, Powertech's motion only requested a continuance until such times as the permits had been *issued*. Had the specific terms of art suggested by the Programs been included in the Board's Order, Powertech would have had an opportunity to address them, at that time the Order was issued, rather than expending considerable time and expense to initiate hearings in this matter under the current language. Those terms cannot now be read into the Order without significant prejudice to Powertech.

Nor is approval by the Bureau of Land Management ("BLM") an impediment to moving forward. BLM approval was clearly not included in the Board's Order. On a practical aside, there are a total of 240 acres of BLM lands within the 10,580 acre NRC license boundary and only 13 acres of that land are anticipated to be subject to minor disturbance for life of the mine. Because the project will be developed using a phased development approach, a procedure endorsed by NRC, Powertech plans to build facilities and wellfields over a process of several years as needed to sustain production levels from the project. Powertech can fully operate from other areas within the project, the vast majority of which is not located on BLM surface, and not subject to BLM approvals.

Powertech has surface agreements allowing project development with all of the private surface owners within the NRC licensed project and the proposed DANR Large Scale Mine Permit (LSMP) boundary, as presented with Powertech's LSMP application to DANR. For efficiency in cost, Powertech does currently have some infrastructure planned that crosses BLM surface, but these include roads, power lines, and pipelines which may be rerouted in compliance with NRC license requirements and under the proposed conditions of the LSMP to avoid BLM

surface. No key project facilities are located on BLM surface and any wellfields on BLM surface could be avoided or postponed until a later date. BLM approval is not necessary an impediment to moving forward.

It should also be noted that the permits currently stayed by the EAB only authorize operation and construction of Class III and Class V injection wells. That stay does not preclude Powertech from moving forward with other aspects of its operation provided it has the appropriate State authorization. The stay of the EPA Class III and Class V permits does not prevent construction of any other components of the facility currently authorized by the NRC. Provided Powertech receives authority from the State, it may move forward with those aspects of the project. The stay of the aforementioned EPA permits only prevents production operations because injection wells are needed to perform those functions. The Programs' position, therefore, that Powertech cannot move this project forward absent effective Class III and Class V permits is wholly inaccurate.

Furthermore, the impetus for Powertech's original motion to continue was to narrow the issues before this Board, especially as related to this Board's public interest inquiry. That goal has been achieved, not only through the federal permitting procedures to date, but also by the South Dakota legislature. During the most-recent legislative session HB 1028 clarified the nature of this Board's inquiry regarding the public interest. The relevant portion of SDCL 46-2A-9 will read (effective 1 July, 2021) "and the permit is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by §§ 46-2-9 and 46-2-11." This definition of public interest will certainly narrow the breadth of admissible evidence on the topic of "public interest."

2. The Board must resume hearings at this time to avoid violating Powertech's due process rights.

The Programs recognize, "there is no legal impediment to restarting these proceedings at this time." Response of Programs at 5. The Programs continue that very sentence by concluding "there is no legal obligation to do so either." *Id.* This contradiction cannot be reconciled in the face of Powertech's due process rights to be heard by this Board. "The fundamental requisite of due process of law is the opportunity to be heard. The constitutional guarantee of due process of law must be applied to and observed in administrative proceedings involving adversary parties." *In re Cancellation of Stabio Ditch Water Right on Spearfish Creek*, 417 N.W.2d 391, 394 (S.D. 1987). And the opportunity to be heard must occur "in a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976). The Programs' position that, "The Board would be within its authority to determine that it is more efficient to continue the stay of these proceedings until such time as the permits are finalized or even until such time as the federal appeals have concluded" overstates the Board's flexibility in this matter. *See* Response of Programs at 5. While the Board certainly possesses flexibility in determining when a hearing may proceed, it is dangerous to suggest the Board may indefinitely delay a hearing based on factors external to this Board's authority. As conceded by the Programs, Powertech's participation in parallel federal proceedings for licensing and permitting do not provide this Board with a legal basis for delay. The Board may easily avoid these due process issues by resuming the hearing in this matter pursuant to a schedule that provides the parties a reasonable opportunity to address Powertech's pending applications.

3. Powertech is not responsible for maintaining an up-to-date list of intervenors.

Powertech respectfully submits it is incumbent upon the individual intervenors and petitioners to update their contact information appropriately. The Programs urge the Board to

determine how to proceed regarding intervenors who have not provided current contact information. Parties, even parties appearing pro-se, are required to update courts with their current addresses.⁵ Without authority to the contrary, the intervenors and petitions in this matter should be held to the same standard. While Powertech agrees that a determination should be made on this issue, Powertech cannot be held responsible for incorrect or out-of-date addresses submitted by the parties. In fact, pursuant to the Procedural Order and verbal direction by this Board, Powertech is bound to serve the entire list of intervenors and petitioners as it currently exists. Moving forward, to reduce unnecessary mailings, and Pursuant to Procedural Order paragraph 6(vii), Powertech requests that it only be required to serve the parties who selected Option A.

4. The time has passed for additional Option B intervenors to provide testimony.

The Board's Order in this matter was one granting a continuance of the hearing in progress. Nothing in the Board's Order can be read to allow testimony to be re-opened or to grant the option for intervenors or petitioners to change party status. The Programs suggest that this Board should determine whether intervenors and petitioners should be allowed to reelect their level of participation. But, as noted by the Programs, that election must have been made "prior to the proceedings." Response of Programs at 8. The time for that election has expired. And the testimony has already been received by all Option B Participants. *Id.* Pursuant to the terms of the Procedural Order, the election of levels of participation has passed and the case cannot be rewound to provide that testimony now. There is no need to address this issue again.

⁵ See *Grant v. Astrue*, No. CIV 09-2818 (DWF/JSM, 2010 WL 3023915, at *2 (D. Minn. July 13, 2010)), *report and recommendation adopted*, No. CIV 09-2818 (DWF/JSM, 2010 WL 3023661 (D. Minn. Aug. 2, 2010))(citing cases).

5. Powertech takes no position on the location of the hearing.

The Programs unnecessarily criticize Powertech for failing to account for the need to determine a location of the hearing. Powertech takes no position on the location of the hearing and believes the location of the hearing is completely within the Board's discretion. It would seem that this issue would best be discussed at a hearing in front of the Board with the ability of all parties to participate. To Powertech, the location of the hearing is much less important than re-initiating the hearing process. Pierre, Rapid City, Hot Springs – Powertech will be ready to proceed at whatever location this Board finds appropriate.

6. Matters of scheduling deadlines can be addressed at a Board hearing.

Like the location of hearing, the appropriate deadlines to be included in an amended Procedural Order should be discussed at a hearing on the matter. The Programs need not object, in total, to Powertech's Motion to Amend Procedural Order when the scheduling of various pre-hearing deadlines, and the date of the hearing itself, can be adjusted to ensure that appropriate time is provided at each stage. After all, Powertech submitted a "*Proposed* Amended Procedural Order" to aid the discussion on this matter. That said, it is unclear, at this point, why certain timelines need be extended to the extent suggested by the Programs.

The Programs suggest additional time may be needed for preparation of transcripts of the prior proceedings. The audio recording of all prior proceedings is available on the Water Rights Program's website. Should transcripts need to be obtained, those transcripts could be prepared.

Most importantly, the Programs take issue with the request that forty-five (45) days be allowed for supplementation of discovery prior to the hearing date. The Programs suggest that this is insufficient because the Water Rights Program will need to prepare a new report and a new recommendation. Certainly, a new Water Rights Engineer will need to evaluate the

previously authored report and recommendation. But there is simply no need for a new report and recommendation. The priority date from Powertech's permits, if approved, would date back to the date its application was received by the Water Rights Program. *See* SDCL § 46-2A-15. The applications for water rights from the Inyan Kara Aquifer and the Madison Limestone that have been submitted since Powertech's application was received will be junior to Powertech's water rights.

The existence of Powertech's requested appropriation is identified by the Water Rights Program in their reports to Chief Engineer, filed after Powertech's applications were received, regarding applications to appropriate water from both the Madison Limestone and Inyan Kara Aquifer. *See* Report to the Chief Engineer on Water Permit Application No. 2784-2 (April 18, 2018) (Madison aquifer)⁶; Report to the Chief Engineer On Water Permit Application No. 2000-1 (November 18, 2020) (Inyan Kara aquifer)⁷. In reports to the Chief Engineer regarding applications from each of these aquifers submitted after Powertech's applications were received, the Water Rights Engineer considers the appropriation that is requested by Powertech in calculating discharge for purposes of the hydrologic budget. It is noteworthy that in each of those situations, the Chief Engineer recommended approval of the request, while including Powertech's requested withdrawal in its analysis of water availability. The Water Rights engineer who will testify regarding Powertech's applications will not be starting from scratch – there is no need for a new recommendation. It is also noteworthy that the Programs request “a minimum of ninety (90) days” to update the reported recommendation. If this were a new recommendation requiring the Water Rights Program to start from scratch, the Water Rights

⁶ https://denr.sd.gov/wrimage/wrinfo/wr_div1/2000-1.pdf

⁷ https://denr.sd.gov/wrimage/wrinfo/wr_div2/2784-2.pdf

Program would statutorily have only sixty (60) days within which to make a recommendation.
See SDCL § 46-2A-2.

