

RAPID CITY

Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Jessica L. Fjerstad
Mark F. Marshall
Of Counsel

SIOUX FALLS

Victoria M. Duehr
Kathryn L. Hoyme

*Attorneys also admitted in
Nebraska, North Dakota,
Minnesota and Missouri*



BANGS McCULLEN
— LAW FIRM —

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

September 6, 2013

RECEIVED
SEP 09 2013
MINERALS & MINING PROGRAM

Mr. Mike Cepak
DENR Minerals & Mining Program
523 East Capitol Ave.
Joe Foss Building
Pierre, SD 57501-3182

Re: LARGE SCALE MINING PERMIT - POWERTECH (USA) INC.

Dear Mr. Cepak:

I enclose for your information and records the following original documents:

1. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's Motion to Disclose;**
2. **Black Hills Wild Horse Sanctuary, Susan Watt & Dayton Hyde's Brief in Support of Motion to Disclose;**
3. **Affidavit of Michael M. Hickey in Support of Motion to Disclose;**
4. **Black Hills Wild Horse Sanctuary, Susan Watt & Dayton Hyde's Motion to Compel;**
5. **Black Hills Wild Horse Sanctuary, Susan Watt & Dayton Hyde's Motion to Continue; and**
6. **Certificate of Service.**

RAPID CITY

First Interstate Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P. (605) 343-1040
F. (605) 343-1503

SIOUX FALLS

5919 S. Remington Place
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Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

Mike Cepak
September 6, 2013
Page 2

By a copy of this correspondence, all counsel of record and the Status A List are being served. Thank you.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Michael M. Hickey

MMH/ke
Enclosures
cc w/enc.:

Clients
Rex Hagg
Charles McGuigan
Steven R. Blair/Richard Williams
Max Main
Roxanne Giedd
Bruce Ellison
Status A Participants

RAPID CITY

Charles L. Riter
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Kathryn L. Hoyme

*Attorneys also admitted in
Nebraska, North Dakota,
Minnesota and Missouri*



BANGS McCULLEN
— LAW FIRM —

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

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MINERALS & MINING PROGRAM

September 6, 2013

Via Hand Delivery

Mr. Rex Hagg
Whiting, Hagg, Hagg,
Dorsey & Hagg
601 West Blvd.
Rapid City, SD 57701

Re: LARGE SCALE MINING PERMIT - POWERTECH (USA) INC.

Dear Mr. Hagg:

On behalf of my clients Black Hills Wild Horse Sanctuary, Susan Watt and Dayton Hyde, I have filed a *Motion to Disclose* in this action. The purpose of my motion is to be able to disclose to my clients and otherwise use at the hearing the contents of discovery I received from Powertech concerning shareholders of Powertech Uranium Corporation. I have enclosed a copy of Exhibit D (the Confidentiality Agreement) as referenced in the *Affidavit of Michael M. Hickey in Support of Motion to Disclose* for your in-camera review.

According to the terms of the agreement, I have provided this document only to you for your *in-camera* inspection. I have, however, sent a copy of this correspondence only to all counsel of record and the Status A List so that they are aware of my communication to you.

Thank you for your consideration of this matter. If you have any questions or comments, please advise.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

Michael M. Hickey

MMH:bah
Enclosure

cc w/o encl: Clients; Mike Cepak; Charles McGuigan; Steven R. Blair/Richard Williams; Max Main; Roxanne Giedd; Bruce Ellison; Status A Participants



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MINERALS & MINING PROGRAM

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

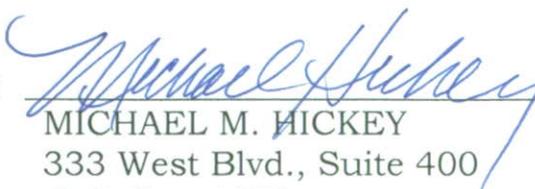
**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**Black Hills Wild Horse
Sanctuary, Susan Watt,
& Dayton Hyde's
Motion to Disclose**

Michael M. Hickey of the law firm of Bangs, McCullen, Butler, Foye and Simmons, LLP, hereby respectfully moves the Hearing Officer for authority to disclose to his clients and otherwise use in this proceeding the contents of Powertech's disclosure of shareholder information of Powertech Uranium Corporation. This motion is based upon the supporting affidavit and brief filed herewith.

Dated this 6th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: 

MICHAEL M. HICKEY
333 West Blvd., Suite 400
P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040
mhickey@bangsmccullen.com
**Attorneys for Black Hills
Wild Horse Sanctuary,
Dayton Hyde and Susan Watt**

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SEP 09 2013
MINERALS & MINING PROGRAM

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**Black Hills Wild Horse
Sanctuary, Susan Watt,
& Dayton's Hyde's Brief in
Support of Motion to
Disclose**

This brief is offered in support of Wild Horse's Motion to Disclose the shareholder information received from Powertech (USA) ("Powertech") in this litigation. Throughout this brief the parties will be identified by name.

A. Factual Summary.

As set forth in the affidavit of Michael M. Hickey, counsel for Wild Horse has in his possession shareholder information of Powertech Uranium Corporation which he wishes to disclose to his clients and otherwise use in the proceeding. In order to do so, however, counsel has agreed to file a motion seeking consent from the hearing officer to disclose the information provided.

B. Legal Authority.

This administrative hearing is governed by the provisions of the South Dakota Administrative Procedures Act (SD Ch. 1-26). Under the terms of that Act, a party in a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses and present evidence in support of the party's interest. *See* SDCL § 1-26-18.

As part of that process, parties may conduct discovery as provided in the South Dakota Rules of Civil Procedure. SDCL § 1-26-19.2. One of the discovery procedures authorized in civil actions is the use of interrogatories and requests for production of documents.

In the course of litigation, if a discovery dispute arises, the rules provide that a party may seek an order compelling discovery. SDCL § 15-6-37(a). Specifically, if "a party fails to answer an interrogatory submitted under § 15-6-33, or if a party in response

to a request for inspection submitted under § 15-6-34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested,” then the discovering party may “move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.” *Id.*

Here Wild Horse sought discovery concerning information about the names of shareholders of Powertech’s parent corporation, Powertech Uranium Corporation. Powertech Uranium Corporation is a Canadian corporation which owns all of the shares of Powertech. The president of Powertech Uranium Corporation is also the president of Powertech.

