

BANGS McCULLEN

— LAW FIRM —

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WATER RIGHTS
PROGRAM

Reply to Rapid City Office

Writer's e-mail address: mhickey@bangsmccullen.com

September 11, 2013

Mr. Eric Gronlund
DENR
523 East Capitol Ave.
Joe Foss Building
Pierre, SD 57501-3182

**Re: IN THE MATTER OF THE WATER PERMIT APPLICATION NOS.
2685-2 AND 2686-2 POWERTECH (USA) INC. AND**

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

Dear Mr. Gronlund:

I enclose for your information and records the following original documents:

1. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's Response to Powertech's Motion for Narrative Testimony;** and
2. **Certificate of Service.**

By a copy of this correspondence, all counsel of record and the Status A List are being served. Thank you.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

Michael M. Hickey

MMH/bah
Enclosures
cc w/enc.:

Clients; Everett Hoyt; Jeff Hallem; Max Main; Diane Best;
Bruce Ellison; Full Status Participants

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

**IN THE MATTER OF THE WATER
PERMIT APPLICATION NOS. 2685-2
2686-2 POWERTECH (USA) INC.**

and

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

**Black Hills Wild Horse
Sanctuary, Susan Watt, &
Dayton Hyde's Response
to Powertech's Motion to
Allow Narrative
Testimony**

Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde, ("Wild Horse") offer the following response to Powertech's Motion to Allow Narrative Testimony.

Wild Horse opposes Powertech's Motion to Allow Narrative Testimony as written. Wild Horse notes that even Powertech's own authority acknowledges that narrative testimony may be permissible only "as long as it stays within the bounds of pertinency and materiality." *United States v. Pless*, 982 F.2d 1118, 1123 (7th Cir. 1992) quoting *United States v. Garcia*, 625 F.2d 162, 169 (7th Cir. 1980).

To assure that the narrative testimony remains pertinent and material, Wild Horse reserves its right to object to specific testimony for any reason contemplated by the South Dakota Rules of Evidence, and may request that counsel for Powertech ask specific questions depending

upon the area of testimony. Moreover, Wild Horse also opposes the Motion to Allow Narrative Testimony to the extent Powertech would have it apply to cross examination or the examination of a hostile witness.

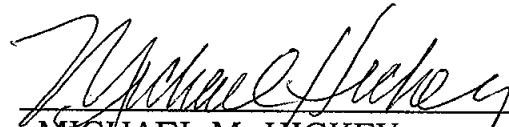
While Powertech's motion does not make a distinction between direct and cross examination or the testimony of an adverse witness, Wild Horse contends this type of evidence is simply not amenable to narrative testimony. In fact, to permit narrative testimony on cross examination or from an adverse witness would be less efficient and prolong the hearing and undermine the utility of cross examination as is the "greatest legal engine ever invented for the discovery of truth."

California v. Green, 399 U.S. 149, 158 (1970).

Dated this 11th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



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**Attorneys for Black Hills
Wild Horse Sanctuary,
Dayton Hyde and Susan Watt**

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WATER RIGHTS
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STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER
PERMIT APPLICATION NOS. 2685-2
2686-2 POWERTECH (USA) INC.

and

Certificate of Service

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

The undersigned hereby certifies that he filed the original with
Eric Gronlund and served copies of the following:

1. **Black Hills Wild Horse Sanctuary, Susan Watt, & Dayton Hyde's
Response to Powertech's Motion to Allow Narrative Testimony;**

upon the persons herein next designated, all on the date below shown:

Everett Hoyt
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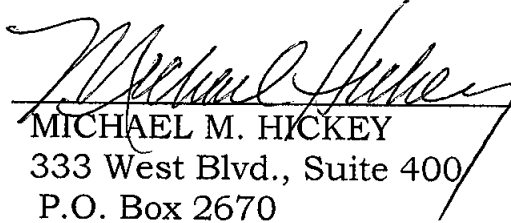
Bruce Ellison
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and upon each of the persons shown on the attached full participation list, including the Libraries, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, which are the last addresses of the addressees known to the subscriber.

Dated this 11th day of September, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



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**Attorneys for Black Hills
Wild Horse Sanctuary,
Dayton Hyde/Susan Watt**

IN THE MATTER OF THE WATER PERMIT APPLICATION NOS. 2685-2 2686-2 POWERTECH (USA) Inc. And
IN THE MATTER OF THE 2012 GROUNDWATER DISCHARGE PLAN APPLICATION SUBMITTED BY POWERTECH (USA), INC.

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Attn: Government Documents
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