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WATER RIGHTS  
PROGRAM

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December 6, 2021

Richard M. Williams  
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Jim Hutmacher, Chairman  
DANR – Water Management Board  
Foss Building  
523 East Capitol Ave.  
Pierre, SD 57501-3182

Re: In the Matter of Water Permit Application #2685-2 and 2686-2;  
In the Matter of 2012 Ground Water Discharge Plan Application Submitted by  
Powertech, USA, Inc.

Dear Mr. Hutmacher:

Enclosed please find a copy of Powertech's Objections to the Order Denying Powertech's Motion to Amend Procedural Order, Denying Clean Water Alliance's Motion to Allow Electronic Service and Updating Parties of Record.

Sincerely,

*/s/ Richard M. Williams*

Richard M. Williams

RMW:klk

Enclosure

cc: All Parties of Record Noted on Certificate of Service  
cc via e-mail: Ann Bailey, Steve Blair and David McVey, Assistant Attorneys General  
Ron Duvall

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WATER RIGHTS  
PROGRAM

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

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| IN THE MATTER OF WATER )      |                            |
| PERMIT APPLICATIONS 2685-2 )  |                            |
| and 2686-2, POWERTECH (USA) ) | POWERTECH'S OBJECTIONS TO  |
| INC. )                        | THE ORDER DENYING          |
| )                             | POWERTECH'S MOTION TO      |
| IN THE MATTER OF THE 2012 )   | AMEND PROCEDURAL ORDER,    |
| GROUNDWATER DISCHARGE PLAN )  | DENYING CLEAN WATER        |
| APPLICATION SUBMITTED BY )    | ALLIANCE'S MOTION TO ALLOW |
| POWERTECH (USA) INC. )        | ELECTRONIC SERVICE AND     |
| )                             | UPDATING PARTIES OF RECORD |

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Powertech (USA) Inc. ("Powertech"), by and through its attorneys, Matthew E. Naasz and Richard M. Williams of Gunderson, Palmer, Nelson & Ashmore, LLP, hereby submits its Objections to the draft Order submitted by counsel for the South Dakota Water Management Board. In further support of this Objection, Powertech incorporates its briefing and oral argument regarding Powertech's Motion to Amend Procedural Order.

The draft Order contains reference to the Bureau of Land Management. Specifically the draft Order states that "Powertech must obtain the approval of the Plan of Operations by the Bureau of Land Management." As was made very clear during the hearings on this matter, Powertech does not need the approval of the BLM prior to conducting operations. Additionally, Powertech's initial Motion to Continue this matter included no reference to the BLM. Including a reference to the BLM in this Board's Order could be read to impose unreasonable requirements upon Powertech, requirements not a part of the initial Motion to Continue.

Additionally, Powertech objects to the draft Order as the Order provides no legal authority for this Board to require Powertech to delay moving forward with its water permit applications and ground water discharge plan approval. Instead, the Order states "it does not make sense for this Board to incur significant expense and move forward when the federal appeals court and the other agencies involved could render the Board's decision moot." The Board's decision to wait "until the federal issues are resolved to the Board's satisfaction" provides an entirely arbitrary standard, which is not grounded in any legal authority. The Order granting Powertech's Motion to Continue dated November 25, 2013 does not, as the current draft Order indicates, state that the federal issues must be resolved "to the Board's satisfaction." Again, such a standard is, by definition, arbitrary and without legal authority. The Board's order denies Powertech due process of law under the State and Federal Constitutions and is contrary to South Dakota statute and rule, including SDCL 1-26-36.