Powertech initially objected to disclosing some of the information requested, claiming that under the rules of the Toronto Stock Exchange, it was prohibited from disclosing the information requested. The fact of the matter is this is an administrative hearing in the State of South Dakota and discovery is governed by the South Dakota Rules of Civil Procedure, not the rules of the Toronto Stock Exchange. Powertech Uranium Corporation and its

subsidiary Powertech have purposely invoked the jurisdiction of the State of South Dakota to obtain approval to operate a large scale uranium mine for the purpose of extracting South Dakota mineral resources. Powertech's efforts to exploit South Dakota resources are governed by the laws of the State of South Dakota, not the rules of the Toronto Stock Exchange.

Here the parties engaged in an informal discussion in an effort to resolve this discovery dispute. Such an effort to meet and confer is prerequisite under the Rules of Civil Procedure to further efforts to compel discovery. Following those discussions, Powertech disclosed certain information under an agreement whereby Wild Horse needs to obtain approval from the hearing officer prior to disclosing the shareholder information to the clients or otherwise using this information in this proceeding.

Rule 1.4(4) of the Rules of Professional Conduct requires a lawyer to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Wild Horse has asked the undersigned to obtain the

information concerning the shareholders of Powertech Uranium Corporation. Thus, your undersigned is under an ethical obligation to provide the information in his possession to Wild Horse.

Moreover, one of the overriding issues in this matter is whether granting Powertech's applications is in the public interest. While the parties may dispute the actual amounts, it seems fair to say Powertech wants to exploit significant amounts of water and minerals that belong to the citizens of the State of South Dakota.

Not only does Powertech want to exploit those public assets, but Powertech wants to do so for nothing more than the cost of extraction. South Dakota and its citizens will not be the beneficiaries of this project if it comes to fruition. The beneficiaries of this project will be the shareholders of Powertech Uranium Corporation. It does not seem too much to ask of Powertech to reveal the identity of those who would enjoy the fruits of this project.

C. Conclusion.

Accordingly, counsel for Wild Horse respectfully requests the hearing officer grant permission to disclose and utilize the shareholder information previously produced.

Dated this 6th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: _____



MICHAEL M. HICKEY

333 West Blvd., Suite 400

P.O. Box 2670

Rapid City, SD 57709

Phone: (605) 343-1040

mhickey@bangsmccullen.com

***Attorneys for Black Hills Wild
Horse Sanctuary, Dayton Hyde
and Susan Watt***

4. That in such capacity, your applicant served on Powertech certain interrogatories and requests for production of documents. As set forth in the attached Interrogatories and Requests for Production marked as Exhibit A, Wild Horse requested in Interrogatory No. 7 that Powertech identify the 10 largest shareholders of its parent corporation, Powertech Uranium Corporation, at the time the application was filed, the number of shares held and the date of acquisition.

5. In Interrogatory No. 8, Powertech was requested to identify the largest 10 shareholders of Powertech Uranium Corporation at the time the interrogatories were served and state the number of shares held and the date of acquisition.

6. In Interrogatory No. 9, Powertech was requested to identify all South Dakota residents or entities that were shareholders in Powertech or Powertech Uranium Corporation and to state the date the shares were acquired and the number of shares held.

7. In Interrogatory No. 7, served in the hearing concerning the Large Scale Mining Permit, Powertech was requested to list each individual, corporation, or organization that Powertech or its employees, officers or directors had communicated with regarding a merger or buy out of Powertech.

8. Additionally, in Request for Production number 8, Powertech was requested to produce a list of all shareholders who live in the State of South Dakota.

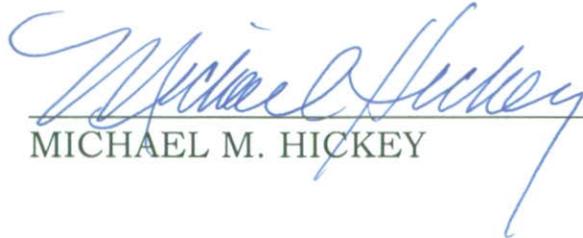
9. As set forth in the attached Exhibits B and C, Powertech refused to respond to all of these discovery requests claiming that it did not have legal authority to identify individual shareholders of Powertech Uranium Corporation under the rules of the Toronto Stock exchange.

10. In accordance with the requirements of our Rules of Civil Procedure, Wild Horse communicated with Powertech in an effort to resolve this discovery dispute. As a result of those discussions, Powertech agreed to provide to Wild Horse's attorney the information requested under a Confidentiality Agreement.

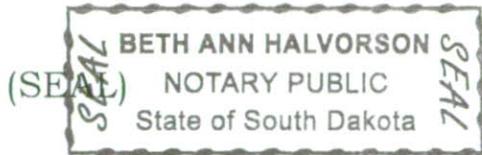
11. Pursuant to that agreement, a copy of which is identified as Exhibit D and is being only provided to the hearing officer for his *in-camera* inspection, Wild Horse may file its request with the Hearing Officer to obtain permission to disclose the information provided.

12. Accordingly, your affiant has filed its Motion hereto requesting authorization to disclose the contents of the stockholder information to his clients and to otherwise use the same in this proceeding as well as in the proceeding before the South Dakota Water Management Board.

Dated this 6th day of September, 2013.


MICHAEL M. HICKEY

Subscribed and sworn to, before me, the undersigned officer, this 6th day of September, 2013.




Notary Public, South Dakota
My Commission Expires: ~~My Commission Expires~~
September 18, 2015

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MINERALS & MINING PROGRAM

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON
HYDE'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS TO
POWERTECH (USA), INC.**

TO: PETITIONER, POWERTECH (USA), Inc., AND ITS ATTORNEY, MAX MAIN:

You are hereby requested to provide answers and produce the documents specified below, within thirty (30) days of service, to Michael M. Hickey, Bangs, McCullen, Butler, Foye & Simmons, L.L.P., P.O. Box 2670, Rapid City, South Dakota, 57709, or at such other time and place, or in such other manner, as may be mutually agreed upon by the parties.

These Interrogatories and Requests for Production shall be deemed to be continuing. If information is discovered by or becomes known to you, your attorney, or to anyone acting on your behalf, after answering and before trial, which would change or add to the answers given, you are hereby directed and requested to furnish the information, under oath, to the undersigned in a timely manner. It is intended that any information held by any person acting on behalf of you will be revealed in the answers hereto.

Demand is also made that when any document is identified in your answers to these interrogatories, or if reference is made to any document in order to provide an answer to these interrogatories, you produce the document for inspection and copying at a mutually agreed upon time, date, and place after service of your response. In lieu of such formal inspection, you may submit a legible copy of such document with your answers, and we shall pay you the reasonable cost of reproduction of such document if requested in advance.