Ultimately, the Programs are not in a position to further opine on an applicants' ability to proceed with a project on issues outside the statutorily created jurisdiction of that program. Powertech has completed all procedural requirements at the Programs' level to allow its application to be considered by this Board. Powertech has submitted a completed application, which has not been returned by the Chief Engineer as defective in form or incomplete. *See* SDCL 46-2A-15. The Chief Engineer has issued a report, recommending approval of the permit. Pursuant to SDCL 46-2A-2, following the recommendation, the Chief Engineer "shall schedule the application for hearing by the Water Management Board." (emphasis added). The matter is now properly in front of this Board and the Programs concede there is no legal impediment to proceeding. The Programs, therefore, are simply incorrect in saying that this Board has the authority to indefinitely delay these proceedings due to matters outside the jurisdiction of the Programs and this Board. That the Programs feel they need additional time to review certain aspects of this project is one thing; for the Programs to suggest that Powertech is not ready to proceed after Powertech has successfully complied with all requirements at the Programs' level is a step too far. Powertech understands the constraints under which the Programs operate but is interested in moving forward in a reasonable fashion. Powertech should have the same rights as any other applicant; the right to have its application timely considered by this Board on the merits.

7. Delay only begets delay.

A prompt hearing in front of the Board now will help ensure that this project continues to move forward at both the State and federal level. The Programs note that the matter has been

stayed for approximately eight years. *See* Response of Programs at 10. Powertech does not disagree that the implementation of EPA permits have long been delayed by numerous attacks – almost all of which have been unfounded – by its opponents. But the successful delay tactics imposed at the federal level should not be used to further delay the State proceedings. As described in Powertech’s initial Brief, the inability to move forward at the State level will only be used to perpetuate additional federal delays. Powertech is currently stuck in a catch-22. The federal agencies are telling the Courts that Powertech is not prejudiced by any delay because they do not have their State permits in order, and the Programs are suggesting that the State not move forward because the EPA’s permits are not effective due to a stay at the federal level. Such a position from the federal bureaucracy, which has long been criticized for moving at a snail’s pace, is not surprising. The federal government, however, should not be able to point to South Dakota to justify its lethargy.

CONCLUSION

Based on the arguments and authorities provided above, Powertech respectfully requests this Board enter an Amended Procedural Order providing Powertech with the ability to move forward with its hearing in this matter.

Dated: June 28th, 2021.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
And 2686-2, POWERTECH (USA), INC.)

CERTIFICATE OF SERVICE

IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

I hereby certify on June 28, 2021, originals of the following documents were served upon Rob Duvall, DANR for filing and a true and correct copy of the following documents:

**POWERTECH'S REPLY TO THE PROGRAMS' RESPONSE IN
OPPOSITION TO PROPOSED AMENDMENT OF THE PROCEDURAL ORDER**

were served upon the following individuals by U.S. Mail, postage prepaid:

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Dan Lang 27564 Ponderosa Road Hot Springs, SD 57747	Greg Langer P.O. Box 141 Buffalo Gap, SD 57722
Matt Lanz 27927 Cascade Spring Road Hot Springs, SD 57747	Calvin Larive 713 N. River Street Hot Springs, SD 57747

John E. Larson 10374 Dryland Drive Edgemont, SD 57738	Karla Larive P.O. Box 752 Hot Springs, SD 57747
Robert Lee 338 S. 5 th Street Hot Springs, SD 57747	Pam Ludweg 810 Gordon Custer, SD 57730
Nancy C. Magnuson P.O. Box 54 Buffalo Gap, SD 57722	Susan Malewke 545 N. River Street, #401 Hot Springs, SD 57747
Carla Rae Marshall P.O. Box 3184 Rapid City, SD 57709	Lisa Masterson 445 S. 6 th Street Hot Springs, SD 57747
DeAnn McComb P.O. Box 254 Hot Springs, SD 57747	James B. McGrath 8403 Pioneer Circle Rapid City, SD 57702
Daria McGrath 8403 Pioneer Circle Rapid City, SD 57701	Billy Jack McLaughlin P.O. Box 25 Buffalo Gap, SD 57722
Jim McKean 27317 Hidden Ct. Hot Springs, SD 57747	Cynthia Messenger 12750 Merchen Road #18 Hot Springs, SD 57747
Steven & Lexxie Meyer 13050 Lakeview Drive Hot Springs, SD 57747	Martin H & Elsa Meyer 102 S. Connor St. Hot Springs, SD 57747
Gary Miles 27528 Rathbun Road Hot Springs, SD 57747	Karen Miller 3119 Turtle Creek Court Rapid City, SD 57703
Marsha Miller 27316 Hidden Center Hot Springs, SD 57747	Neal Miller 486 Almond Street Hot Springs, SD 57747
Glenn Mushaney P.O. Box 272 Hot Springs, SD 57747	Jason Nachtigall 12749 Country Road Hot Springs, SD 57747

Jean Nachtigall 12749 Country Road Hot Springs, SD 57747	Valerie Naylor 23201 Custer Trails Road Rapid City, SD 57702
Casey Neugebauer 27552 S Buffalo Gap Road Oral, SD 57766	Richard Nowlan 202 Dakota St. Hot Springs, SD 57747
Michael O'Rourke 4513 Leo Drive #4 Madison, WI 53716	Madeline Ortego P.O. Box 861 Pine Ridge, SD 57773
Otis Osborn 523 Francis St. Rapid City, SD 57701	Raymond Palmer 27221 Windy Road Hot Springs, SD 57747
Jason Parker 1005 S River St. Hot Springs, SD 57747	Valerie A Parker, MD 4814 Cliff Drive Rapid City, SD 57702
Mary Helen Pederson P.O. Box 646 Hot Springs, SD 57747	Mel Pence 2330 Washington Ave. Hot Springs, SD 57747
Jim Petersen 1203 11 th Street Rapid City, SD 57701	Sarah Peterson 510 Jennings Hot Springs, SD 57747
Sarah & AJ Phillips 4099 S. 570 E Apt. 15F Salt Lake City, UT 84107	Chris Pierce 101 N. Chicago Hot Springs, SD 57747
Rex & Mildred Piper 1609 Detroit Ave. Hot Springs, SD 57747	Linda Pirales 311 S. Wisconsin Ave. Casper, WY 82609
Cindy Powell 1637 38 th St. Rapid City, SD 57702	Gary Putnam 204 4 th Ave. Hot Springs, SD 57747
Jim Red Cloud 13084 Gray Drive Hot Springs, SD 57747	Rick Rewe 28149 Sheps Canyon Road Hot Springs, SD 57747

Charleton T. Reynar 28025 Cascade Road Hot Springs, SD 57747	Dorothy Richards 340 N 23 rd St. Hot Springs, SD 57747
Craig Romey 342 N. 4 th Hot Springs, SD 57747	Elray Rosaaen P.O. Box 125 Buffalo Gap, SD 57722
Katie Roseland 5811 Gemini St. Rapid City, SD 57703	Grant Rush P.O. Box 172 Hot Springs, SD 57747
Betty Runzerel P.O. Box 836 Hot Springs, SD 57747	Frank Ruther 545 N River #413 Hot Springs, SD 57747
Betty Russell P.O. Box 836 Hot Springs, SD 57747	Gail M. Saxonis 745 Happy Hollow Hot Springs, SD 57747
Mary and Jason Salway 910 S 6 th Street Hot Springs, SD 57501	John & Connie Schwarzenbach 2229 Minnekahta Ave. Hot Springs, SD 57747
Gary Schweigert 279 Cascade Road Hot Springs, SD 57747	Marsha Seabolt 4435 Dolphin Rapid City, SD 57701
Peggy Semler P.O. Box 245 Hot Springs, SD 57747	Robert V. Shannon 24705 Timber Ridge Road Hermosa, SD 57744
Barbara Sharp 445 S. 3 rd Street Hot Springs, SD 57747	Russ Sick 12619 Boone Canyon Road Hot Springs, SD 57747
Ashley Simpson P.O. Box 587 Hot Springs, SD 57747	Jerry Simunter 22769 Jenny Road Hot Springs, SD 57747
Charlene J. Smith P.O. Box 481 Rapid City, SD 57709	J. Smith 2728 Hoot Brook Hot Springs, SD 57747

