

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF POWERTECH,)
)
 APPLICATION NOS. 2786-2)
 2686-2)

OBJECTION AND RESPONSE TO POWERTECH’S MOTION IN LIMINE

The Clean Water Alliance CWA, by and through its attorney, hereby objects to the Motion of Powertech In Limine (hereinafter, “Motion”).

Powertech, by its Motion, seeks to bar unnamed Intervenors from presenting and this Board considering evidence it describes as “inadmissible hearsay,” contrary to SDCL §§19-16-1(relevancy) and 4 (hearsay). Certainly the Rules of Evidence applies, as does §19-16-40, the “Residual exception.”

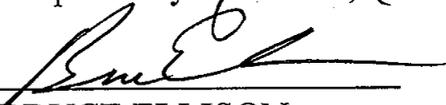
§19-16-40 states:

A statement not specifically covered by §§ 19-16-5 to 19-16-8, inclusive, or §§ 19-16-9 to 19-16-34, inclusive, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by § 19-16-4, if the court determines that:

- (A) The statement is offered as **evidence of a material fact**;
- (B) The statement is **more probative** on the point for which it is offered **than any other evidence which the proponent can procure** through reasonable efforts; and
- (C) The general purposes of chapters 19-9 to 19-18, inclusive, and the **interests of justice will best be served** by admission of the statement

into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. (Emphasis added).

Dated this 12 day of September, 2013.

Respectfully submitted, 

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