When documents that are in your possession, custody, or control are requested, such request includes documents in the possession, custody, or control of your shareholders, officers, directors, employees, agents, representatives, partners, and attorneys (including the attorneys' partners, employees, agents, and representatives). When production of any document in your possession is requested, such request includes documents subject to your possession, custody or control. In the event that you are able to provide only part of the document(s) called for in any particular Request for Production,

EXHIBIT
tabbles
 A

INTERROGATORY NO. 2: Please explain what steps have been taken by Powertech to avoid a vertical excursion of mining fluids at the Project site and, if such steps to fail, how Powertech will handle a vertical excursion.

INTERROGATORY NO. 3: What specific response actions will Powertech take in the event that leakage from any of the ponds in the permit area reach the environment?

INTERROGATORY NO. 4: What specific response actions will Powertech take in the event a rain event that is greater than pond specifications occurs and pond contents reach the environment.

INTERROGATORY NO. 6: What are Powertech's plans and procedures in the event metals or radioactivity bioaccumulate in vegetation during land application?

INTERROGATORY NO. 7: List each individual, corporation, or organization that Powertech or any employee, officer, director, or other representative of Powertech has communicated with regarding a merger or buy-out of Powertech.

INTERROGATORY NO. 8: List each individual, corporation, or organization that any Powertech employee, officer, director, or other representative of Powertech has communicated with regarding processing that entity's uranium at the Dewey-Burdock site.

INTERROGATORY NO. 9: Knowing groundwater restoration has typically taken far longer than originally planned at other in situ leach uranium mines, how does Powertech expect to adhere to its reclamation schedule?

INTERROGATORY NO. 10: Does Powertech expect the permit area or the affected area to expand during the life of the project?

INTERROGATORY NO. 11: If the answer to the above interrogatory is yes, where does Powertech expect the expansion to occur.

INTERROGATORY NO. 12: Powertech's large scale mining permit application provides partial information on personnel and job descriptions for the project. What other positions will Powertech have available? Please include the number of persons needed for each position and a job description for each position, including required qualifications.

INTERROGATORY NO. 13: Please provide what the full qualifications are for each position described in the large scale mining permit application.

- iii. Restoration;
- iv. Chemical storage and feeding;
- v. Utility water;
- vi. Wastewater;
- vii. Drum storage and decontamination; and
- viii. Byproduct storage?

INTERROGATORY NO. 49: What are the specific risks of radiological exposure following any type of accident or release of hydrochloric acid, sulfuric acid, hydrogen peroxide, or sodium hydroxide during the ISL mining process?

INTERROGATORY NO. 50: Powertech states on p. 5-36 of its large scale mining permit application that the maximum distance for the perimeter monitor wells is based on standard monitoring practices at operating ISR facilities. Please specify which facilities Powertech is referring to.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce a map showing the location and types of fencing that will be located on the project area during the active mining stage.

REQUEST NO. 2: Please produce documentation showing the planned sediment and erosion control locations and types for the permit area.

REQUEST NO. 3: Please produce documentation showing the locations and types of planned berms, catchment basins, and sediment and erosion control features for each proposed land application site, with each site individually identified as to location relative to waterways and wetlands.

REQUEST NO. 4: Please produce a copy of Powertech's detailed specifications for wildlife protection features at all ponds in the permit area.

REQUEST NO. 5: Please produce a copy of Powertech's South Dakota Scientific Collector's Permit.

REQUEST NO. 6: Please produce copies of all well plugging records for any and all wells that Powertech has plugged on the Dewey-Burdock site.

REQUEST NO. 7: Please produce copies of all results for baseline testing done on soils and vegetation in the permit area.

REQUEST NO. 8: Please produce a list of all Powertech shareholders who live in the state of South Dakota.

Dated this 3RD day of July, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: 
MICHAEL M. HICKEY
333 West Blvd., Suite 400
P.O. Box 2670
Rapid City, SD 57709-2670
Phone: (605) 343-1040
E-mail: mhickey@bangsmccullen.com
**ATTORNEYS FOR BLACK HILLS
WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON HYDE**

CERTIFICATE OF SERVICE

The undersigned certifies that on July 3, 2013, he caused true and correct copies of the above to be served upon each of the persons identified below as follows:

<input checked="" type="checkbox"/>	First Class Mail	<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Mail	<input type="checkbox"/>	ECF System

**Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche, SD 57717-1489
ATTORNEYS FOR POWERTECH (USA), INC.**


Michael M. Hickey

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MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

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

**BLACK HILLS WILD HORSE
SANCTUARY, SUSAN WATT, &
DAYTON HYDE'S FIRST SET
OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS to
POWERTECH (USA), Inc.**

TO: PETITIONER, POWERTECH USA, AND ITS ATTORNEY, MAX MAIN:

You are hereby requested to provide answers and produce the documents specified below, within thirty (30) days of service, to Michael M. Hickey, Bangs, McCullen, Butler, Foye & Simmons, L.L.P., P.O. Box 2670, Rapid City, South Dakota, 57709, or at such other time and place, or in such other manner, as may be mutually agreed upon by the parties.

These Interrogatories and Requests for Production shall be deemed to be continuing. If information is discovered by or becomes known to you, your attorney, or to anyone acting on your behalf, after answering and before trial, which would change or add to the answers given, you are hereby directed and requested to furnish the information, under oath, to the undersigned in a timely manner. It is intended that any information held by any person acting on behalf of you will be revealed in the answers hereto.

Demand is also made that when any document is identified in your answers to these interrogatories, or if reference is made to any document in order to provide an answer to these interrogatories, you produce the document for inspection and copying at a mutually agreed upon time, date, and place after service of your response. In lieu of such formal inspection, you may submit a legible copy of such document with your answers, and we shall pay you the reasonable cost of reproduction of such document if requested in advance.

When documents that are in your possession, custody, or control are requested, such request includes documents in the possession, custody, or control of your shareholders, officers, directors, employees, agents, representatives, partners, and attorneys (including the attorneys' partners, employees, agents, and representatives). When production of any document in

Interrogatories

1. Please state the organizational structure of Powertech (USA) and provide copies of its Articles of Incorporation, By-laws and Authority to conduct business in the State of South Dakota.
2. Please identify the Board of Directors of Powertech (USA) and for each such official state their educational background and work history for the last 30 years.
3. Please identify the Officers of Powertech (USA) and for each such official state their educational background and work history for the last 30 years.
4. As to each director and officer please state the nature and extent of the experience said individual has in the operation and management of an in situ leach mining operation.
5. Identify the largest 10 shareholders of Powertech (USA) at the time the applications were filed in the instant proceeding, the number of shares held and the date of acquisition.
6. State the legal and/or contractual relationship between Powertech (USA) and Powertech Uranium Corporation. Please identify and produce copies of any agreements or documents between Powertech (USA) and Powertech Uranium Corporation that relates to the Project.
7. Identify the largest 10 shareholders of Powertech Uranium Corporation at the time the applications were filed in this proceeding, the number of shares held and the date of acquisition.
8. Identify the 10 largest shareholders of Powertech Uranium Corporation at the present time and state the number of shares held and the date of acquisition.
9. Identify all South Dakota residents or South Dakota entities that are shareholders in Powertech (USA) or Powertech Uranium Corporation and for each such shareholder state the date said individual acquired shares in Powertech (USA) or Powertech Uranium Corporation and the number of shares held.
10. Have your attorneys employed an expert to act on your behalf in any manner pertaining to this action? If so, state his or her name, address, phone number, occupation, profession and field of specialization.