Jeremey Smith 287 Evans Lane Spearfish, SD 57783	Maura Smith 306 Joplin #8 Hot Springs, SD 57747
Jason & Mary Solway P.O. Box 424 Allen, SD 57714	Dale Steineke 13130 Greg Dr. Hot Springs, SD 57747
Darla Stevens 1622 Evanston Hot Springs, SD 57747	Susan Stolarcek P.O. Box 686 Hot Springs, SD 57747
Richard Stone 12959 Buffalo Circle Hot Springs, SD 57747	Lila Streff 12379 Beaver Den Dr. Custer, SD 57730
Linda M. Styger 11962 Sundance Dr. Hot Springs, SD 57747	Michelle Sugeg P.O. Box 139 Hot Springs, SD 57747
Dennis Sutherland 2202 University Hot Springs, SD 57747	Alison Swan 703 N. River Street Hot Springs, SD 57747
Paula Tonemah 306 Thompson Hot Springs, SD 57747	Niklaus Towne 28423 Old Highway 79 Hot Springs, SD 57747
Loraine Tucker P.O. Box 1129 Hot Springs, SD 57747	Mary Ellen Uptain 3213 W. Main #112 Rapid City, SD 57702
Judith R. Van Cleave 7711 Dark Canyon Road Rapid City, SD 57702	Milli Vong 333 N. River Street Hot Springs, SD 57747
Alan Walker 303 Cedar Street Buffalo Gap, SD 57722	Lennie Walleen 446 S. 16 th Hot Springs, SD 57747
Barbara Walter 545 N. River Street, Apt. 503 Hot Springs, SD 57747	Kellee Walton 1005 S. River Street Hot Springs, SD 57747

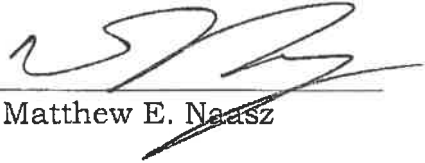
Susan W. Watt P.O. Box 790 Hot Springs, SD 57747	Wendolyn Weimers 306 N. 19 th St. Hot Springs, SD 57747
Debra J. Weishaupl 110 N. 3 rd Street Hot Springs, SD 57747	Betty Welch P.O. Box 14 Edgemont, SD 57735
Charmaine White Face P.O. Box 2003 Rapid City, SD 57709	Debra White Plume P.O. Box 71 Manderson, SD 57756
Kristen Wilder 506 Jennings Ave. Hot Springs, SD 57747	Bette Wilkinson 3718 Redwood Street Rapid City, SD 57701
Jerry Wilson 30959 Frog Creek Road Vermillion, SD 57069	Russell D. Witte 301 S. Chicago Hot Springs, SD 57747
Julia Woodard 639 Pahsapa Road Rapid City, SD 57701	Sandra Woodard P.O. Box 533 Oglala, SD 57764-0533
Robin Wynia 12750 Merchen Road Hot Springs, SD 57747	Karen Yekel 2455 Minnekahta Hot Springs, SD 57747
Elton Zornes 12742 Highway 18 Hot Springs, SD 57747	Steve Preheim 2317 Washington Ave. Hot Springs, SD 57747
Stacy Reetz 546 Jennings Ave. Hot Springs, SD 57747	James B. Woodward P.O. Box 599 Wellington, CO 80549
John E. Lawson 10374 Dryland Drive Edgemont, SD 57735	Jennie Sotherland 27735 Cascade Road Hot Springs, SD 57747
Melissa Martin 2329 Ely Ave. Hot Springs, SD 57747	Rube D. Tiff P.O. Box 411 Edgemont, SD 57735

Judy Gaalswyk 912 9 th Street Rapid City, SD 57701	Bill Barlaw P.O. Box 1104 Hot Springs, SD 57747
Dayton O. Hyde P.O. Box 932 Hot Springs, SD 57747	James Sword Sword Law Office, P.C. P.O. Box 283 Hot Springs, SD 57747
Linsey McLean 14390 Edgewood Pl. Piedmont, SD 57769	Gary Heckenliable P.O. Box 422 Rapid City, SD 57709
Therese Marie Furois 1851 City Springs Road Rapid City, SD 57702	Ray Gellerman 12349 Moss Rock Lane Custer, SD 57730
Rick Good Voice Flute 1216 Wambli Drive Rapid City, SD 57701	George Ann & Glen Graves 304 4 th Street Buffalo Gap, SD 57722
Philip S. Heckman 11936 Hay Creek Road Custer, SD 57730	Clifford Heizen 309 S 6 th Street Hot Springs, SD 57747
Susan Hey 312 N 40 th Street Rapid City, SD 57702	Sharon Huston 12571 BH Flyway Road Hot Springs, SD 57747
Margaret Ikonen 445 S 6 th Street Hot Springs, SD 57747	Lyle Jensen 13167 Fall River Rd Hot Springs, SD 57747
Judith A. Joba 3483 Elk Creek Rd Piedmont, SD 57769	Jim Johnson 12568 Cascade Mt Rd Hot Springs, SD 57747
Bonnie & Dallas Keiswetter 12899 Sapphire Lane Hot Springs, SD 57747	Margaret Mary Keogh 1851 City Springs Rd Rapid City, SD 57702-9602
Regina Koch 515 N 1 st Street, #1 Rapid City, SD 57701	Louise Kursave 27275 SD Hwy 79 Buffalo Gap, SD 57722

Shirley & Robert Lautenschlager 3507 Idlewild Ct Rapid City, SD 57702	Jennifer Lena 8812 Dunsmore Rd Rapid City, SD 57702
Mike Linderman 446 Battle Mtn Ave Hot Springs, SD 57747	Grady Lockhart P.O. Box 152 Oelrichs, SD 57752
Bonnie & Donald Maritz 545 N River #313 Hot Springs, SD 57747	Miriam & Ken Martin 801 N River St Hot Springs, SD 57747
Mark Mason 1161 Deadwood Ave, #3 Rapid City, SD 57702	Gary McDowell 701 South St, Apt. B Rapid City, SD 57701
Jo Beth Troxel 303 E. Morse St. Callaway, NE 68825	Kenneth D. Anderson 24035 Palmer Gulch Rd Hill City, SD 57745
Beth Audette 1939 Evergreen Dr Rapid City, SD 57702	Larry & Doris Belitz 12474 Oak Road Hot Springs, SD 57747
Heather J. Besco P.O. Box 82 Buffalo Gap, SD 57722	Jay & LaVella Birkland 301 S 6 th St Hot Springs, SD 57747
Donald Bledsoe 27635 View Rd Oral, SD 57766	Ray Boots 302 Crook St Custer, SD 57730
B.R. Brygider 104 Tuflamore Rd Garden City, NY 11530-2512	George Corrigan 446 S 5 th St Hot Springs, SD 57747
Barbara Cromwell 2313 Cruz Dr Rapid City, SD 57702	Sister Gabriella Crowley 720 E Wiswall Pl Sioux Falls, SD 57105
Jeremiah David 130 E Centennial Rapid City, SD 57701	Joe Drapper (Doppen) 13174 Fall River Rd Hot Springs, SD 57747

Jon Fair 12909 Sheps Canyon Rd Hot Springs, SD 57747	Irene Fandrich 301 S 6 th St Hot Springs, SD 57747
Ann Fields, PhD 2415 Amberbrooke Ln Grayson, GA 30017	Adrian Forrette III 119 S Berry Pine Rd Rapid City, SD 57702-1911
Jody McKean 27317 Hidden Ct Hot Springs, SD 57747	Carol Merwin 2247 Cedar Dr Rapid City, SD 57702
Katherine L. Montague 1216 Wambli Dr Rapid City, SD 57701-0456	Joe W. Montgomery 210 Pine St Buffalo Gap, SD 57722
Marion Muhm 1614 Coldbrook Ave Hot Springs, SD 57747	Leslie Murphy 523 E Capitol Ave Pierre, SD 57501
Susan Nolan 1184 Lookout Ln Rapid City, SD 57703	Elaine Noyes 4104 Lakeview Dr Rapid City, SD 57702
Eileen Ohliger Patricia Ohliger 446 S 5 th St Hot Springs, SD 57747	James L. Olson Rev. Jodi Olson 12350 Beaver Den Dr Custer, SD 57730
Virginia Panarella 26979 SD Hwy 89 Hot Springs, SD 57747-6002	Sharon Parker 1913 Jennings Ave Hot Springs, SD 57747
Karen Pettigrew 1203 St Cloud St Rapid City, SD 57701	Rose or Reese Pettris 12544 W. Cascade Rd Hot Springs, SD 57747
Raymond Powell 2025 Lincoln Ave Hot Springs, SD 57747	Carrie Regelin 2312 Serten Ave Rapid City, SD 57701
Antoinette Reynar 28025 Cascade Rd Hot Springs, SD 57747	Floyd Rowe 28144 Lot 50 Sheep Canyon Hot Springs, SD 57747

