

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

IN THE MATTER OF POWERTECH)	DENR'S FIRST RESPONSE TO
(USA), INC. APPLICATION FOR)	WILD HORSE SANCTUARY, SUSAN
LARGE SCALE MINING PERMIT)	WATT, & DAYTON HYDE'S
PERMIT NO. 480)	SECOND SET OF
(Dewey-Burdock Project))	INTERROGATORIES AND
)	REQUESTS FOR PRODUCTION

The Minerals and Mining Program ("M&MP"), of the South Dakota Department of Environment and Natural Resources ("DENR"), is the only DENR party to this proceeding. M&MP hereby provides its First Set of Responses to the Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's Second Set of Interrogatories and Requests for Production dated July 12, 2013 ("First Set of Interrogatories and Requests for Production"). The M&MP reserves the right to supplement these disclosures for any reason, including, but not limited to (a) ongoing factual discovery including any depositions of witnesses identified by all parties, and (b) ongoing investigation by attorneys and the parties.

PRELIMINARY STATEMENT

Definitions: Words used in the M&MP's Responses herein carry the same meaning as the definitions in the Interrogatories and Requests for Production, except as specifically noted herein.

Federal Agency Acronyms: These responses refer to the Nuclear Regulatory Commission as “NRC,” the United States Geological Survey as “USGS,” and the Environmental Protection Agency as “EPA.”

Relevancy: By making these Responses, the M&MP does not concede that the information sought is relevant to the subject matter of this action or is reasonably calculated to lead to the discovery of admissible evidence.

Preservation of Objections: M&MP’s responses are made without in any way intending to waive, but on the contrary, intending to preserve: (a) the right to raise, in any subsequent proceeding in or the trial of this or any other action, all questions of foundation, relevancy, materiality, privilege, hearsay and evidentiary admissibility of any responses provided herein; (b) the right to object on any ground to the use or introduction into evidence of said responses in any subsequent proceeding in or the trial of this or any other action, on any grounds; and (c) the right to object on any ground at any time to other interrogatories, requests for production, requests for admissions or other discovery involving said responses or the subject matter thereof.

GENERAL OBJECTIONS

1. To the extent the Interrogatories and Requests for Production are intended to elicit information protected by the attorney-client privilege or the work product rule or which contain or reflect the impressions, conclusions, opinions, legal research or theories of the M&MP’s attorneys, the M&MP objects and asserts these privileges to the fullest extent permitted by law.

2. The M&MP objects to each Interrogatory and Request for Production to the extent it seeks to require the M&MP provide information on behalf of any individual or entity other than the M&MP.

3. The M&MP objects to each Interrogatory and Request for Production to the extent that it seeks information with respect to entities or individuals other than the parties involved in this litigation. Such requests are overly broad, unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence.

4. The M&MP objects to each Interrogatory and Request for Production to the extent that it seeks information, the disclosure of which would violate constitutional, statutory, or common law privacy rights of others, contract or confidentiality agreements between the M&MP and third parties, confidential settlement discussions or agreements, or court orders restricting disclosure.

5. The M&MP objects to each Interrogatory and Request for Production to the extent it demands information that is already in the possession of or has been previously produced to, offered for review, inspection and copying by any party during the course of the above entitled proceeding or demands information which is as readily available to any other party to the pending proceeding as the M&MP on the grounds that such a request is unduly burdensome, harassing and cumulative.

6. The M&MP objects to each Interrogatory and Request for Production to the extent that it seeks the disclosure of information or data which is beyond the permissible scope of the South Dakota Rules of Civil Procedure, in that it is

irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

7. The M&MP objects to each Interrogatory and Request for Production to the extent it purports to obligate the M&MP to supplement answers beyond that which is contemplated or mandated by the South Dakota Rules of Civil Procedure.

8. The M&MP objects to each Interrogatory and Request for Production that is so broad, vague, ambiguous, uncertain, and unintelligible that the DENR cannot determine the nature of the answers sought, and to which the DENR is therefore unable to respond.

9. The M&MP has not completed its preparation for hearing. Therefore, the M&MP Responses are given subject to the DENR's right to produce evidence of any subsequently discovered facts.

10. The M&MP objects to each Interrogatory and Request for Production to the extent that it demands information for which the required good cause or substantial need, as dictated by applicable statutes, court rules, and case law, has not been shown.

11. The M&MP objects to Interrogatories and Requests for Production using the term "you" as overly broad, unduly burdensome and oppressive, M&MP does not act or purport to act on behalf of any *Applicant or Petitioner* in this matter and cannot answer Interrogatories and Requests for Production on behalf of any *Applicant or Petitioner*. Notwithstanding this objection, the M&MP will respond to

the Interrogatories and Requests for Production as though they seek information within the custody or control of the M&MP.

12. The M&MP objects to each Interrogatory and Request for Production to the extent it seeks "all" or "every" fact, event or other item on the grounds that the requests using these terms are overly broad, unduly burdensome and oppressive, and are not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, the M&MP will construe these terms to encompass information, the contents of which constitute or can reasonably be determined to refer to the matter requested and which are in the custody or control of the M&MP.

13. The M&MP objects to each Interrogatory and Request for Production to the extent it seeks information from the "DENR", "the State" or "the State of South Dakota" rather than the Minerals and Mining Program of DENR. Requesting that the M&MP search for information from all programs, agencies, departments, subdivisions, and employees of DENR or the state is oppressive and creates an undue burden upon the M&MP. The M&MP will respond to the requests as though they are made to the Minerals and Mining Program of DENR, the only entity with jurisdiction over the review of applications pending before the Board of Minerals and Environment.

