



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

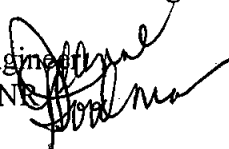
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

August 13, 2013

NOTICE

TO: Linsey McLean, 14390 Edgewood Place, Piedmont SD 57769
Max Main, Counsel for Powertech (USA) Inc, 618 State St, Belle Fourche SD 57717
Elected Full Party Participation in the matter of Powertech's Water Permit
Applications and Ground Water Discharge Plan Application

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program, DENR 

SUBJECT: Order Granting in Part and Denying in Part McLean Petition to Intervene

Notice is provided that Prehearing Chairman Everett Hoyt issued the enclosed Order Granting in Part and Denying in Part McLean Petition to intervene. Also enclosed is the request filed by Linsey McLean. Ms. McLean is granted "Option B" status to participate in the hearing on Powertech's water permit applications and 2012 ground water discharge plan.

Enclosed in the mailing to Ms. McLean is the February 14, 2013, Procedural Order and March 26, 2013, notice scheduling the hearing. Other parties were previously sent these documents.

Finally, the Rapid City Public Library requested future filing be addressed to the attention of Government Documents instead of to Jason Walker.

enclosures

c: Parties that Elected Full Party Participation (attached)
Everett Hoyt, Prehearing Chairman
Jeff Hallem, Assistant Attorney General, Counsel to Water Management Board
Roxanne Giedd, Deputy Attorney General, Counsel to Groundwater Quality Program
Diane Best, Assistant Attorney General, Counsel to Water Rights Program
Doris Ann Mertz, Custer County Library, 447 Crooks Street, Ste 4, Custer SD 57730
Cindy Messenger, Hot Springs Public Library, 2005 Library Drive, Hot Springs SD 57747
Michelle May, Woksape Tipi, Oglala Lakota College, PO Box 310, Kyle SD 57752
Ashley Cortney, Edgemont Public Library, PO Box A, Edgemont SD 57735
Attn: Government Documents, Rapid City Public Library, 610 Quincy Street, Rapid City SD 57701

Parties that Elected Full Party Participation in the matter of Powertech's Water Permit
 Applications and Ground Water Discharge Plan Application

SABRINA KING	917 WOOD AVENUE	RAPID CITY SD 57701
GARY E HECKENLAIBLE	PO BOX 422	RAPID CITY SD 57709
BRUCE ELLISON	PO BOX 2508	RAPID CITY SD 57709
Attorney for Clean Water Alliance		
REBECCA R LEAS	6509 SEMINOLE LANE	RAPID CITY SD 57702
RICK V SUMMERVILLE	6509 SEMINOLE LANE	RAPID CITY SD 57702
ANDY JOHNSON	610 NELLIE LANE	SPEARFISH SD 57783
CINDY GILLIS	522 7TH STREET, SUITE 202	RAPID CITY SD 57701
Attorney for Oglala Sioux Tribe		
CHERYL A and ROGER ROWE	7950 DARK CANYON	RAPID CITY SD 57702
DOUGLAS C UPTAIN	3213 W MAIN #112	RAPID CITY SD 57702
LILIAS JONES JARDING	418 N 44TH ST	RAPID CITY SD 57702
GENA M PARKHURST	PO BOX 1914	RAPID CITY SD 57709
MARVIN KAMMERER	22198 ELKVALE RD	RAPID CITY SD 57701
CINDY BRUNSON	11122 FORT IGLOO RD	EDGEMONT SD 57735
RODNEY G KNUDSON	PO BOX 25	HULETT WY 82720
REBECCA M LORD	PO BOX 952	HILL CITY SD 57745
MARK BODDICKER	13850 BATTLE CREEK RD	HERMOSA SD 57744
DAHL H MCLEAN	11853 ACORN RIDGE RD	SPEARFISH SD 57783
MICHAEL M HICKEY	PO BOX 2670	RAPID CITY SD 57709-2670
Attorney for Black Hills Wild Horse Sanctuary		
ANGELIA BALDWIN	PO BOX 1914	PIERPONT SD 57468-0191
FRANK J KLOUCEK	29966 423 AVENUE	SCOTLAND SD 57059
SUSAN R HENDERSON	11507 HWY 471	EDGEMONT SD 57735
JILL ANAWATY	2804 WILLOW AVENUE	RAPID CITY SD 57701
RICHARD DRAEGER	617 SAINT CLOUD	RAPID CITY SD 57701
GWEN E KANESHIRO & WILLIAM M C ING	1446 EVANSTON AVENUE	HOT SPRINGS SD 57747
BRENDA GAMACHE	2337 WILSON AVENUE	HOT SPRINGS SD 57747

RECEIVED

JUL 25 2013

DEPT. OF ENVIRONMENT &
NATURAL RESOURCES,
GROUND WATER PROGRAM

Linsey McLean
14390 Edgewood Place
Piedmont, SD 57769
(605)787-4949

July 17, 2013

Matt Hicks
Eric Gronlund
Water Management Board
Department of Environment and Natural Resources
523 E. Capital
Pierre, SD 57501

Re: Request to Intervene as a Party

Dear Sirs:

I am writing in reference to the water permits pending before the Water Management Board involving the Powertech matter. I am respectfully requesting that I be allowed to intervene as a party to this matter. Please call me at your earliest convenience to discuss this matter. Thank you in advance for your consideration. 605-787-4949 or cell 605-484-5314.