Dated this 1st day of April, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: 

MICHAEL M. HICKEY

333 West Blvd., Suite 400

P.O. Box 2670

Rapid City, SD 57709-2670

Phone: (605) 343-1040

E-mail: mhickey@bangsmccullen.com

ATTORNEYS FOR BLACK HILLS

WILD HORSE SANCTUARY,

SUSAN WATT, & DAYTON HYDE

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

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IN THE MATTER OF THE LARGE SCALE MINE
PERMIT APPLICATION OF POWERTECH (USA)
INC.

POWERTECH'S ANSWERS TO BLACK
HILLS WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON HYDE'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
OF DOCUMENTS

Answers to Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's First Set of Interrogatories

INTERROGATORY NO. 1: Please explain what steps have been taken by Powertech to avoid a horizontal excursion of mining fluids at the Project site and, if such steps to fail, how Powertech will handle a horizontal excursion.

ANSWER: Section 5.6.3.2 of the large scale mine (LSM) permit application describes the mitigation measures that will be used to avoid a horizontal excursion of ISR solutions at the project site. Pre-operational excursion preventative measures will include but will not be limited to:

1. Proper well construction and mechanical integrity testing (MIT) of each well before use;
2. Monitor well design schema based upon delineation drilling to further characterize the zones of mineralization and to identify the target completion zones for all monitor wells; and
3. Pre-operational pumping tests with monitoring systems in place to obtain a detailed understanding of the local hydrogeology and to demonstrate the adequacy of the monitoring system.

Operational excursion preventative measures will include but will not be limited to:

1. Regular monitoring of flow and pressure on each production and injection well;
2. Regular flow balancing and adjustment of all production and injection flows appropriate for each production pattern;



- Modify land application system operating parameters to reduce the discharge rate in specific pivots or throughout the land application area.
- Implement water treatment if necessary for radionuclides, metals or metalloids.
- Implement a phytoremediation plan to control buildup of selenium in soil.
- Plant alternate crops that have increased tolerance to the specific ions of concern.

INTERROGATORY NO. 7: List each individual, corporation, or organization that Powertech or any employee, officer, director, or other representative of Powertech has communicated with regarding a merger or buy-out of Powertech.

ANSWER: As required by Canadian law and Toronto Stock Exchange rules, the relevant information in Powertech's possession is being provided pursuant to a Confidentiality and Nondisclosure Agreement.

INTERROGATORY NO. 8: List each individual, corporation, or organization that any Powertech employee, officer, director, or other representative of Powertech has communicated with regarding processing that entity's uranium at the Dewey-Burdock site.

ANSWER: None.

INTERROGATORY NO. 9: Knowing groundwater restoration has typically taken far longer than originally planned at other in situ leach uranium mines, how does Powertech expect to adhere to its reclamation schedule?

ANSWER: NRC has regulatory authority over groundwater restoration, and timely groundwater restoration will be required by the NRC license. Draft license condition 10.6 states that, "The licensee shall conduct groundwater restoration activities in accordance with Section 6.1 of the approved license application. Permanent cessation of lixiviant injection in a production area would signify the licensee's intent to shift from the principal activity of uranium recovery to the initiation of groundwater restoration and decommissioning for any particular production area. If the licensee determines that these activities are expected to exceed 24 months for any particular production area, the licensee shall submit an alternate schedule request ..." (NRC, 2013a).

Section 6.2.2.3 of the LSM permit application describes how Powertech will use the following operational practices to minimize the duration of groundwater restoration:

- (i) Daily balancing of injection and extraction flow rates during production. This flow rate balancing is designed to ensure that a proper aquifer bleed is maintained both at the well field level and also within each 5-spot pattern within the well field.

REQUEST NO. 8: Please produce a list of all Powertech shareholders who live in the state of South Dakota.

ANSWER: As required by Canadian law and Toronto Stock Exchange rules, the relevant information in Powertech's possession is being provided pursuant to a Confidentiality and Nondisclosure Agreement.

REQUEST NO. 9: Provide five examples in which groundwater restoration at an in situ leach uranium mine returned the water to its baseline condition.

ANSWER: Powertech is not aware of any ISR facility for which the groundwater restoration standard has been restricted to baseline conditions. In the case of the Dewey-Burdock Project, NRC license conditions and federal regulations will require Powertech to restore groundwater to (i) NRC Commission-approved background (also referred to as post-licensing, preoperational baseline water quality) or (ii) maximum contaminant levels (MCLs), whichever is higher, or (iii) an alternate concentration limit (ACL) established by the NRC Commission, if the constituent background level and the MCLs are not reasonably achievable and if it is demonstrated that the ACL is adequately protective of groundwater and surface water.

Documentation of successful groundwater restoration at ISR facilities is readily available and can be found in Section 6.2.2.2 of the LSM permit application and in the NRC Technical Report Request for Additional Information (RAI) responses (Powertech, 2011). Numerous ISR facilities in Nebraska, Texas and Wyoming have achieved regulatory approval of successful groundwater restoration in accordance with NRC and state standards. Several examples are given in Powertech (2011) including the Ruth R&D Project (Wyoming), Crow Butte R&D Project (Nebraska) and Bison Basin Commercial ISR Mine (Wyoming). Groundwater restoration also has been approved by NRC and Wyoming DEQ at the Irigaray Ranch Facility (Wyoming). See also the Answer to Interrogatory No. 35.

In addition, USGS Open-File Report 2009-1143 (Hall, 2009) provides two examples of ISR well fields that restored all groundwater constituents with federal maximum contaminant levels (MCLs) to baseline. Following is documentation from that report:

“Regarding the original question of whether or not groundwater has been restored to baseline in Texas uranium ISR well fields, it was observed that no well field for which final sample results were found in TCEQ records returned every element to baseline. However, two PAAs returned all elements for which USEPA has established MCLs to baseline: the O’Hern-2 and Trevino-1 PAAs [production area authorizations].