Dated: December 6, 2021.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: 

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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. )

**CERTIFICATE OF SERVICE**

I hereby certify on December 6, 2021, originals of the following documents were served upon Rob Duvall, DANR for filing and a true and correct copy of the following documents:

**POWERTECH'S OBJECTIONS TO THE ORDER DENYING  
 POWERTECH'S MOTION TO AMEND PROCEDURAL ORDER, DENYING  
 CLEAN WATER ALLIANCE'S MOTION TO ALLOW ELECTRONIC SERVICE  
 AND UPDATING PARTIES OF RECORD**

were served upon the following individuals by U.S. Mail, postage prepaid:

|  |  |
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| Attn: Michelle May   | Attn: Ashley Cortney  |

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| Woksape Tipi<br>Oglala Lakota College<br>P.O. Box 310<br>Kyle, SD 57752  | Edgemont Public Library<br>P.O. A / 412nd<br>Edgemont, SD 57735                                      |
| Shirley Frederick<br>3411 Idlewild Court<br>Rapid City, SD 57702         | Attn: Government Documents<br>Rapid City Public Library<br>610 Quincy Street<br>Rapid City, SD 57701 |
| Patricia Jenkins & Jeremy Smith<br>287 Evans Lane<br>Spearfish, SD 57783 | Attn: Doris Ann Mertz<br>Custer County Library<br>447 Crooks Street, Suite 4<br>Custer, SD 57730     |
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| Craig Romey<br>342 N. 4 <sup>th</sup><br>Hot Springs, SD 57747            | Dorothy Richards<br>340 N 23 <sup>rd</sup> St.<br>Hot Springs, SD 57747 |
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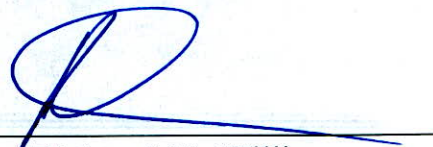
|   |  |
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| Stacy Reetz<br>546 Jennings Ave.<br>Hot Springs, SD 57747           | Steve Preheim<br>2317 Washington Ave.<br>Hot Springs, SD 57747                 |
| John E. Lawson<br>10374 Dryland Drive<br>Edgemont, SD 57735         | James B. Woodward<br>P.O. Box 599<br>Wellington, CO 80549                      |
| Melissa Martin<br>2329 Ely Ave.<br>Hot Springs, SD 57747            | Jennie Sotherland<br>27735 Cascade Road<br>Hot Springs, SD 57747               |
| Judy Gaalswyk<br>912 9 <sup>th</sup> Street<br>Rapid City, SD 57701 | Rube D. Tiftt<br>P.O. Box 411<br>Edgemont, SD 57735                            |
| Dayton O. Hyde<br>P.O. Box 932<br>Hot Springs, SD 57747             | Bill Barlaw<br>P.O. Box 1104<br>Hot Springs, SD 57747                          |
| Linsey McLean<br>14390 Edgewood Pl.<br>Piedmont, SD 57769           | James Sword<br>Sword Law Office, P.C.<br>P.O. Box 283<br>Hot Springs, SD 57747 |