J&M Shaw 12083 Beardsley Dr Hot Springs, SD 57747	Linda L. Smith 947 S Chicago St Hot Springs, SD 57747
Gail M. Soave 14249 Lyons St Livonia, MI 48154	Dewane Steams 11500 Indian Canyon Rd Edgemont, SD 57735
Larry Tegantvoort 10041 Ventura Ln Summerset, SD 57718	Jeannie Tiff 2342 Wilson Ave Hot Springs, SD 57747
Matie Tyson 2508 Crown Hill Rapid City, SD 57702	Bill Walsh 7450 Dark Canyon Rd Rapid City, SD 57702
Kathryn Weller 8812 Dunsmore Rd Rapid City, SD 57702	Trip Williams 27662 Scenic Rd Hot Springs, SD 57747

By: 
Matthew E. Neasz



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

August 24, 2021

NOTICE OF ENTRY OF ORDER

TO: Powertech (USA) Inc.
c/o Matthew E. Naasz and Richard M. Williams, Counsel
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

And Parties of Record (see attached list dated August 24, 2021)

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Order regarding Update of Party Contact Information and Scheduling of Hearing to Consider Motions and Responses concerning Recommencement of the Contested Case Hearing for the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

Attached is an order from Hearing Officer Freeman dated August 18, 2021, ordering parties of record to make any needed corrections to their contact information as set forth in the order. In addition, the attached order schedules a hearing for the Water Management Board (Board) to consider motions and responses to motions. The hearing is scheduled for consideration by the Board at 10:45 AM (Central Time) on October 6, 2021, in Legislative Conference Room 414, State Capitol Building, 500 East Capitol Avenue, Pierre SD. Regardless of any decision reached by the Board at this meeting, the contested case hearing will NOT recommence at the October 6, 2021 meeting.

Space is limited in Legislative Conference Room 414 and, depending on attendance, it may not be possible to accommodate social distancing as recommended by the CDC due to COVID-19. Another option for parties of record is to participate remotely via video/audio or phone. Connection information is available on the South Dakota Boards and Commissions portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>. An audio-only livestream of the meeting will also be available at the above link. Participation, either in-person or remotely, is limited to parties of record other than the public comment period. Any individual who is a party may represent themselves or be represented by legal counsel. Any party of record which is an organization, entity, or is comprised of multiple people must be represented by legal counsel in accordance with state law.

Notices, orders, and other pleadings filed in this matter are posted on DANR's contested case page available at <https://danr.sd.gov/public/contestedcases.aspx>.

Questions may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General
Steven R. Blair, Assistant Attorney General
David McVey, Assistant Attorney General

RECEIVED

AUG 20 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATIONS NOS. 2685-2 AND)
2686-2, POWERTECH (USA), INC.)
IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

ORDER REGARDING
UPDATE OF PARTY CONTACT
INFORMATION AND NOTICE OF
HEARING

In a motion dated May 28, 2021, Powertech (USA) Inc has requested the Water Management Board (Board) amend the procedural order dated February 14, 2013, concerning the above-entitled matter. Powertech seeks to recommence the contested case proceedings.

In an order dated June 24, 2021, it was ordered that the motion be considered by the Board, along with any other filed motions or responses, at the October 6 and 7, 2021 Board meeting. This matter is scheduled for consideration by the Board at 10:45 AM (Central Time) on October 6, 2021, in Legislative Conference Room 414, State Capitol Building, 500 East Capitol Avenue, Pierre SD.

Due the length of time expired since 2013 procedural order and the volume of returned as undeliverable notices filed in this matter, it is

ORDERED that Water Rights publish the following Notice:

"Notice is hereby given that on August 20, 2021, the Water Management Board, through Pre-hearing Officer Rodney Freeman, orders parties of record concerning the consolidated case in the matter of Water Permit Application Nos: 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc. to provide any needed updates to their contact information no later than five o'clock p.m. (Central Time) on September 13, 2021, to:
Ron Duvall

Department of Agriculture and Natural Resources
Joe Foss Building
523 E. Capitol Avenue
Pierre SD 57501

Failure by a party to provide any needed updates to their contact information will result in removal of that party from the parties of record list. If your contact information is accurate, no action is needed. To check your contact information, a service list of parties of record has been maintained by the South Dakota Department of Agriculture and Natural Resources (SD DANR) as required by a procedural order issued February 14, 2013. This service list is available from the SD DANR at <https://danr.sd.gov/powertech/wmb.aspx> or by contacting Ron Duvall at the above address, calling (605) 773-3352, or emailing ron.duvall@state.sd.us."

It is further **ORDERED** that the foregoing Notice of the requirement to update contact information be published in the Rapid City, Hot Springs, Custer, Spearfish, Lakota Times, Sioux Falls, and Pierre newspapers once a week for two weeks.

Dated this August ²⁶18, 2021.


Rodney Freeman, Hearing Officer
South Dakota Water Management Board

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "A" Intervenors:

Last Name	First Name	Company	Address	City	State	Zip
Anawaty	Jillian	Dakota Rural Action	2804 Willow Rd	Rapid City	SD	57701
Baldwin	Angelia		PO Box 191	Pierpont	SD	57468
Boddicker	Mark		13850 Battle Creek Rd	Hermosa	SD	57744
Brunson	Cindy		11122 Fort Igloo Rd	Edgemont	SD	57735
Cing	William		1446 Evanston Ave	Hot Springs	SD	57747
Draeger	Rick		617 St Cloud	Rapid City	SD	57701
Ellison	Bruce	Attny for Clean Water Alliance	PO Box 2508	Rapid City	SD	57709
Gamache	Brenda		2337 Wilson Ave	Hot Springs	SD	57747
Gillis	W Cindy	Attny for Oglala Sioux Tribe	522 7th St #202	Rapid City	SD	57701
Heckenlaible	Gary		PO Box 422	Rapid City	SD	57709
Henderson	Susan		PO Box 731	Edgemont	SD	57735
Hickey	Michael	Attny for Wild Horse Sanctuary	PO Box 2670	Rapid City	SD	57709
Jarding	Lilias C		PO Box 591	Rapid City	SD	57709
Johnson	Andy		610 Nellie Ln	Spearfish	SD	57783
Kammerer	Marvin		22198 Elk Vale Rd	Rapid City	SD	57701
Kaneshiro	Gwen E		1446 Evanston Ave	Hot Springs	SD	57747
King	Sabrina		14705 Halter Ct	Piedmont	SD	57769
Kloucek	Frank J		29966 423rd Ave	Scotland	SD	57059
Knudson	Rodney		PO Box 25	Hulett	WY	85720
Leas	Rebecca R		6509 Seminole Ln	Rapid City	SD	57702
Lord	Rebecca Michele		PO Box 952	Hill City	SD	57745-0952
McLean	Dahl H		11853 Acorn Ridge Rd	Spearfish	SD	57783
Parkhurst	Gena		PO Box 1914	Rapid City	SD	57709
Rowe	Cheryl A		7950 Dark Canyon Rd	Rapid City	SD	57702
Rowe	Roger		7950 Dark Canyon Rd	Rapid City	SD	57702
Summerville	Rick V		6509 Seminole Ln	Rapid City	SD	57702
Uptain	Douglas		3213 W Main #112	Rapid City	SD	57702

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "B" Intervenors:

Last Name	First Name	Company	Address	City	State	Zip
Ackerman	Donald L		27128 Wonderland	Hot Springs	SD	57747
Alarie	Keith		840 Spruce St Lot 320	Rapid City	SD	57701
Alarie	Kim		840 Spruce St Lot 320	Rapid City	SD	57701
Ames-Curtis	Juli		11936 Hay Creek Rd	Custer	SD	57730
Amiatte	Twyla		PO Box 125	Buffalo Gap	SD	57722
Arns	Harold		22723 Tawney Ct	Box Elder	SD	57719
Arpen	Jacqueline		2004 Maple Ave	Rapid City	SD	57701
Bad Wound	Brandon		639 Pahsapa Rd	Rapid City	SD	57701
Badure	Brianna		PO Box 971	Hot Springs	SD	57747
Baker	Jerri		705 N River St	Hot Springs	SD	57747
Ball	Anna K		PO Box 46	Piedmont	SD	57769
Barnaud	Bernard & Laurie		12129 Sagebrush Rd	Nisland	SD	57762
Barnes	Thomas F		11778 Pleasant Valley Rd	Custer	SD	57730
Bassingham	Joe		10985 Pleasant Valley Rd	Hot Springs	SD	57747
Baumberger	Sudhi		12374 Baumberger Rd	Deadwood	SD	57732
Belitz	Mark & Jennifer		28233 Cascade Rd	Hot Springs	SD	57747
Berford	Eddie		241 Galveston Ave	Hot Springs	SD	57747
Between Lodge	Annabelle		PO Box 118	Oglala	SD	57764
Binns	Edward H		408 N 17th St	Hot Springs	SD	57747
Bloomer	Jerry		2146 Minnekahta Ave	Hot Springs	SD	57747
Bochert	Hannah		Sherman St	Hot Springs	SD	57747
Boots	Mary		25588 Mt Shadow Rd	Edgemont	SD	57735
Boots	Wayne		25588 Mt Shadow Rd	Edgemont	SD	57735
Bothul	Karl W		338 S 17th	Hot Springs	SD	57747
Britton	Rick		PO Box 53	Hot Springs	SD	57747
Brock	Michelle		26846 Hwy 385	Hot Springs	SD	57747
Burrows	Mary R		545 N River St Apt 211	Hot Springs	SD	57747-6800
Cain	Wally		690 S 6th St	Hot Springs	SD	57747
Carle	Mary Kay		5821 Michael Ct	St Cloud	MN	56303
Chesson	Allen		545 N River St	Hot Springs	SD	57747
Christensen	Julie & Emily		603 N River St	Hot Springs	SD	57747
Christie	Sharon & Alex		PO Box 74	Buffalo Gap	SD	57722
Cox	Charles		PO Box 84	Hot Springs	SD	57747
Cross	Georgiana		2045 Canton Ave #530	Hot Springs	SD	57747
Dalss	Teresa		28423 Old Hwy 79	Hot Springs	SD	57747
Davies	Lynda		Po Box 1204	Hot Springs	SD	57747
Davis	Jeremiah J		130 E Centennial	Rapid City	SD	57701
Detmers	Joel		13488 Shelter Dr	Rapid City	SD	57702
Detmers	Peggy		13488 Shelter Dr	Rapid City	SD	57702
DeVries	Don	City of Hot Springs	303 N River St	Hot Springs	SD	57747
Dexter	Kendra		23278 Pebble Ct	Hot Springs	SD	57747
Dexter	Ross		PO Box 883	Hot Springs	SD	57747

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "B" Intervenor (continued)

Dicesare	Francis	1501 11st St	Rapid City	SD	57701
Drapper (Doppen Leora		13174 Fall River Rd	Hot Springs	SD	57747
Durrun	Kathy	10374 Dryland Dr	Edgemont	SD	57735
Elmore	Rosie	PO Box 886	Hot Springs	SD	57747
Emanuel	Tom	Executive Director - SD Peace & Justice	Vermillion	SD	57069
Engle	M.	115 Scott St	Edgemont	SD	57735
Engle	T.	115 Scott St	Edgemont	SD	57735
Evans	Wade	27338 Taylor Ln	Hot Springs	SD	57747
Everhart	Elaine	545 N River St	Hot Springs	SD	57747
Fair	Cheryl & Jon	12909 Shep's Canyon Rd	Hot Springs	SD	57747
Fine	Jeannie	PO Box 153	Pringle	SD	57773
Firkins	Jana	244 Galveston Ave	Hot Springs	SD	57747
Fischer	Ronald	711 6th Ave East	Mobridge	SD	57601
Fisher	Donna M	12311 Whitetail Rd	Deadwood	SD	57732
Frederick	Shirley	3411 Idlewild Court	Rapid City	SD	57702
Freshour	Lisa	2045 Canton Ave #535	Hot Springs	SD	57747
Friendshuh	Gary	27098 Elk Rd	Buffalo Gap	SD	57722
Gaalaugh	Judy	912 9th St	Rapid City	SD	57701
Gaalswyk	Judy	912 9th St	Rapid City	SD	57701
Gericke	Rich & Jackie	305 S 14th St	Hot Springs	SD	57747
Gill	Amber	718 Harney	Custer	SD	57730
Goulet	Mary	338 S 5th St	Hot Springs	SD	57747
Gozelet	May	338 S River St	Hot Springs	SD	57747
Grant	Jesse	1938 Detroit Ave	Hot Springs	SD	57747
Gray	Lynn	PO Box 153	Pringle	SD	57773
Gray	Garnder	20228 Avalanche Rd	Whitewood	SD	57793-6414
Gross	Diane	27426 Cedar Rd	Hot Springs	SD	57747-8500
Haacke	Jake	1026 Evanston Ave	Hot Springs	SD	57747
Hansen	William R	NPS-Water Resource Div.	Fort Collins	CO	80525
Harvey	Edward	1201 Oakridge Dr # 250	Hot Springs	SD	57747
Hawkins	Joel	1545 Albany Ave	Hot Springs	SD	57747
Heafner	Ellen	504 16th St	Hot Springs	SD	57747
Heinzen	Kip	504 S 19th	Hot Springs	SD	57747
Heizen	Clifford	309 S 6th St	Hot Springs	SD	57747
Heizen	Clifford	309 S 6th St	Hot Springs	SD	57747
Heizen	Virginia M	309 S 6th St	Hot Springs	SD	57747
Hernandez	Moses-Ciser & Veronica	410 1/2 South St	Hot Springs	SD	57747
Hernandez	Patricia	71 Apache Plume Dr	Santa Fe	NM	87508
Hertel	Carolyn	27615 Country View Rd	Hot Springs	SD	57747
Hicks	Luella J	PO Box 144	Buffalo Gap	SD	57722
Holcomb	Terry	105 S 23rd St	Hot Springs	SD	57747
Holmes	Georgia	Hot Springs Council	Hot Springs	SD	57747
Horton	Jeremy A	838 Birch	Hot Springs	SD	57747
Horton, Sr	Roger K	PO Box 629	Edgemont	SD	57735
Hunter	BJ	PO Box 629	Edgemont	SD	57735
		353 Bears Ave	Hot Springs	SD	57747

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "B" Intervenor (continued)

Hyde	Dayton O	President - BH Wild Horse Sanctuary	PO Box 932	Hot Springs	SD	57747
Jacoue?	Richardo		601 Albany Ave	Hot Springs	SD	57747
Jarding	Cheryl		202 E Nebraska St	Rapid City	SD	57701
Jarding	John B		202 E Nebraska St	Rapid City	SD	57701
Jarding	Anglea & Mike		27201 Valley Rd	Hot Springs	SD	57747
Jarding	Mike		27201 Valley Rd	Hot Springs	SD	57747
Jenkins	Patricia		287 Evans Ln	Spearfish	SD	57783
Jensen	Maxine		806 Galveston	Hot Springs	SD	57747
Jensen	Dan		806 Galveston	Hot Springs	SD	57747
Jensen	Dianna		27999 Cascade Rd	Hot Springs	SD	57747
Johnson	Forest		610 Nellie Ln	Spearfish	SD	57783
Johnson	Terry		26680 Buffalo Butte Dr	Hot Springs	SD	57747
Johnson	Dawn		PO Box 1123	Hot Springs	SD	57747
Just	Lorna		21939 464th Ave	Volga	SD	57071
Kaneshiro	Eloise		1446 Evanston Ave	Hot Springs	SD	57747
Kelerleber	Angie	Custer Conservation District	447 Crook St #1	Custer	SD	57730
Kelley	Don		12637 Meritt-Estes Rd	Deadwood	SD	57732
Kelley	Kim		12637 Merritt-Estes Rd	Deadwood	SD	57732
Kennedy	Corey		140 Adnoia Ln	Rapid City	SD	57701
Kennedy	Shawntera		140 Adnola Ln	Rapid City	SD	57701
Keown	Jewell		410 S 4th St	Hot Springs	SD	57747
Keys	Stanley T		224 E Minnesota St, Apt 205	Rapid City	SD	57701
Klein	Judith		238 N 6th St	Hot Springs	SD	57747
Knuckles	Dennis & Penny		12484 Willow Creek Rd	Custer	SD	57730
Lambert	Sylvia		PO Box 78	Interior	SD	57750
Lamont	Laurence & Margaret		PO Box 53	Buffalo Gap	SD	57722
Lang	Dan		27564 Ponderosa Rd	Hot Springs	SD	57747
Langer	Greg		PO Box 141	Buffalo Gap	SD	57722
Lanz	Matt		27927 Cascade Spring Rd	Hot Springs	SD	57747
Larive	Calvin		713 N River St	Hot Springs	SD	57747
LaRive	Karla R		839 Almond St	Hot Springs	SD	57747
Larson	John E		10374 Dryland Dr	Edgemont	SD	57738
Larvie	Karla		PO Box 752	Hot Springs	SD	57747
Lee	Robert		338 S 5th St	Hot Springs	SD	57747
Ludweg	Pam		810 Gordon	Custer	SD	57730
Magnuson	Nancy C		PO Box 54	Buffalo Gap	SD	57722
Malewke	Susan		545 N River St #401	Hot Springs	SD	57747
Marshall	Carla Rae		PO Box 3184	Rapid City	SD	57709
Masterson	Lisa		445 S 6th St	Hot Springs	SD	57747
McComb	DeAnn		PO Box 254	Hot Springs	SD	57747
McGrath	Darla		8403 Pioneer Circle	Rapid City	SD	57701
McGrath	James B		8403 Pioneer Circle	Rapid City	SD	57702
McKean	Jim		27317 Hidden Ct	Hot Springs	SD	57747
McLaughlin	Billy Jack		PO Box 25	Buffalo Gap	SD	57722