Dated this 30th day of July, 2013.

POWERTECH (USA) INC.

By: _____

RICHARD F. CLEMENT, JR.

Its: President

STATE OF Colorado)
County of Arapahoe) SS.

RICHARD F. CLEMENT, JR., in his capacity as President of Powertech (USA) Inc., being duly sworn, verifies the Responses contained in the foregoing **POWERTECH'S ANSWERS TO BLACK HILLS WILD HORSE SANCTUARY, SUSAN WATT, & DAYTON HYDE'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**, are true to the best of his knowledge and belief.

RICHARD F. CLEMENT, JR.

Subscribed and sworn to before me on July 30, 2013.

Barbara Houston
Notary Public

My commission expires: 3/9/2016

(Seal)

**BARBARA HOUSTON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID: 20114071570
MY COMMISSION EXPIRES 03/09/2016**

FOR PURPOSES OF ALL OBJECTIONS:

Dated July 30, 2013.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Powertech (USA) Inc.

By Max Main
Max Main
618 State Street
Belle Fourche, SD 57717-1489
(605) 892.2011

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

RECEIVED
SEP 09 2013
MINERALS & MINING PROGRAM

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

POWERTECH'S ANSWERS TO
BLACK HILLS WILD HORSE
SANCTUARY, SUSAN WATT, &
DAYTON HYDE'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS

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

Answers to Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's First Set of Interrogatories

1. Please state the organizational structure of Powertech (USA) and provide copies of its Articles of Incorporation, By-laws and Authority to conduct business in the State of South Dakota.

ANSWER:

Powertech (USA) Inc. is a South Dakota corporation and a wholly owned subsidiary of Powertech Uranium Corporation. The Articles of Incorporation for Powertech (USA) Inc. are publicly available for viewing or downloading on the South Dakota Secretary of State website:
<http://sdsos.gov/business/search.aspx>.

By-laws are provided as Attachment A.

2. Please identify the Board of Directors of Powertech (USA) and for each such official state their educational background and work history for the last 30 years.

ANSWER:

As described in the response to #1, Powertech (USA) Inc. is a wholly owned subsidiary of Powertech Uranium Corporation. The Powertech (USA) Inc. directors are the same as the Powertech Uranium Corporation directors. Table 2-1 lists the Powertech Uranium Corporation officers and directors. None of the Canadian officers and directors has any education or training in the construction, operation, or reclamation of ISR uranium mines and/or mills. The Canadian officers and directors provide expertise to Powertech (USA) Inc. in corporate finance, administration, and corporate governance.

Engineer/Vice President; February 2008-Present, Powertech (USA) Inc., Denver, CO, VP of Engineering.

- b. ISR Experience: The work experience under item #a illustrates extensive, direct experience in construction, operation and reclamation of ISR facilities. Mr. Mays at times has been directly responsible for managing ISR well field operations to maintain compliance with groundwater monitoring requirements.

4. As to each director and officer please state the nature and extent of the experience said individual has in the operation and management of an in situ leach mining operation.

ANSWER:

Please refer to the responses to #2 and #3.

5. Identify the largest 10 shareholders of Powertech (USA) at the time the applications were filed in the instant proceeding, the number of shares held and the date of acquisition.

ANSWER:

Powertech (USA) Inc. is a wholly owned subsidiary of Powertech Uranium Corp. As such, it only has one shareholder.

6. State the legal and/or contractual relationship between Powertech (USA) and Powertech Uranium Corporation. Please identify and produce copies of any agreements or documents between Powertech (USA) and Powertech Uranium Corporation that relates to the Project.

ANSWER:

Powertech (USA) Inc. is a wholly owned subsidiary of Powertech Uranium Corp.

7. Identify the largest 10 shareholders of Powertech Uranium Corporation at the time the applications were filed in this proceeding, the number of shares held and the date of acquisition.

ANSWER:

Toronto Stock Exchange requires only shareholders with 10% of the outstanding shares or greater or insiders of the Company to disclose their holdings. Based on information available through insider filings (which includes officers and directors of Powertech as well as shareholders who own more than 10% of the company's outstanding shares) on the SEDI web site, the largest reporting beneficial shareholders of the company are as follows:

Greg Burnett – Currently holds 4,219,000 shares. Acquired position between July 2006 and January 2013. Held 2,185,000 shares when NRC application was filed in 2009.

Richard Clement – Currently holds 3,528,000 shares. Acquired position between August and December 2007. Held 3,528,000 shares when NRC application was filed in 2009.

Thomas Doyle – Currently holds 4,997,400 shares. Acquired position between July 2006 and January 2013. Held 2,813,400 shares when NRC application was filed in 2009.

Synatom – Currently holds 23,390,000 shares. Acquired position between 2008 and November 2012. Held 10,890,000 shares when NRC application was filed in 2009.

K2 Principal Fund LP – Currently holds 24,650,000 shares. Acquired position between March 2011 and February 2013. Held 0 shares when NRC application was filed in 2009.

8. Identify the 10 largest shareholders of Powertech Uranium Corporation at the present time and state the number of shares held and the date of acquisition.

ANSWER:

Refer to the response to #7.

9. Identify all South Dakota residents or South Dakota entities that are shareholders in Powertech (USA) or Powertech Uranium Corporation and for each such shareholder state the date said individual acquired shares in Powertech (USA) or Powertech Uranium Corporation and the number of shares held.

ANSWER:

Powertech does not have the legal authority to identify individual shareholder residents or entities of South Dakota. The Company is a public company. Investors hold shares with brokerage firms and in depositories, which appear on the shareholder records of the Company. Unless a shareholder is a registered shareholder or becomes a reporting shareholder as an insider (as shown in the response to #7) the Company does not have access to information about shareholdings. The exception is that some shareholders allow their names to be provided to the Company by their brokerage firms on a confidential basis. These shareholders are termed NOBO shareholders (Non-objecting beneficial owners). The Company does not have the legal authority to publicly release NOBO shareholder information, nor registered shareholder information under the Personal Information Protection and Electronic Documents Act.

Notwithstanding the limitations in accessing shareholder information as discussed above, Powertech can confirm that as of April 8, 2013 there was one registered shareholder residing in South Dakota holding a total of 5,000 shares (representing approximately 0.004% of the company's issued outstanding shares). Further, no U.S. shareholders are reported on the NOBO lists that are maintained by the Company's transfer agent.

Dated this 2nd day of May, 2013.

POWERTECH (USA) INC.

