

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 21, 2013

Jerry Wilson
30959 Frog Creek Road
Vermillion, SD 57069

Custer Conservation District
ATTN: Angie Keierleber
447 Crook Street, Suite 1
Custer, SD 57730

Thomas F. Barnes
11778 Pleasant Valley Rd
Custer, SD 57730

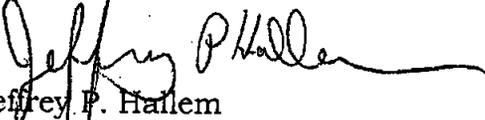
Martin H. Meyer
102 S. Connor St.
Hot Springs, SD 57747

Elsa Meyer
102 S. Connor St.
Hot Springs, SD 57747

Dear Petitioners:

Enclosed herewith please find the Order Granting Petitions to Intervene in the above matter under which Prehearing Chair Everett Hoyt accepted your untimely petitions and granted you leave to intervene and to participate under "Option B" of the February 14, 2013 Procedural Order. A copy of the Procedural Order is also enclosed with this letter. Your intervention is subject to the provisions of the Procedural Order.

Very truly yours,


Jeffrey P. Hallem
Assistant Attorney General
Counsel for Water Management Board

JPH/rar

cc: Eric Gronlund, S.D. Department of Environment and Natural Resources
Everett Hoyt, Prehearing Chair

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.)

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

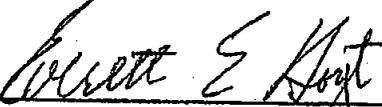
ORDER GRANTING
PETITIONS TO INTERVENE

The South Dakota Department of Environment and Natural Resources received five petitions to intervene in the above-captioned matter, dated or received prior to March 15, 2013. The petitions to intervene were from Jerry Wilson, Vermillion, South Dakota, as a member of the Executive Committee of the South Dakota Chapter of the Sierra Club; the Custer Conservation District; Thomas F. Barnes of Custer, South Dakota; and Martin H. Meyer and Elsa Meyer of Hot Springs, South Dakota. Mr. Wilson's request asked to be allowed to intervene under the "Option B" set forth in the February 14, 2013 Procedural Order. The other requests to intervene contained no indication of the status of the requested intervention. The petitions to intervene were forwarded to the Prehearing Chair for review and consideration. Counsel for the Board contacted petitioners, excepting Mr. Wilson, to determine the intended status of intervention and advised that under the Procedural Order the default status was "Option B," which was not full party status. No petitioner represented the current intention to participate as a full party "Option A."

Upon review of the petitions to intervene and consideration of the administrative record in this matter, the Prehearing Chair finds that all petitions were received by the Department prior to the issuance of the status of intervening parties and that granting intervention under "Option B" of the Procedural Order would not prejudice any of the existing parties; therefore it is hereby

ORDERED that the Petitions of Jerry Wilson, Custer Conservation District, Thomas F. Barnes, Martin H. Meyer and Elsa Meyer are accepted and the petitioners are granted leave to intervene and to participate under "Option B" of the Procedural Order.

Dated this 21st day of March, 2013.



Everett Hoyt, Prehearing Chair
South Dakota Water Management Board

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.)

PROCEDURAL ORDER

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

Upon consideration of the Motions for Consolidation and Procedural Order filed by the Department of Environment and Natural Resources Water Rights Program and Groundwater Quality Program (DENR), and argument submitted by all parties and interested persons at the Procedural Hearing (Prehearing Conference) held on February 8, 2013, it is hereby ORDERED that:

- 1) DENR's Motion to Consolidate is granted. The above-entitled matters are hereby consolidated.
- 2) All persons who filed Petitions to Intervene in the water permit application proceedings or Petitions to Initiate a Contested Case in the groundwater discharge plan proceedings that were on file with DENR prior to the Prehearing Conference are granted.
- 3) All persons who have filed Petitions to Intervene or Petitions to Initiate a Contested Case in the above-entitled matters must file with DENR an Election of Participation using the attached form by March 15, 2013. Persons who do not

file an Election of Participation Form will be treated as if they have elected to limit their participation to submitting sworn testimony at the beginning of the contested case hearing (Option B). Any Party may change participation status by timely notifying DENR staff person Eric Gronlund in writing at: Eric Gronlund, DENR, Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501-3182. The Party must also serve copies of the notification on Applicant, DENR counsel, all parties who elected full participation (Option A), Prehearing Chair Hoyt and Board Counsel Jeff Hallem. A service list may be obtained from Mr. Gronlund.

- 4) Attorneys who have not yet filed Notices of Appearance for persons who elect to fully participate in the contested case proceeding (Option A) are directed to do so immediately. Nonresident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2 to participate in this matter.
- 5) All corporations, partnerships, associations, and other legal entities (including non-profit associations) must be represented by counsel in this proceeding.
- 6) The following prehearing schedule and obligations apply to Applicant, DENR and all parties who elect Option A:
 - i) Discovery requests must be initiated (served upon the applicable Party) by April 1, 2013. The Parties shall attempt to informally resolve any discovery dispute. If a discovery dispute cannot be resolved a party may file a motion with the Prehearing Chair in the same manner as provided in 6) vii) below.
 - ii) Discovery completion deadline is 45 days prior to the initial date scheduled for the contested case hearing.