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "B" Intervenor (continued)

McLean	Linsey	14390 Edgewood Pl	Piedmont	SD	57769
Messenger	Cynthia	12750 Merchen Rd #18	Hot Springs	SD	57747
Meyer	Steven & Lexxie	13050 Lakeview Dr	Hot Springs	SD	57747
Meyer	Martin H & Elsa	102 S Connor St	Hot Springs	SD	57747
Miles	Gary	27528 Rathbun Rd	Hot Springs	SD	57747
Miller	Neal	486 Almond St	Hot Springs	SD	57747
Miller	Marsha	11820 Red Fox Dr	Maple Grove	MN	55369-6340
Miller	Karen N	3119 Turtle Creek Ct	Rapid City	SD	57703
Mushaney	Glenn	PO Box 272	Hot Springs	SD	57747
Nachtigall	Jason	12749 Country Rd	Hot Springs	SD	57747
Nachtigall	Jean	12746 Country Rd	Hot Springs	SD	57747
Naylor	Valerie	23201 Custer Trails Rd	Rapid City	SD	57702
Neugebauer	Casey	27552 S Buffalo Gap Rd	Oral	SD	57766
Nowlan	Richard	202 Dakota St	Hot Springs	SD	57747
O'Rourke	Michael	4513 Leo Dr #4	Madison	WI	53716
Ortego	Madeline	Po Box 861	Pine Ridge	SD	57773
Osborn	Otis	523 St Francis St	Rapid City	SD	57701
Palmer	Raymond	27221 Windy Rd	Hot Springs	SD	57747
Parker	Jason	1005 S River St	Hot Springs	SD	57747
Parker, MD	Valerie A	PO Box 1460	Rapid City	SD	57702-1460
Pederson	Mary Helen	PO Box 646	Hot Springs	SD	57747
Pence	Mel	2330 Washington Ave	Hot Springs	SD	57747
Peterson	Jim	1203 11st St	Rapid City	SD	57701
Peterson	Sarah	510 Jennings	Hot Springs	SD	57747
Phillips	Sarah & AJ	4099 S 570 Apt 15F	Salt Lake City	UT	84107
Pierce	Chris	101 N Chicago	Hot Springs	SD	57747
Piper	Rex & Mildred	1609 Detroit Avenue	Hot Springs	SD	57747
Pirales	Linda	311 S Winconsin Ave	Casper	WY	82609
Powell	Cindy	1637 38th St	Rapid City	SD	57702
Prehelm	Steve	2317 Washington	Hot Springs	SD	57747
Putnam	Gary	204 4th Ave	Hot Springs	SD	57747
Red Cloud	Jim	13084 Gray Dr	Hot Springs	SD	57747
Resident		12560 Beaver Creek Rd	Hot Springs	SD	57747
Resident		309 S 6th St	Hot Springs	SD	57747
Rewe	Rick	28149 Shep's Canyon Rd	Hot Springs	SD	57747
Reynar	Charleton T	2500 S Elmwood Ave	Sioux Falls	SD	57105-3318
Richards	Dorothy	340 N 23rd St	Hot Springs	SD	57747
Romey	Craig	342 N 4th	Hot Springs	SD	57747
Rosaaen	Elray	PO Box 125	Buffalo Gap	SD	57722
Roseland	Katie	5811 Gemini St	Rapid City	SD	57703
Rowe	Cindy	7950 Dark Canyon Rd	Rapid City	SD	57701
Runzerel	Betty	PO Box 836	Hot Springs	SD	57747
Rush	Grant	PO Box 172	Hot Springs	SD	57747
Russell	Betty	Po Box 836	Hot Springs	SD	57747

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "B" Intervenor (continued)

Ruther	Frank	545 N River Apt 110	Hot Springs	SD	57747
Salway	Mary and Jason	PO Box 424	Allen	SD	57714
Saxonis	Gail M	745 Happy Hollow	Hot Springs	SD	57747
Schwarzenbach	Connie Aann	2229 Minnekahta Ave	Hot Springs	SD	57747
Schwarzenbach	John	2229 Minnekahta Ave	Hot Springs	SD	57747
Schwelgert	Gary	279 Cascade Rd	Hot Springs	SD	57747
Seabolt	Marsha	4435 Dolphin	Rapid City	SD	57701
Semler	Peggy	PO Box 245	Hot Springs	SD	57747
Shannon	Robert V	24705 Timber Ridge Rd	Hermosa	SD	57744
Sharp	Barbara	445 S 3rd St	Hot Springs	SD	57747
Simpson	Ashley	PO Box 587	Hot Springs	SD	57747
Simpson	Ashley	PO Box 587	Hot Springs	SD	57747
Simunter	Jerry	22769 Jenny Rd	Hot Springs	SD	57747
Sisk	Russ	12619 Booke Canyon Rd	Hot Springs	SD	57747
Smith	Maura	306 Joplin #8	Hot Springs	SD	57747
Smith	J	2728 Hoot Brook	Hot Springs	SD	57747
Smith	Charlene J	PO Box 481	Rapid City	SD	57709
Smith	Jeremy	287 Evans Ln	Spearfish	SD	57783
Stareck	Susan	PO Box 686	Hot Springs	SD	57747
Steineke	Dale	13130 Greg Dr	Hot Springs	SD	57747
Stevens	Darla	1622 Evanston	Hot Springs	SD	57747
Stolarcek	Susan	PO Box 686	Hot Springs	SD	57747
Stone	Richard	12959 Buffalo Circle	Hot Springs	SD	57747
Streff	Lila	12379 Beaver Den Dr	Custer	SD	57730
Styger	Linda M	206 Meadowlark Dr	Hot Springs	SD	57747-5202
Sugeg	Michelle	PO Box 139	Hot Springs	SD	57747
Sutherland	Dennis	2202 University	Hot Springs	SD	57747
Swan	Allison	703 N River St	Hot Springs	SD	57747
Tonemah?	Paula	306 Thompson	Hot Springs	SD	57747
Towne	Niklaus	28423 Old Hwy 79	Hot Springs	SD	57747
Troxel	Jo Beth	303 E Morse St	Callaway	NE	68825
Tubbs	Mark	10891 River Rd	Edgemont	SD	57735
Tucker	Loraine	PO Box 1129	Hot Springs	SD	57747
Uptain	Mary Ellen	3213 W Main #112	Rapid City	SD	57702
Van Cleave	Judith R	PO Box 9552	Rapid City	SD	57702-9552
Vong	Milli	333 N River St	Hot Springs	SD	57747
Walker	Alan	303 Cedar St	Buffalo Gap	SD	57722
Walleen	Lennie	446 S 16th	Hot Springs	SD	57747
Walter	Barbara	545 N River St Apt 503	Hot Springs	SD	57747
Walton	Kelley	1005 S River St	Hot Springs	SD	57747
Watt	Susan W	PO Box 790	Hot Springs	SD	57747
Weimers	Wendolyn	306 N 19th St	Hot Springs	SD	57747
Weishaupl	Debra J	110 N 3rd St	Hot Springs	SD	57747
Welch	Betty	PO Box 14	Edgemont	SD	57735

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "B" Intervenor (continued)

Walleen	Lennie		446 S 16th	Hot Springs	SD	57747
Walter	Barbara		545 N River St Apt 503	Hot Springs	SD	57747
Walton	Kellee		1005 S River St	Hot Springs	SD	57747
Watt	Susan W	BH Wild Horse Sanctuary	PO Box 790	Hot Springs	SD	57747
Weimers	Wendolyn		306 N 19th St	Hot Springs	SD	57747
Weishaupl	Debra J		110 N 3rd St	Hot Springs	SD	57747
Welch	Betty		PO Box 14	Edgemont	SD	57735
White Face	Charmaine	Coordinator - Defenders of the Black Hills	PO Box 2003	Rapid City	SD	57709
White Plume	Debra		PO Box 71	Manderson	SD	57756
Wilder	Kristen		506 Jennings Ave	Hot Springs	SD	57747
Wilkinson	Bette		3718 Redwood St	Rapid City	SD	57701
Wilson	Jerry		30959 Frog Creek Rd	Vermillion	SD	57069
Witte	Russell D		301 S Chicago	Hot Springs	SD	57747
Woodard	Julia		639 Pahsapa Rd	Rapid City	SD	57701
Woodard	Sandra		PO Box 533	Oglala	SD	57764-0533
Wynia	Robin		12750 Merchen Rd	Hot Springs	SD	57747
Yekel	Karen		2455 Minnekahta	Hot Springs	SD	57747
Zornes	Elton		12742 Hwy 18	Hot Springs	SD	57747
	Alica		PO Box 861	Pine Ridge	SD	57773
	Rube D		104 Jefferson St	Edgemont	SD	57735