By: [Signature]

RICHARD F. CLEMENT, JR.
Its: President

STATE OF Colorado)
) SS.
County of Denver)

RICHARD F. CLEMENT, JR., in his capacity as President of Powertech (USA) Inc., being duly sworn, verifies the Responses contained in the foregoing **POWERTECH'S ANSWERS TO BLACK HILLS WILD HORSE SANCTUARY, SUSAN WATT, & DAYTON HYDE'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**, are true to the best of his knowledge and belief.

[Signature]
RICHARD F. CLEMENT, JR.

Subscribed and sworn to before me on May 2, 2013.

[Signature]
Notary Public

My commission expires: July 9, 2016
(Seal)

AUTUMN LEON GUERRERO
COMMISSION # 20124043754
STATE OF COLORADO
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 9, 2016

FOR PURPOSES OF ALL OBJECTIONS:

Dated May 3, 2013.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Powertech (USA) Inc.

By: [Signature]

Max Main
618 State Street
Belle Fourche, SD 57717-1489
(605) 892.2011

COPY

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

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MINERALS & MINING PROGRAM

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

POWERTECH'S SUPPLEMENTAL
ANSWERS TO BLACK HILLS WILD
HORSE SANCTUARY, SUSAN
WATT, & DAYTON HYDE'S FIRST
SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS

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

In making these Supplemental Answers, Powertech does not admit any deficiencies in its initial answers, and Powertech preserves and does not waive all applicable objections. Powertech's initial answers, responses and objections are incorporated herein.

Supplemental Answers to Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's First Set of Interrogatories

7. Identify the largest 10 shareholders of Powertech Uranium Corporation at the time the applications were filed in this proceeding, the number of shares held and the date of acquisition.

ANSWER:

As required by Canadian law and Toronto Stock Exchange Rules, the relevant information in Powertech's possession is being provided pursuant to a Confidentiality and Nondisclosure Agreement.

8. Identify the 10 largest shareholders of Powertech Uranium Corporation at the present time and state the number of shares held and the date of acquisition.

ANSWER:

As required by Canadian law and Toronto Stock Exchange Rules, the relevant information in Powertech's possession is being provided pursuant to a Confidentiality and Nondisclosure Agreement.



9. Identify all South Dakota residents or South Dakota entities that are shareholders in Powertech (USA) or Powertech Uranium Corporation and for each such shareholder state the date said individual acquired shares in Powertech (USA) or Powertech Uranium Corporation and the number of shares held.

ANSWER:

As required by Canadian law and Toronto Stock Exchange Rules, the relevant information in Powertech's possession is being provided pursuant to a Confidentiality and Nondisclosure Agreement.

10. Have your attorneys employed an expert to act on your behalf in any manner pertaining to this action? If so, state his or her name, address, phone number, occupation, profession and field of specialization.

ANSWER: No.

16. Please advise whether or not Petrotek hydrogeologic modeling assumes that fractures and other geologic structures transmit water?

ANSWER:

For the reasons stated in detail in Powertech's initial Answer, the Petrotek modeling does not assume that fractures and other geologic structures will transmit water.

17. What assumptions were made in the Petrotek model regarding the ability of the thousands of Dewey-Burdock site boreholes to transmit water vertically and/or horizontally?

ANSWER:

For the reasons stated in detail in Powertech's initial Answer, the Petrotek model does not assume the transport of water vertically and/or horizontally by the boreholes. Further, as described in the initial Answer, this will be verified during development of the well field hydrogeologic data packages, which will be submitted to NRC for review and verification/approval and submitted to DENR prior to operating each well field.

18. What assumptions were made in the other Powertech (USA) hydrogeologic models regarding the ability of the thousands of Dewey-Burdock site boreholes to transmit water vertically and/or horizontally?

ANSWER:

Petrotek's 2010 groundwater model presented in Appendix 6.2-A of the LSM permit application is a well field-scale model developed to evaluate well field balance and bleed, flare during ISR

Dated this 30th day of July, 2013.

POWERTECH (USA) INC.

By: [Signature]
RICHARD F. CLEMENT, JR.
Its: President

STATE OF Colorado)
County of Arapahoe) SS.

RICHARD F. CLEMENT, JR., in his capacity as President of Powertech (USA) Inc., being duly sworn, verifies the Responses contained in the foregoing **POWERTECH'S SUPPLEMENTAL ANSWERS TO BLACK HILLS WILD HORSE SANCTUARY, SUSAN WATT, & DAYTON HYDE'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**, are true to the best of his knowledge and belief.

[Signature]
RICHARD F. CLEMENT, JR.

Subscribed and sworn to before me on Jul, 30, 2013.

Barbara Houston
Notary Public

My commission expires: 3/9/2016

(Seal)

**BARBARA HOUSTON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114071570
MY COMMISSION EXPIRES 03/09/2016**

FOR PURPOSES OF ALL OBJECTIONS:

Dated July 30,, 2013.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Powertech (USA) Inc.

By Max Main
Max Main
618 State Street
Belle Fourche, SD 57717-1489
(605) 892.2011

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

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**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**Black Hills Wild Horse
Sanctuary, Susan Watt,
& Dayton Hyde's
Motion to Compel**

INTRODUCTION

Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde (hereinafter “the Sanctuary”) respectfully move this Court for its *Order* compelling the production of specific documents from the Department of Water and Natural Resources (“DENR”).

Specifically, the Sanctuary served discovery requests on the DENR. While some were answered, the DENR objected to many others under the “deliberative process privilege.” The Sanctuary submits this motion to compel seeking production of those documents.¹

¹ The Sanctuary attempted in good faith to resolve this discovery dispute without the need for a motion to compel. This attempt was unsuccessful. See SDCL § 15-6-37(a)(2) (“The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to secure the information or material without court action.”)

DISCUSSION

In South Dakota, all common law privileges have been abrogated by statute. Unless the Constitution, statute, or Supreme Court rule provides otherwise, “no person has a privilege to: ... (3) refuse to produce any object or writing.” SDCL § 19-13-1 (Rule 501).

The recognized privileges are found in SDCL § 19-13, *et seq.* The DENR has not provided any legal authority for its stated position, nor any legally supportable basis for withholding production of the requested documents. Indeed, at the time of the informal attempt to resolve this discovery dispute, the only reason given was that the “NRC did not want this disclosed.” That is an insufficient basis upon which to withhold this information.

The privilege chapter contains no such “deliberative process privilege,” nor is it clear that the requested documents would qualify for such a privilege if the DENR provided legal support for its position.

Therefore, the DENR has no legitimate basis upon which to oppose production of the requested documents.

