US Department of Justice

RANDOLPH J. SEILER
Acting United States Attorney
District of South Dakota

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June 15, 2015

Ann Mines-Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, SD 57501

HAND DELIVERED

Re: Water Management Board Water Application No. 2730-2

Dear Ann:

Enclosed is an executed original and 20 copies of the Stipulation for Withdrawal of Petitions To Intervene. It is my understanding that you will offer the Stipulation as an exhibit at the July 9, 2015 hearing on the above-entitled water permit application.

By copy of this letter, I am sending one original to Jeffrey Connolly, attorney for United Order of South Dakota. We have not served the stipulation upon others, and the enclosed copies are intended for that purpose.

Please contact me with any questions or concerns.

Sincerely,

RANDOLPH J. SEILER
Acting United States Attorney

Cheryl Schrempp DuPris

Cheryl Schrempp DuPris
Assistant U.S. Attorney

Enclosure
cc: Jeffrey Connolly (letter and one original Stipulation)

STIPULATION FOR WITHDRAWAL OF PETITIONS TO INTERVENE

This Stipulation is made and entered into between United Order of South Dakota, common law trust ("United Order"), the United States Department of the Interior, National Park Service ("NPS"), and United States Department of Agriculture, Forest Service ("FS") (collectively "the Parties").

RECITALS

A. On October 14, 2014, the United Order filed an "Application for Permit to Appropriate Water within the State of South Dakota" with the South Dakota Department of Environment and Natural Resources, Water Rights Program. The application was assigned No. 2730-2. The application requested that a previously-issued permit (No. 2610-2), which is owned by the United Order, be amended to add a new point of diversion and increase the rate of withdrawal to 300 gallons per minute (gpm) of groundwater from the Madison aquifer.

B. On December 5, 2014, the Chief Engineer of the State of South Dakota (Chief Engineer) issued a Recommendation recommending approval of Application No. 2730-2.

C. On December 19, 2014, the NPS submitted a petition to intervene to the Chief Engineer, wherein the NPS advised the Chief Engineer about its concerns regarding the potential adverse effects of Application No. 2730-2 on the water rights and water-dependent resources of Wind Cave National Park.

D. On January 15, 2015, the NPS submitted an amendment to its petition to intervene to the Chief Engineer, wherein the NPS raised additional issues of concern. On the basis of its assertion that Application No. 2730 was speculative, the NPS requested that the South

Dakota Water Management Board (Water Management Board) deny Application No. 2730-2.

E. On January 16, 2015, the FS submitted a petition to intervene to the Chief Engineer, wherein the FS advised the Chief Engineer about its concerns regarding the potential adverse effects of Application No. 2730-2 on the water-dependent resources of Cascade Springs and Cascade Creek and the possible speculative nature of the application.

F. By way of a letter to the Chief Engineer, dated February 18, 2015, the United Order requested that Application No. 2730-2 be amended by reducing the maximum instantaneous diversion rate from 300 gpm to 200 gpm.

G. On June 1, 2015, the Chief Engineer issued a Revised Recommendation for Water Permit Application No. 2730-2. Among other recommendations, the Revised Recommendation included two (2) qualifications that the NPS and the FS believe should substantially reduce any adverse effects from the applicant's proposed groundwater withdrawals on the water rights and water-dependent resources of the NPS and the FS. Those qualifications are as follows:

1. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.466 cubic feet of water per second; and,
2. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer. The report shall be submitted each January and provide a

month by month breakdown of water withdrawn for the previous calendar year.

H. The Water Management Board has set an administrative hearing to consider the Application No. 2730-2 as amended, the Revised Recommendation of the Chief Engineer, and the petitions to intervene, which is scheduled for July 9th, 2015.

I. The Parties acknowledge that other entities and individuals have lodged petitions to intervene to the Application No. 2730-2, but such other entities and individuals are not Parties to or in any way bound or prejudiced by this Stipulation.

J. The Parties desire to resolve the issues raised by the petitions to intervene filed by the NPS and the FS according to the terms and conditions contained in this Stipulation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

1. The United Order hereby expressly agrees that it shall take no actions of any kind to contest the Revised Recommendation of the Chief Engineer, dated June 1, 2015, including but not limited to refraining from interposing any objections to the Revised Recommendation during any proceedings before the Water Management Board, and shall in no way oppose the attachment of the qualifications set forth in the Revised Recommendation to Water Permit Nos. 2610-2 and 2730-2.

2. The United Order hereby expressly agrees to affirmatively support the Revised Recommendation of the Chief Engineer for Water Permit Application No. 2730-2, dated June 1, 2015, in all proceedings before the Water Management Board.