- iii) Each Party will disclose, in writing sent to all other Parties, the names of expert witnesses, curricula vitae, and a copy of any expert report that it intends to offer on or before 45 days prior to the initial date scheduled for the contested case hearing.
- iv) 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 initial date scheduled for the contested case hearing.
- v) 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 initial date scheduled for the contested case hearing.
- vi) All exhibits shall be marked in advance by each Party and that each Party must provide a sufficient number of copies for use at the contested case hearing, including 10 copies for use by the Board, its counsel, and court reporter. Exhibits shall be marked by using the Party's name and numbered sequentially. Individuals shall mark each of their exhibits using their name in full (example: Jane W. Doe)
- vii) All original pleadings, prehearing motions, discovery requests and responses are to be sent by regular first class mail to Eric Gronlund, DENR, Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501-3182. Parties must serve copies on all other Parties; and except for discovery requests, discovery responses and the items identified in 6) iii) through v) inclusive on

the Prehearing Chair and Board Counsel Jeff Hallem. In addition copies of all documents to be filed will be delivered to the following libraries:

Attn: Doris Ann Mertz
Custer County Library
447 Crooks Street, Ste. 4
Custer, SD 57730

Attn: Ashley Cortney
Edgemont Public Library
PO Box A / 412 2nd
Edgemont, SD 57735

Attn: Cindy Messenger
Hot Springs Public Library
2005 Library Drive
Hot Springs, SD 57747

Attn: Jason Walker
Rapid City Public Library
610 Quincy Street
Rapid City, SD 57701

Attn: Michelle May
Woksape Tipi
Oglala Lakota College
PO Box 310
Kyle, SD 57752

Public access to the documents delivered will be determined by each library.

- 7) The contested case hearing before the Water Management Board will begin at Rapid City, South Dakota at a date to be set by the Water Management Board and at a location to be determined by DENR staff. The Water Management Board will consider scheduling the dates for the contested case hearing during its meeting in Pierre on March 6, 2013 at the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD at 11 A.M. CST, or as soon thereafter as may be heard. It is anticipated the contested case hearing will take at least five days.
- 8) The contested case hearing will proceed as follows:
 - i) The taking of sworn testimony from those parties that chose or have been designated to have chosen Option B of the Election of Participation Form. Comments should not to exceed 15 minutes each; and the Board may limit

unduly repetitive testimony. The testimony provided will be subject to cross examination by other parties and questions from Board members.

ii) Once the taking of comments is completed, the formal contested case proceeding will start with any preliminary motions from the Parties.

iii) The Parties will make opening statements.

iv) Witnesses and evidence will be taken subject to objection and cross examination, in the following order:

(a) Applicant Powertech (USA), Inc.;

(b) DENR Water Rights Program;

(c) DENR Groundwater Quality Program;

(d) Other Parties following an order established by the Chairman;

(e) Board members may ask the witness questions.

v) After the record is closed, the Parties will offer short closing arguments in the same order.

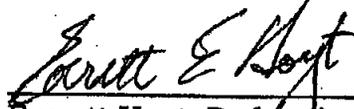
vi) At the conclusion of the proceedings, the Board may render a decision and direct the prevailing party to provide findings of fact and conclusions of law consistent with the decision. Other parties will be given an opportunity to file proposed findings of fact and conclusions of law for the record.

Alternatively, the Board may take the matter under advisement until its next Board meeting.

9) Questions concerning the arrangements for the contested case proceeding and service list are to be made to DENR employee Eric Gronlund at

Eric.Gronlund@state.sd.us or 605-773-3352.

Dated this 14th day of February, 2013.



Everett Hoyt, Prehearing Chair
South Dakota Water Management Board

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.) ELECTION OF PARTICIPATION

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

*TO: All Persons who filed Petitions to Intervene or Petition to Initiate a Contested Case
in either of the above-entitled matters:*

You filed or signed a petition or sent comments to the Department of Environment and Natural Resources on one or both of the Powertech matter listed above pending before the Water Management Board. To clarify your intent, you must elect to A) participate as a full party in the formal contested case proceeding, including presenting testimony subject to cross examination, offering exhibits, cross examining other witnesses, making and defending objections, addressing legal argument, and having the option to appeal to the courts if desired; OR B) provide sworn testimony during the beginning of the contested case hearing; OR C) rely on information you already filed. Election of Options B and C will waive some of the rights and relieve you of some of the obligations you have if you participate as a Party under Option A.

**YOU MUST RETURN THIS FORM TO ERIC GRONLUND, DENR, ON OR
BEFORE MARCH 15, 2013. FAILURE TO COMPLETE AND RETURN THIS WILL
BE CONSTRUED AS AN ELECTION TO PROCEED UNDER OPTION B. A PERSON**

MAY CHANGE THEIR PARTICIPATION STATUS AS PROVIDED IN THE

FEBRUARY 14th, 2013 PROCEDURAL ORDER.

Dated this 14th day of February, 2013.

Everett E Hoyt

Everett Hoyt, Prehearing Chair
South Dakota Water Management Board

____(A) I wish to participate as a full party in this proceeding by presenting testimony subject to cross examination, offering exhibits, cross examining other witnesses, making and defending objections, addressing legal argument, and having the option to appeal to the courts if desired. I understand that if I am appearing on my own behalf, I do not need to be represented by a lawyer, but that all corporations, partnerships, nonprofit associations, and other legal entities must have a lawyer represent them if they participate as a party.

____(B) I wish to offer my sworn testimony at the beginning of the contested case hearing. I understand that due to the large number of parties, I may be limited to 10-15 minutes. I understand my testimony will be subject to cross examination and I will not have all of the rights nor obligations of a full party.

____(C) I wish to rely on the petition that I submitted or signed. I do not wish to testify or participate as a full party in these proceedings.

Date: _____

Signature: _____

Printed name: _____

Address: _____

Telephone number: _____

Email address: _____

Mail to: Eric Gronlund, DENR, 523 E. Capitol Ave., Pierre, SD 57501