Sincerely,



Linsey McLean

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

RECEIVED

AUG 13 2013

WATER RIGHTS
PROGRAM

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 IN PART AND
DENYING IN PART MCLEAN
PETITION TO INTERVENE

The South Dakota Department of Environment and Natural Resources, on July 25, 2013, received a petition to intervene in the above-captioned from Linsey McLean, Piedmont, SD. The petition is untimely and does not include the requested party status for intervention as set forth in the February 14, 2013, Procedural Order.

Upon review of the petition to intervene and consideration of the administrative record in this matter, the Prehearing Chair finds that though the McLean Petition is sufficiently untimely to grant intervention under "Option A" of the Procedural Order, that granting Mclean intervention under "Option B" of the Procedural Order would not prejudice any of the existing parties. Therefore it is hereby

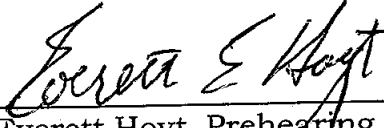
ORDERED that the Petition from Linsey McLean is accepted, and the petitioner is granted leave to intervene and to participate under "Option B" of the Procedural Order; it is further

ORDERED to the extent petitioner seeks intervention under "Option A" it is denied; it is further

ORDERED that petitioner be provided a copy of the February 14, 2013,

Procedural Order.

Dated this 9th day of August, 2013.



Everett Hoyt, Prehearing Chair
South Dakota Water Management Board

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

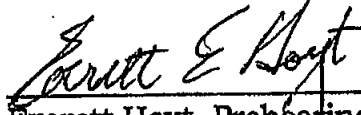
Public access to the documents delivered will be determined by each library.

- 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.

A handwritten signature in cursive script, reading "Everett E. Hoyt". The signature is written in black ink and is positioned above a horizontal line.

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:*

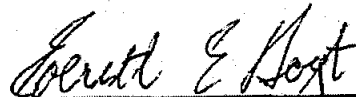
You filed or signed a petition or sent comments to the Department of Environment and Natural Resources on one or both of the Powertech matter listed above pending before the Water Management Board. To clarify your intent, you must elect to A) participate as a full party in the formal contested case proceeding, 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 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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

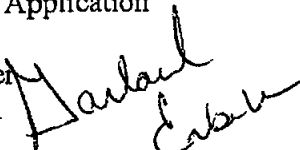
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

March 26, 2013

NOTICE

TO: Parties of Record in the matter of Powertech's Water Permit Applications and Ground Water Discharge Plan Application

FROM: Garland Erbele, Chief Engineer
Water Rights Program, DENR 

SUBJECT: Establishment of Hearing Date to Consider 2012 Ground Water Discharge Plan and Water Permit Application Nos. 2685-2 and 2686-2 filed by Powertech (USA) Inc.

On March 6, 2013, the Water Management Board established dates to conduct the consolidated contested case hearing in the matter of the 2012 Ground Water Discharge Plan and Water Permit Application Nos. 2685-2 and 2686-2 filed by Powertech (USA) Inc. The Board set the hearing to begin at 8:30 am on Monday, October 7, 2013 and to continue through Friday, October 11, 2013. If necessary, the Board will reconvene the week of October 28, 2013 to conclude the evidentiary hearing.

The hearing will be conducted at the Best Western Ramkota Hotel & Conference Center, 2111 North LaCrosse Street, Rapid City SD 57701.

The final day to submit completed Election of Participation forms was March 15, 2013. Attached is a summary table of Election of Participation submittals and the election choices. The actual forms along with all other documents received in the administrative record will be posted on DENR's website at <http://denr.sd.gov/Powertech.aspx>.

Participants that selected "A" on the election form for full party status must serve all original pleadings, prehearing motions, discovery requests and responses by first class mail to Eric Gronlund, DENR, Foss Building, 523 E Capitol Avenue, Pierre SD 57501-3182. In addition, unless the Prehearing Chairman orders otherwise, the parties must also serve copies on all other Parties that selected full party status (selection "A"), as well as each of the five libraries listed in 6) vii) of the procedural order.

Petitioners that selected "B" on the election form may present sworn testimony at the beginning of the hearing the week of October 7, 2013. Those that selected "C" on the election form will rely on the petition that they signed. Those that did not submit a selection form will be treated as selecting "B" on the election form. Copies of the petitions will be provided to the Board prior to the hearing.

Enclosure

C: Parties of Record (attached)
Everett Hoyt, Prehearing Chairman
Jeff Hallem, Assistant Attorney General, Counsel to Water Management Board
Roxanne Giedd, Deputy Attorney General, Counsel to Groundwater Quality Program
Diane Best, Assistant Attorney General, Counsel to Water Rights Program
Doris Ann Mertz, Custer County Library, 447 Crooks Street, Ste 4, Custer SD 57730
Cindy Messenger, Hot Springs Public Library, 2005 Library Drive, Hot Springs SD 57747
Michelle May, Woksape Tipi, Oglala Lakota College, PO Box 310, Kyle SD 57752
Ashley Cortney, Edgemont Public Library, PO Box A, Edgemont SD 57735
Jason Walker, Rapid City Public Library, 610 Quincy Street, Rapid City SD 57701