Status "C" Intervenor

Last Name	First Name	Address	City	State	Zip
Anderson	Kenneth D	24035 Palmer Gulch Rd	Hill City	SD	57745
Audette	Beth	1929 Evergreen Dr	Rapid City	SD	57702
Baker	Jerri & Ronald	705 N River St	Hot Springs	SD	57747
Belitz	Larry & Doris	12747 Oak Rd	Hot Springs	SD	57747
Besco	Heather J	PO Box 82	Buffalo Gap	SD	57722
Birkland	Jay	301 S 6th St	Hot Springs	SD	57747
Birkland	LaVella	301 S 6th St	Hot Springs	SD	57747
Bledsoe	Donald	27635 View Rd	Oral	SD	57766
Boots	Ray	302 Crook St	Custer	SD	57730
Brygider	B.R.	104 Tullamore Rd	Garden City	NY	11530-2512
Corrigan	George	446 S 5th St	Hot Springs	SD	57747
Cromwell	Barbara	2313 Cruz Dr	Rapid City	SD	57702
Crowley	Sister Gabriella	720 E Wiswall Pl	Sioux Falls	SD	57105
David	Jeremiah	130 E Centennial	Rapid City	SD	57701
Drapper (Doppen)	Joe	13174 Fall River Rd	Hot Springs	SD	57747
Fair	Jon	12909 Shep's Canyon Rd	Hot Springs	SD	57747
Fandrich	Irene	301 S 6th St	Hot Springs	SD	57747
Fields, PhD	Anne	2415 Amberbrooke Ln	Grayson	GA	30017
Forrette III	Adrian	119 S Berry Pine Rd	Rapid City	SD	57702-1911
Furois	Therese Marie	1851 City Springs Rd	Rapid City	SD	57702
Gellerman	Ray	12349 Moss Rock Lane	Custer	SD	57730
Good Voice Flute	Rick	1216 Wambli Dr	Rapid City	SD	57701
Graves	George Ann	304 4th St	Buffalo Gap	SD	57722
Graves	Glen	304 4th St	Buffalo Gap	SD	57722
Heckman	Philip S	11936 Hay Creek Rd	Custer	SD	57730

Parties of Record to the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

August 24, 2021

Status "C" Intervenor (continued)

Helzen	Clifford	309 S 6th St	Hot Springs	SD	57747
Hey	Susan	312 N 40th St	Rapid City	SD	57702
Huston	Sharon	12571 BH Flyway Rd	Hot Springs	SD	57747
Ikonen	Margaret	445 S 6th St	Hot Springs	SD	57747
Jensen	Lyle	13167 Fall River Rd	Hot Springs	SD	57747
Joba	Judith A	3463 Elk Creek	Piedmont	SD	57769
Johnson	Jim	3085 Anderson Rd SE	Port Orchard	WA	98366-8751
Keiswetter	Bonnie	12899 Sapphire Ln	Hot Springs	SD	57747
Keiswetter	Dallas	12899 Sapphire Ln	Hot Springs	SD	57747
Keogh	Margaret Mary	1851 City Springs Rd	Rapid City	SD	57702-9602
Koch	Regina A	515 N 1st St #1	Rapid City	SD	57701
Kursave	Louise	27275 SD Hwy 79	Buffalo Gap	SD	57722
Lautenschlager	Shirley & Rober	3507 Idlewild Ct	Rapid City	SD	57702
Lena	Jennifer	8812 Dunsmore Rd	Rapid City	SD	57702
Linderman	Mike	446 Battle Mtn Ave	Hot Springs	SD	57747
Lockhart	Grady	PO Box 152	Oelrichs	SD	57752
Maritz	Bonnie & Donal	545 N River #313	Hot Springs	SD	57747
Martin	Miriam & Ken	801 N River St	Hot Springs	SD	57747
Mason	Mark	1161 Deadwood Ave #3	Rapid City	SD	57702
McDowell	Gary A	701 South St Apt B	Rapid City	SD	57701
McKean	Jody	27317 Hidden Ct	Hot Springs	SD	57747
Merwin	Carol	2247 Cedar Dr	Rapid City	SD	57702
Montague	Katherine L	1216 Wambli Dr	Rapid City	SD	57701-0456
Montgomery	Joe W	210 Pine St	Buffalo Gap	SD	57722
Muhm	Marion	1614 Coldbrook Ave	Hot Springs	SD	57747
Murphy	Leslie	523 E Capitol Ave	Pierre	SD	57501
Nolan	Susan	1164 Lookout Lane	Rapid City	SD	57735
Noyes	Elaine	4104 Lakeview Dr	Rapid City	SD	57702
Ohliger	Eileen	446 S 5th St	Hot Springs	SD	57747
Ohliger	Patricia E	446 S 5th St	Hot Springs	SD	57747
Olson	James L	12350 Beaver Den Dr	Custer	SD	57730
Olson	Rev. Jodi	12350 Beaver Den Dr	Custer	SD	57730
Panarella	Virginia	26979 SD Hwy 89	Hot Springs	SD	57747-6002
Parker	Sharon	1913 Jennings Ave	Hot Springs	SD	57747
Pettigrew	Karen	1203 St Cloud St	Rapid City	SD	57701
Pettris	Rose or Reese	12544 W Cascade Rd	Hot Springs	SD	57747
Powell	Raymond	2025 Lincoln Ave	Hot Springs	SD	57747
Regelin	Carrie	2312 Serten Ave	Rapid City	SD	57701
Reynar	Antoinette	2500 S Elmwood Ave	Sioux Falls	SD	57105-3318
Rowe	Floyd	28144 Lot 50, Sheep Canyon	Hot Springs	SD	57747
Shaw	J & M	12083 Beardsley Dr	Hot Springs	SD	57747
Smith	Linda L	947 S Chicago St	Hot Springs	SD	57747
Soave	Gail M	14249 Lyons St	Livonia	MI	48154
Stearns	Dewane	11500 Indian Canyon Rd	Edgemont	SD	57735
Tegantvoort	Larry	10041 Ventura Ln	Summerset	SD	57718
Tiff	Jeannie	2342 Wilson Ave	Hot Springs	SD	57747
Tyson	Matie	2508 Crown Hill	Rapid City	SD	57702
Walsh or Welsh	Bill	7450 Dark Canyon Rd	Rapid City	SD	57702
Weller	Kathryn	8812 Dunsmore Rd	Rapid City	SD	57702
Williams	Trip	27662 Scenic Rd	Hot Springs	SD	57747



GUNDERSON | PALMER | NELSON | ASHMORE LLP

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SEP 02 2021

WATER RIGHTS
PROGRAM

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Post Office Box 8045
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Main: (605) 342-1078
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www.gpna.com

August 31, 2021

Matthew E. Naasz
Email: mnaasz@gpna.com
Direct Dial: (605) 719-3424

Jim Hutmacher, Chairman
DANR – Water Management Board
Foss Building
523 East Capitol Ave.
Pierre, SD 57501-3182

Re: In the Matter of Water Permit Application #2685-2 and 2686-2;
In the Matter of 2012 Ground Water Discharge Plan Application Submitted by
Powertech, USA, Inc.

Dear Mr. Hutmacher:

Enclosed please find a copy of Powertech's Reply Brief in Support of Motion to Amend
Procedural Order and Response to Motion to Permit Electronic Filing.

Sincerely,

/s/ Matthew E. Naasz

Matthew E. Naasz

MEN:klk
Enclosure

cc: All Parties of Record Noted on Certificate of Service
cc via e-mail: Ann Bailey, Steve Blair and David McVey, Assistant Attorneys General
Ron Duvall

Offices in Rapid City and Pierre, South Dakota

Attorneys licensed to practice in South Dakota, North Dakota, Nebraska, Wyoming, and Montana

RECEIVED

SEP 02 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	
PERMIT APPLICATIONS 2685-2)	
and 2686-2, POWERTECH (USA))	
INC.	)	POWERTECH'S REPLY BRIEF IN
	)	SUPPORT OF MOTION TO AMEND
IN THE MATTER OF THE 2012	)	PROCEDURAL ORDER
GROUNDWATER DISCHARGE PLAN	)	AND RESPONSE TO MOTION TO
APPLICATION SUBMITTED BY	)	PERMIT ELECTRONIC FILING
POWERTECH (USA) INC.)	