Dated this 6th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



MICHAEL M. HICKEY

333 West Blvd., Suite 400

P.O. Box 2670

Rapid City, SD 57709

Phone: (605) 343-1040

mhickey@bangsmccullen.com

***Attorneys for Black Hills Wild
Horse Sanctuary, Dayton Hyde
and Susan Watt***

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MINERALS & MINING PROGRAM

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**Black Hills Wild Horse
Sanctuary, Susan Watt,
& Dayton Hyde's
Motion to Continue**

Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde, by and through their attorney, for the reasons discussed below respectfully move the Board to continue Powertech's Large Scale Mine Permit Application until such time as Powertech has received final approval from the Nuclear Regulatory Commission and the Environmental Protection Agency.

A. Factual Summary

On or about February 25, 2009, Powertech (USA) ("Powertech") filed its application for a Nuclear Regulatory Commission Uranium Recovery License for its Proposed Dewey-Burdock In-Situ Leach Uranium Recovery Facility in Custer and Fall River Counties, South Dakota. This application was later withdrawn and a new application was submitted on August 10, 2009. Several parties, including Dayton Hyde, petitioned to intervene in that proceeding. Recently, the Atomic Safety and Licensing Board¹ has admitted Dayton Hyde as a party and granted a hearing on

¹ See Memorandum and Order of Atomic Safety and Licensing Board dated August 5, 2010.

the adequacy of the presentation and analysis of baseline water quality, aquifer confinement, artesian and horizontal flow that could impact surrounding aquifers and surface waters; adequacy of the Inyan Kara aquifer which makes the proposed operation inimical to public health and safety; Powertech's failure to describe faults and fractures between aquifers through which groundwater can spread uranium, thorium, radium 22 and 228, arsenic and other heavy metals; and an inadequate, inaccurate and incomplete identification and protection of cultural and historic resources. Thus Powertech's application is still pending before the United States Nuclear Regulatory Commission ("NRC") and whether it will obtain final approval is certainly very much up in the air.

On April 22, 2009, Powertech also filed with the Environmental Protection Agency ("EPA") an application to obtain an Underground Injection Control Permit. A replacement application was filed on February 5, 2010. On July 2, 2010, the DENR filed its comments concerning the permit. In those comments, concern was expressed about the incompleteness and inadequacy of Powertech's application and the need for additional information and testing including the drilling of test holes. The EPA has not ruled on that application.

If the EPA does not approve the injection permits as proposed, then Powertech wants to use land application to dispose of its waste water. This presents a completely different set of questions and concerns.

Thus, at the present time, it is completely unknown if or when Powertech will obtain the federal license and permits necessary to operate an in-situ recovery operation.

On October 1, 2012, Powertech filed its initial application for a Large Scale Mining Permit with the DENR. Supplemental information and amendments to the application were submitted on December 4, 2012; January 10, 2013; and April 2, 5, 9, and 11, 2013, but no independent Environmental Impact Statement has been completed for this major action as required under SDCL Chapter 34A-9.

Ultimately, on April 15, 2013, the Secretary of the Department of Environment and Natural Resources issued his recommendation conditionally approving Powertech's permit application. In doing so, the Secretary recommended approval of the application but attached several conditions. The most significant of which are that Powertech must obtain a Source and Byproduct Material License from the NRC, and an aquifer exemption and Underground Injection permit from the EPA, and a 404 Permit from the Army Corps of Engineers. Given the fact that no mining operation can commence until and unless the NRC issues its license and the EPA makes a determination as to whether deep well injection will be permitted, the interests of justice and judicial economy require that this proceeding be continued until such time as Powertech

actually obtains the federal license and permits needed to operate this large scale in-situ mine.

B. Argument and Authorities

In accordance with the provisions of SDCL 45-6B-30, hearings before the Board of Minerals and Environment are governed by the provisions of SDCL Chapter 1-26. That statute also governs the procedure required to be followed with regard to setting a date for hearing. As stated above, in the present case Powertech, in addition to its original application, has made numerous supplemental filings the last of which appears to have been on April 11, 2013.

However, in a phone conversation of July 18, 2013, a copy of which is attached as Exhibit A, Powertech requested permission from the DENR to file an updated Socioeconomic Study as required by SDCL 45-6B-33.1. DENR indicated in response that Powertech could supply such study at least 20 days prior to the hearing. To the best of our knowledge, Powertech has not supplied that additional information. As the Board is aware, Wild Horse has retained an economic expert to reply to and rebut the evidence introduced by Powertech but our expert is unable to do so given the fact that no updated report has been filed.

Additionally, under the provisions of SDCL 45-6B-30, in the event that an extension of the time exceeding 45 days is needed, the applicant is required to republish the notice prescribed by SDCL 45-6B-16.

Moreover, pursuant to the deadlines established under SDCL 45-6B-30, the Board is required to publish notice of the time, date and location of the hearing in a newspaper of general circulation in the locality of the proposed mining operations once a week for two consecutive weeks immediately prior to the hearing. According to the DENR's website, the only formal notice posted by the Board was mailed to the appropriate newspapers on January 17, 2013, for publication on January 23 and 30, 2013, noticing a hearing "tentatively planned for May, 2013." A Notice of Date, Time and Location of Hearing was sent to various identified parties and interveners on June 7, 2013, which indicated that at least 30 days prior to the contested case hearing, a formal Notice of Hearing shall be issued. To the best of Wild Horse's knowledge and belief, no such notice has been issued to date.

Finally, Wild Horse seeks a continuance of this hearing on the grounds and for the reasons that since neither the NRC nor the EPA has issued their final permits in this case, it is premature for the Board to proceed when there are so many unanswered questions.

For reasons that are not immediately apparent, the South Dakota legislature adopted Senate Bill 158 during the 2011 legislative session. The act was entitled "An Act to toll the Department of Environment and Natural Resources administrative rules on underground injection control Class III wells and in situ leach mining until the department obtains

primary enforcement authority of comparable federal programs.” A copy of Senate Bill 158, as enrolled is attached as Exhibit B.

“[S]tatutes are presumed to have prospective application and may be construed as retroactive only when such intention plainly appears.”

Ernest & Young v. SD Dept. of Revenue & Regulation, 2004 SD 122, ¶ 11, 689 N.W.2d 449 quoting *Gasper v. Friedel*, 450 N.W.2d 226, 233 (S.D. 1990) (citing *Arndt v. Hannum Trucking*, 324 N.W.2d 680 (S.D. 1982)).

As the South Dakota Supreme Court has noted, “[t]he principal rationale for allowing prospective application is the reliance of parties on the old rule of law.” *Burgard v. Benedictine Living Communities*, 2004 SD 58, ¶17, 680 N.W.2d 296.