3. The NPS and FS hereby expressly agree to withdraw their petitions to intervene in the matter of the Application No. 2730-2 within five (5) business days of the complete execution of this Stipulation.

4. The Parties agree that this Stipulation shall be submitted to the Chief Engineer within five (5) business days following the complete execution of this Stipulation for submission to the Water Management Board and incorporation into the administrative record for Water Permit Nos. 2610-2 and 2730-2.

5. The Parties agree that, at any time following the complete execution of this Stipulation, the NPS and the FS, at their sole discretion, may issue press releases or other types of official statements to the general media setting forth the scientific, technical, policy, and legal reasons associated with each federal agency's determination to withdraw its petition to intervene.

6. The Parties expressly acknowledge that this Stipulation is binding only upon the Parties hereto and their successors, transferees and assigns, and shall not bind or seek to bind or prejudice any other interveners.

7. This Stipulation does not waive any authorities of the NPS and the FS or the United States of America, including any other agency or bureau not specified in this Stipulation, nor relieve the United Order from complying with any applicable state and federal laws and any and all rules and regulations thereunder.

8. The Parties expressly acknowledge that the Water Management Board has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of South Dakota and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.

9. In the event that the United Order transfers or assigns its interest in Water Permit No. 2610-2 and/or Water Permit Application 2730-2 prior to a final determination of the Water Management Board on Water Permit Application 2730-2, the United Order shall provide written notice to the NPS and FS within three (3) business days of the transfer or assignment. As a condition to any such transfer or assignment, the United Order shall obtain from the transferee and/or assignee an express written confirmation that the transferee and/or assignee is bound by all of the terms and conditions of this Stipulation and shall deliver such express written confirmation to the NPS and the FS not later than seven (7) business days following the transfer or assignment.

10. If notice is required to be sent to the NPS and the FS by the United Order, the addresses are as follows:

Chief, Water Right Branch
National Park Service
1201 Oakridge Drive
Fort Collins, CO 80525

Forest Supervisor, Black Hills National Forest
U.S. Forest Service
1019 North 5th Street
Custer, SD 57730

11. This Stipulation shall be governed in accordance with the laws of the State of South Dakota to the extent not inconsistent with federal law.

12. By entering into this Stipulation, the NPS and the FS do not become a party to any proceeding other than the administrative proceeding of the Water Management Board regarding Application No. 2730-2, nor do they waive their immunity from suit or consent to or acknowledge the jurisdiction of any other court or tribunal. Nothing in this Stipulation shall affect any state permitted or federal reserved water rights of the United

States or the United States on behalf of any Indian Tribe or individual Indian, and the NPS and the FS by entering into this Stipulation do not waive or prejudice any such rights. The NPS and the FS reserve all legal rights, of any kind, they possess pursuant to or derived from Executive Orders, Acts of Congress, judicial decisions, or regulations promulgated pursuant thereto, including but not limited to, the filing of petitions to intervene in the future in response to Recommendations of the Chief Engineer issued on any and all new applications for permits or changes to existing permits to appropriate water filed by the United Order.

13. This Stipulation may be amended by mutual agreement of the Parties.

14. This Stipulation sets forth the entire agreement of the Parties and supersedes all prior discussions, negotiations, understandings, or agreements. No alteration or variation of this Stipulation shall be valid or binding unless expressly agreed to in writing by the Parties.

15. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, transferees and assigns.

16. The Parties may execute this Stipulation in two or more counterparts, which shall in the aggregate be signed by all Parties; each counterpart shall be deemed an original as against any party who has signed it.

17. Other entities may become Parties to this Stipulation by mutual assent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation as of the date(s) written below.

Date: 6/15/2015

ON BEHALF OF THE NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, AND THE UNITED STATES FOREST SERVICE, DEPARTMENT OF AGRICULTURE

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

Cheryl Schrempp DuPris

Cheryl Schrempp DuPris
Assistant United States Attorney
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(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

Date: 6/11/2015

UNITED ORDER OF SOUTH DAKOTA, A COMMON LAW TRUST

By Seth S. Jeffs
Title: Water Operator, Acting on Authority of the Board of Trustees

State of South Dakota)
) ss.
County of Pennington)

On this 11 day of June, 2015, before me, the undersigned officer, personally appeared Seth S. Jeffs, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(SEAL)
My Commission Expires: February 20th 2016

ERIN A. ERNEST
NOTARY PUBLIC
SEAL
SOUTH DAKOTA
MY COMMISSION EXPIRES 2-20-2016