Powertech (USA) Inc. ("Powertech"), by and through its attorneys,
Matthew E. Naasz and Richard M. Williams of Gunderson, Palmer, Nelson &
Ashmore, LLP, hereby submits this Reply Brief in Support of Motion to Amend
Procedural Order.

INTRODUCTION

This reply brief is filed in response to the Clean Water Alliance's ("CWA")
Response and Opposition to Motion to Amend Scheduling Order and the
various letters of Intervenors that have been submitted to the Water
Management Board ("Board").¹ The majority of the arguments raised by the
CWA and Intervenors have been addressed in Powertech's Brief in Support of
Motion to Amend Procedural Order and Powertech's Reply to the Programs'
Response in Opposition to Proposed Amendment of the Procedural Order.

¹ The Board received letters from the Mayor of Hot Springs and the President of the Board of Trustees for Buffalo Gap. Neither of these municipalities are intervenors in this matter. Powertech, therefore, requests that their submissions not be considered in response to this motion.

Instead of restating its previous arguments at length within this brief, Powertech incorporates them herein.

ARGUMENT

1. It is time to move forward with State permitting.

Powertech's initial briefing has exhaustively addressed this issue. As noted throughout Powertech's briefing, the State Boards have an independent obligation to address the applications pending in front of them. Powertech has met all of the State requirements for these permits to go forward. As recognized by the Programs, "there is no legal impediment to restarting these proceedings at this time." Response of Programs at 5. Likewise, neither the CWA nor the Intervenors have provided any authority that would allow this Board to indefinitely delay these proceedings while the NRC License and the EPA permits are under appeal.

As of July 22, 2021, final briefing regarding the NRC License has been submitted to the D.C. Circuit Court of Appeals. Currently, the proceedings before the Environmental Appeals Board ("EAB") regarding the injection well permits are on hold until the D.C. Circuit rules on the application of the National Historic Preservation Act under the NRC license. The proceedings regarding the Aquifer Exemption are held in abeyance before the Eighth Circuit Court of Appeals pending resolution before the EAB. As noted in Powertech's initial Brief on this matter, the issuance of the Aquifer Exemption is not stayed pending the Eighth Circuit's determination. Because of this, Powertech has not and will not receive any substantive rulings at the federal level until the

D.C. Circuit Court ruling and it is unknown when any rulings will be forthcoming.

The continued delays at the federal level, however, should not serve to exacerbate delays in the overall permitting process. The federal delays do not require additional delay in the overall project. The NRC license is fully effective. As such, approvals from the State of South Dakota would allow construction on the project to be conducted in parallel with the federal appeals. Construction of the injection wells and operation of the project must wait for EAB resolution, but it is not the case that the federal appeals prevent Powertech from moving ahead with other aspects of project construction. Requiring Powertech to wait for all federal appeals to be exhausted before the resumption of State permitting would, therefore, prejudice Powertech.

2. Substantive arguments should be addressed at a later date.

A number of the submissions from Intervenorors raise questions such as the amount of water that Powertech intends to use, water availability, reclamation, and the nature of the underlying geology. For the water permit applications, a majority, if not all of these questions, have been addressed in the Reports to the Chief Engineer. The hearing process will allow Intervenorors the opportunity to inquire further on these matters. The hearing process allows parties the opportunity to present evidence and testimony relevant to the applications at issue. See SDCL 46-2A-2 (recommendations of Chief Engineer to be scheduled for hearing); SDCL 46-2A-7 (Water Management Board to consider evidence at hearing). For those wishing to further educate

themselves prior to the hearing, however, the Reports to the Chief Engineer and the Recommendation of the Chief Engineer for the Water Permit

Applications Nos. 2685-2 and 2686-2 may be found here:

<https://denr.sd.gov/powertech/wmb/Powertechreportrecommaffidavitpetitions.pdf> . Powertech welcomes the opportunity to address such relevant issues at hearing, but respectfully asserts that arguments regarding substantive issues are not appropriate at this time.

3. Location of Hearing.

As noted previously, Powertech takes no position on where the hearing should be located. Powertech would defer to the Board to determine whether the spatial and technological needs of the parties can be met at the various locations under consideration. With the ever-evolving nature of COVID-19, Powertech recognizes that certain precautions may need to be put in place to help preserve the health of the parties, and other interested persons, including the utilization of larger spaces or remote communications to facilitate social distancing.

4. Service by mail and electronic means.

On August 18, 2021, Hearing Officer Freeman entered an Order requiring the parties of record to update their contact information by September 13, 2021. Powertech has had numerous filings returned in the mail due to incorrect or outdated addresses indicated on the service list. Powertech currently has no option but to use the existing service list and agrees that the mailing information for the parties needs to be updated in order avoid the

waste that is occurring. Pursuant to the Board's Order, the "[f]ailure of a party to provide any needed updates to their contact information will result in the removal of that party of record list." The Order continues by stating that "[i]f your contact information is accurate, no action is needed." Despite this Order, there may be a number of intervenors who do not update their contact information even though the information is no longer correct or is outdated.² In those instances, mailings will continue to be sent only to be returned to the sender. In order to address this issue, Powertech would request that the addresses reflected on mail returned after September 13, 2021, be removed from the service list. And that the parties associated with those addresses be removed from the parties of record list unless those parties have provided a new address for service. Powertech anticipates this process would substantially cut down on the number of superfluous mailings.

With regard to the Motion to Permit Electronic Service, Powertech is aware that service by email has been permitted for certain proceedings. But electronic service does not appear to be an option in this instance. Chapter 46-2A entitled "Administrative Procedure for Appropriation of Water" contains a statute specific to service. SDCL 46-2A-6 provides:

Service and filing of pleadings, petitions, and motions.
The originals of all pleadings, including petitions to contest, petitions to intervene, and motions, shall be filed with the chief engineer and served upon other parties, either personally or by mail. The chief engineer shall provide copies to all Water Management Board members. Service and filing by mail shall be deemed complete upon mailing. Any comment filed pursuant to subdivision 46-2A-

² This may include Intervenors who moved from the State or may have passed away.

4(7) shall be provided by the chief engineer to all Water Management Board members and become part of the public record.

As provided in the statute, “[t]he originals of all pleadings, including petitions to contest, petitions to intervene, and motions, **shall** be filed with the chief engineer and served upon other parties, either personally or by mail.” The use of “shall” illustrates that service in the manner directed – either personally or by mail – is mandatory rather than permissive. *Reck v. S. Dakota Bd. of Pardons & Paroles*, 2019 S.D. 42, ¶ 12, 932 N.W.2d 135, 139 (“as a rule of statutory construction, we have determined that ‘when shall is the operative verb in a statute, it is given obligatory or mandatory meaning.’” (citations omitted)). Given the above, it would not appear the Board has the option to allow electronic service.

5. The time for designation of party status and the intervention deadline has passed.

As discussed in Powertech’s Reply to the Programs’ Response in Opposition to Proposed Amendment of the Procedural Order, the contested case portion of the hearings in this matter has already started. See Reply at 7-8. It is simply too late in this process to reassign participation status. The time for intervention has also passed. Pursuant to the statutes and rules governing these hearings, the intervention deadline was set as November 26, 2012. Notice of Powertech’s applications and the intervention deadline was published in the local papers in the affected area. Those publications likewise noticed November 26, 2012 as the intervention deadline. See Affidavits of Publication at: <https://denr.sd.gov/powertech/wr/Powertechaffidavits.pdf>

SDCL 46-2A-4(4)(c) requires that any petition to oppose the water permit applications must be filed with the chief engineer and the applicant within ten days of the published notice. Powertech is seeking to resume hearings in this matter and the deadline to intervene in this matter has long passed. SDCL 46-2A-4 does not allow for two intervention periods.

CONCLUSION

Based on the arguments and authorities presented in its previous filings, and this brief, Powertech respectfully requests that this Board amend the Procedural Order in a manner to allow Powertech to present its case to this Board and which allows the parties a reasonable opportunity to address Powertech's pending applications.

Dated: August 31, 2021.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By: 

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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
And 2686-2, POWERTECH (USA), INC.)

CERTIFICATE OF SERVICE

IN THE MATTER OF THE 2012)
GROUNDWATER DISCHARGE PLAN)
APPLICATION SUBMITTED BY)
POWERTECH (USA), INC.)

I hereby certify on August 31, 2021, originals of the following documents were served upon Rob Duvall, DANR for filing and a true and correct copy of the following documents:

**POWERTECH'S REPLY BRIEF IN SUPPORT OF MOTION TO AMEND
PROCEDURAL ORDER AND RESPONSE TO MOTION TO PERMIT
ELECTRONIC FILING**

were served upon the following individuals by U.S. Mail, postage prepaid:

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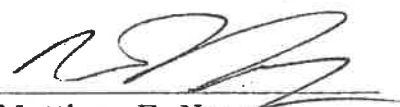
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