When Powertech filed its applications before the EPA and the NRC, South Dakota citizens were relying on the DENR to protect the public’s interest. The DENR apparently did so by noting the deficiencies in Powertech’s applications. Since that initial questioning, the DENR has sat on the sidelines and no assurances have been given by the NRC that the Department’s concerns will be addressed.

Having deferred regulatory authority over Class III injection wells and in situ leach mining to the federal government, it seems at best disingenuous to entertain this application before the federal government has acted. In simpler terms, the Department has the cart before the horse.

These federal agencies are primarily responsible for determining if Powertech will be authorized to construct and operate an in-situ recovery mine. The Board is being asked to shirk its regulatory authority by holding hearings on an application that does not adequately address the full nature and extent of Powertech's proposed operations, sequence of order of operations, the location of proposed wells and the method and means being utilized to dispose of waste water. All of the questions should be answered by the NRC and the EPA before a permit should be granted by this Board.

It is completely incomprehensible for the Secretary to make a recommendation for conditional approval when there are so many unanswered questions. By proceeding in this manner, Powertech's actual operations avoid public scrutiny and only the DENR staff is left to ensure that the health, safety and general welfare of the people are not endangered, while those opposed to the application are left without a voice. Surely that was not the legislature's intent when it deferred responsibility to this kind of project to federal authorities.

C. Conclusion

Powertech's applications are incomplete and significantly deficient. The most significant aspects of its applications are still pending before federal agencies. Moreover, appropriate notice does not appear to have been given. Nevertheless, the Secretary appears content to recommend

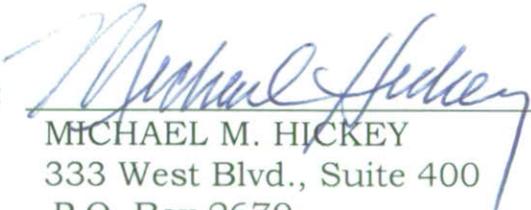
the granting of a permit. Once the permit is granted, Powertech may have a constitutionally protected property interest in the permit², and the interveners' voices will be silenced. Why the rush? It seems as if Powertech's interests are paramount to the public interest.

As a country we have come a long way from the view that "what is good for General Motors is good for the USA". By the same token, there is no proof that what is good for Powertech is good for the citizens of the State of South Dakota. Wild Horse respectfully urges the Board to continue this matter and defer a decision as to what is in the public interest until such time as the record is complete, proper notice has been given and the NRC and EPA have completed their action.

Dated this 6th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:


MICHAEL M. HICKEY
333 West Blvd., Suite 400
P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040
mhickey@bangsmccullen.com
**Attorneys for Black Hills
Wild Horse Sanctuary,
Dayton Hyde and Susan Watt**

² Matter of SDDS, Inc., 472 N.W.2d 502 (S.D. 1991).

RECORD OF TELEPHONE CONVERSATION AND/OR PUBLIC CONTACT REPORT

RECEIVED

SEP 09 2013

MINERALS & MINING PROGRAM

CONFIDENTIAL

Route: _____

NOT CONFIDENTIAL

cc: _____

Date of Call: 7/18/13

Date of Contact: _____

Telephone call to: Eric Holm

DENR Employee Contacted: _____

Name of Caller: Jack Fritz

Name of Visitor: _____

Address: WWC Engineering
Sheridan, Wyoming

Address: _____

Telephone: _____

Telephone: _____

RE: Update to Powertech Socioeconomic Study

Staff Signature: _____ \s/

COMMENTS:

Jack Frit called this afternoon to discuss the demographic update to Powertech's Socioeconomic Study that he briefly discussed with Mike Cepak and Eric Holm a couple of weeks ago. Powertech was looking at either submitting the updated demographic information as additional information or presenting it at the board hearing as part of expert testimony on the Socioeconomic Study. Mr. Fritz said Powertech wants to present it at the hearing and wanted to know if that was acceptable to us.

After consulting with the Attorney General's office, I called Jack back and told him that since we are in the discovery phase of the contested case hearing, it would be better to submit the demographic revisions as additional information so interveners are aware of the changes prior to the hearing. Mr. Fritz said he would relay the information to Powertech and submit the information. He wanted to know if Powertech could submit the information at least 20 days prior to the hearing as stated in ARSD 74:29:01:16. I told him that was fine.



State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

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921S0681

SENATE BILL NO. 158

Introduced by: Senators Rave, Brown, Gray, Hundstad, Olson (Russell), and Rampelberg and Representatives Rausch, Cronin, Dennert, Gosch, Lust, Russell, and Verchio

1 FOR AN ACT ENTITLED, An Act to toll the Department of Environment and Natural
2 Resources administrative rules on underground injection control Class III wells and in situ
3 leach mining until the department obtains primary enforcement authority of the comparable
4 federal programs.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 34A-2 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The legal force and effect of the underground injection control Class III rules promulgated
9 under subdivision 34A-2-93(15) are tolled until the department obtains primary enforcement
10 authority for underground injection control Class III wells from the United States Environmental
11 Protection Agency. The in situ leach mining rules promulgated under subdivision 45-6B-81(10)
12 as they relate to uranium are tolled until the department obtains agreement state status from the
13 United States Nuclear Regulatory Commission.



An Act to toll the Department of Environment and Natural Resources administrative rules on underground injection control Class III wells and in situ leach mining until the department obtains primary enforcement authority of the comparable federal programs.

I certify that the attached Act
originated in the

SENATE as Bill No. 158

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 158
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,
20____ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State

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SEP 09 2013
MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.

Certificate of Service

The undersigned hereby certifies that he filed the originals with Mike Cepak and served copies of the following:

1. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's Motion to Disclose;**
2. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's Brief in Support of Motion to Disclose;**
3. **Affidavit of Michael M. Hickey in Support of Motion to Disclose;**
4. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's Motion to Compel;** and
5. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's Motion to Continue.**

upon the persons herein next designated, all on the date below

shown:

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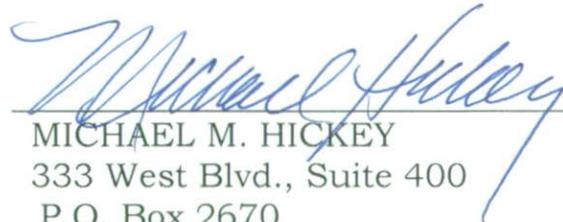
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and upon each of the persons shown in the attached list, including Libraries, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, which are the last addresses of the addressees known to the subscriber.

Dated this 6th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

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