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| <p>Therese Marie Furois<br/>1851 City Springs Road<br/>Rapid City, SD 57702</p>          | <p>Gary Heckenliable<br/>P.O. Box 422<br/>Rapid City, SD 57709</p>                          |
| <p>Rick Good Voice Flute<br/>1216 Wambli Drive<br/>Rapid City, SD 57701</p>              | <p>Ray Gellerman<br/>12349 Moss Rock Lane<br/>Custer, SD 57730</p>                          |
| <p>Philip S. Heckman<br/>11936 Hay Creek Road<br/>Custer, SD 57730</p>                   | <p>George Ann &amp; Glen Graves<br/>304 4<sup>th</sup> Street<br/>Buffalo Gap, SD 57722</p> |
| <p>Susan Hey<br/>312 N 40<sup>th</sup> Street<br/>Rapid City, SD 57702</p>               | <p>Clifford Heizen<br/>309 S 6<sup>th</sup> Street<br/>Hot Springs, SD 57747</p>            |
| <p>Margaret Ikonen<br/>445 S 6<sup>th</sup> Street<br/>Hot Springs, SD 57747</p>         | <p>Sharon Huston<br/>12571 BH Flyway Road<br/>Hot Springs, SD 57747</p>                     |
| <p>Judith A. Joba<br/>3483 Elk Creek Rd<br/>Piedmont, SD 57769</p>                       | <p>Lyle Jensen<br/>13167 Fall River Rd<br/>Hot Springs, SD 57747</p>                        |
| <p>Bonnie &amp; Dallas Keiswetter<br/>12899 Sapphire Lane<br/>Hot Springs, SD 57747</p>  | <p>Jim Johnson<br/>12568 Cascade Mt Rd<br/>Hot Springs, SD 57747</p>                        |
| <p>Regina Koch<br/>515 N 1<sup>st</sup> Street, #1<br/>Rapid City, SD 57701</p>          | <p>Margaret Mary Keogh<br/>1851 City Springs Rd<br/>Rapid City, SD 57702-9602</p>           |
| <p>Shirley &amp; Robert Lautenschlager<br/>3507 Idlewild Ct<br/>Rapid City, SD 57702</p> | <p>Louise Kursave<br/>27275 SD Hwy 79<br/>Buffalo Gap, SD 57722</p>                         |
| <p>Mike Linderman<br/>446 Battle Mtn Ave<br/>Hot Springs, SD 57747</p>                   | <p>Jennifer Lena<br/>8812 Dunsmore Rd<br/>Rapid City, SD 57702</p>                          |
| <p>Bonnie &amp; Donald Maritz<br/>545 N River #313<br/>Hot Springs, SD 57747</p>         | <p>Grady Lockhart<br/>P.O. Box 152<br/>Oelrichs, SD 57752</p>                               |
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| Mark Mason<br>1161 Deadwood Ave, #3<br>Rapid City, SD 57702          | Miriam & Ken Martin<br>801 N River St<br>Hot Springs, SD 57747               |
| Jo Beth Troxel<br>303 E. Morse St.<br>Callaway, NE 68825             | Gary McDowell<br>701 South St, Apt. B<br>Rapid City, SD 57701                |
| Beth Audette<br>1939 Evergreen Dr<br>Rapid City, SD 57702            | Kenneth D. Anderson<br>24035 Palmer Gulch Rd<br>Hill City, SD 57745          |
| Heather J. Besco<br>P.O. Box 82<br>Buffalo Gap, SD 57722             | Larry & Doris Belitz<br>12474 Oak Road<br>Hot Springs, SD 57747              |
| Donald Bledsoe<br>27635 View Rd<br>Oral, SD 57766                    | Jay & LaVella Birkland<br>301 S 6 <sup>th</sup> St<br>Hot Springs, SD 57747  |
| B.R. Brygider<br>104 Tuflamore Rd<br>Garden City, NY 11530-2512      | Ray Boots<br>302 Crook St<br>Custer, SD 57730                                |
| Barbara Cromwell<br>4717 Balwdin Street<br>Rapid City, SD 57702      | George Corrigan<br>446 S 5 <sup>th</sup> St<br>Hot Springs, SD 57747         |
| Jon Fair<br>12909 Sheps Canyon Rd<br>Hot Springs, SD 57747           | Sister Gabriella Crowley<br>720 E Wiswall Pl<br>Sioux Falls, SD 57105        |
| Ann Fields, PhD<br>2415 Amberbrooke Ln<br>Grayson, GA 30017          | Joe & Leora Drapper (Doppen)<br>13174 Fall River Rd<br>Hot Springs, SD 57747 |
| Jody McKean<br>27317 Hidden Ct<br>Hot Springs, SD 57747              | Irene Fandrich<br>301 S 6 <sup>th</sup> St<br>Hot Springs, SD 57747          |
| Katherine L. Montague<br>1216 Wambli Dr<br>Rapid City, SD 57701-0456 | Adrian Forrette III<br>119 S Berry Pine Rd<br>Rapid City, SD 57702-1911      |
| Marion Muhm  | Carol Merwin   |

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| Antoinette Reynar<br>28025 Cascade Rd<br>Hot Springs, SD 57747                          | Rose or Reese Pettris<br>12544 W. Cascade Rd<br>Hot Springs, SD 57747        |
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| Trip Williams<br>27662 Scenic Rd<br>Hot Springs, SD 57747  | Bill Walsh<br>7450 Dark Canyon Rd<br>Rapid City, SD 57702 |

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