14. The M&MP incorporates fully the above stated Preliminary Statement and General Objections into each of the following specific objections and responses, and no specific objection or response shall be construed to waive any of the General Objections.

WRITTEN INTERROGATORIES

40. Does the DENR typically receive revised and resubmitted applications? If so, please state the circumstances under which such resubmitted applications are allowed and the statutory authority for the same.

Objection, the term "typically", is vague and ambiguous.

Without waiving this objection, the M&MP provides the following information:

Applications filed with the M&MP are subject to review for procedural completeness. The process for determining the procedural completeness is found in ARSD 74:29:01:07. The process may involve the submission of additional documents by the applicant and additional review by the M&MP before the application is determined by the M&MP to be procedurally complete. The application is considered "filed" with the M&MP once it has been found to be procedurally complete. As provided for in ARSD 74:29:01:11, additional information may be submitted by the applicant after filing to supplement, correct, amend, or clarify an application. These changes can be made up to 20 days prior to the hearing date as provided in ARSD 74:29:01:16.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Preface:

All documents submitted in response to the below requests are being provided in the manner in which they are kept by the M&MP.

Further, the following Requests for Production (as well as the foregoing Written Interrogatories) include broad and voluminous requests. Some of the information produced or described by M&MP is responsive to more than one request. To the extent any material is listed or produced in response to a Request, but is not listed or produced in response to other Requests where it could arguably be listed or produced, any failure to so list or produce such item a second time is unintentional or due to the broad or voluminous nature of the requests. Accordingly, such information should be considered as responsive even if produced in response to other Requests.

REQUEST NO. 8: Please produce copies of all notes or other documents made by any staff member of DENR when they reviewed

any portion of the mine permit application specifically dealing with hydrology, geology, or hydrogeology aspects of the permit; any emails between staff, or staff and any other consultant, regarding the hydrology, geology or hydrogeology aspects of the permit application; and any other documents not currently located on the DENR website that deal with the hydrology, geology, and hydrogeology aspects of the pending mine permit application.

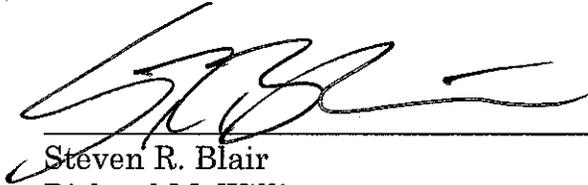
Objection, the Request for Production ("RFP") calls for documents, materials and information that would reveal opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated and are protected by the deliberative process privilege. The request is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving this objection, the M&MP provides the following information:

See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>. See attached disc containing the Powertech (USA), Inc. pre-permit baseline file and copies of documents of regarding hydrology and geology attached. See Bates Nos 00800-01662.

SIGNATURES AS TO OBJECTIONS:

Dated this 2nd day of August, 2013



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Counsel for Minerals and Mining Program, DENR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the *DENR First Set of Responses to the Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's Second Set of Interrogatories and Requests for Production* in the above entitled matter was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 2nd day of August, 2013:

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WILD HORSE SANCTUARY
BANGS, MCCULLEN LAW FIRM
PO BOX 2670
RAPID CITY SD 57709-2670

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PO BOX 790
HOT SPRINGS SD 57747-0790

DAYTON O HYDE
PO BOX 932
HOT SPRINGS SD 57747-0932

MAX MAIN
BENNETT, MAIN & GUBBRUD, P.C.
618 STATE STREET
BELLE FOURCHE SD 57717

MIKE CEPAK
MINERALS AND MINING PROGRAM
FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE SD 57501

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ROGER ROWE
7950 DARK CANYON RD
RAPID CITY SD 57701-4766

RICK V SUMMERVILLE
6509 SEMINOLE LN
RAPID CITY SD 57702-7088

DOUGLAS C UPTAIN
3213 W MAIN #112
RAPID CITY SD 57702-2314

ATTN:DORIS ANN MERTZ
CUSTER COUNTY LIBRARY
447 CROOKS STREET, SUITE 4
CUSTER, SD 57730

ATTN: ASHLEY CORTNEY
EDGEMONT PUBLIC LIBRARY
P.O. A / 412ND
EDGEMONT, SD 57735

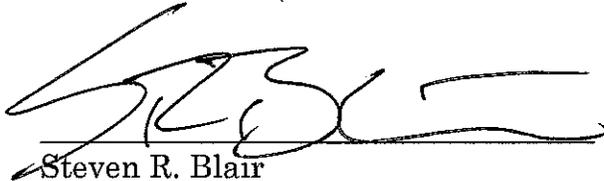
ATTN: CINDY MESSENGER
HOT SPRINGS PUBLIC LIBRARY
2005 LIBRARY DR.
HOT SPRINGS, SD 57747

ATTN: JASON WALKER
RAPID CITY PUBLIC LIBRARY
610 QUINCY ST.
RAPID CITY, SD 57701

ATTN: MICHELLE MAY
WOKSAPE TIPI
OGLALA LAKOTA COLLEGE
P.O. BOX 310
KYLE, SD 57752

And the original of the same was filed on the same date with Michael Cepak,

Joe Foss Building, 523 E. Capitol Ave, Pierre, SD 57501

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

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