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APR 22 2009
Division of Financial
& Technical Assistance

RETIRED
DONN BENNETT

April 21, 2009

Department of Environment & Natural Resources
Attn: Brenda Binegar
PMB 2020, Joe Foss Bldg.
523 East Capitol
Pierre, SD 57501-3182

RE: Powertech; Notices of Entry; Our File No. 4500.025008.

Dear Brenda:

Enclosed for filing in the above-referenced matter are the originals of the following:

1. Order Denying Motion for Reconsideration.
2. Findings of Fact, Conclusions of Law, and Order.
3. Notice of Entry of Order Denying Motion for Reconsideration, with Certificate of Service.
4. Notice of Entry of Findings of Fact, Conclusions of Law, and Order, with Certificate of Service.

Thank you for your assistance, and please let me know if you have any questions.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.



Max Main

MM/ra
Encs.
cc: Client

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

IN THE MATTER OF POWERTECH (USA) INC.: PETITIONS TO NOMINATE LANDS FOR INCLUSION ON THE PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS.	ORDER DENYING MOTION FOR RECONSIDERATION
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The motion by Ms. White Face for reconsideration came on regularly to be heard before the Board of Minerals and Environment ("Board") on April 20, 2009, in Pierre, South Dakota. Board Member Lee M. McCahren had previously been appointed Hearing Chairman by Board Chairman Richard C. Sweetman.

The Board having considered the pleadings and papers on file herein, and the arguments submitted, and good cause appearing therefore, it is hereby:

ORDERED, that the motion of Ms. White Face for reconsideration be, and the same hereby is, denied.

DATED this 20th day of April, 2009.

**SOUTH DAKOTA BOARD OF MINERALS
AND ENVIRONMENT**

By: Lee M. McCahren
Lee M. McCahren, Hearing Chairman

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

IN THE MATTER OF POWERTECH
(USA) INC.: PETITIONS TO NOMINATE
LANDS FOR INCLUSION ON THE
PRELIMINARY LIST OF SPECIAL,
EXCEPTIONAL, CRITICAL, OR
UNIQUE LANDS.

NOTICE OF ENTRY OF
ORDER DENYING
MOTION FOR
RECONSIDERATION

PLEASE TAKE NOTICE, that an Order Denying Motion for Reconsideration by the Board of Minerals and Environment ("Board") in the above-referenced matter, a copy of which is attached hereto and by this reference incorporated herein, was made and entered by the Board on April 20, 2009 in Pierre, South Dakota.

Dated this 21st day of April, 2009.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Powertech

By Max Main
Max Main
618 State Street
Belle Fourche, SD 57717-1489
Telephone: 605.892.2011

CERTIFICATE OF SERVICE

I, MAX MAIN, one of the attorneys for Powertech (USA) Inc., do hereby certify that on the 21st day of April, 2009, I caused the original of the foregoing NOTICE OF ENTRY OF ORDER DENYING MOTION FOR RECONSIDERATION with attached copy of the Order to be filed as follows:

Department of Environment & Natural Resources
Attn: Brenda Binegar
PMB 2020, Joe Foss Bldg.
523 East Capitol
Pierre, SD 57501-3182

and that I caused full, true and complete copies of said documents to be served upon the following named persons at their last known mailing addresses, as follows:

Charmaine White Face
PO Box 2003
Rapid City, SD 57709-2003

Bruce H. Ellison
PO Box 2508
Rapid City, SD 57709

Roxanne Giedd, Esq.
Assistant Attorney General
Office of the Attorney General
1302 E. Hwy. 14, Ste. 1
Pierre, SD 57501-8501

by depositing the same in the United States Mail in Belle Fourche, South Dakota with first class postage thereon fully prepaid, in envelopes addressed as above.



MAX MAIN

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

IN THE MATTER OF POWERTECH (USA) INC.: PETITIONS TO NOMINATE LANDS FOR INCLUSION ON THE PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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The petitions of Charmaine White Face and the Defenders of the Black Hills, Debra White Plume, and the Oglala Sioux Tribe to nominate lands for inclusion on the preliminary list of special, exceptional, critical, or unique lands came on regularly to be heard before the Board of Minerals and Environment ("Board") on February 19, 2009, in Pierre, South Dakota. Assistant Attorney General Roxanne Giedd appeared as counsel for the Department of Environment and Natural Resources ("DENR"), Bruce Ellison appeared telephonically as counsel for Debra White Plume, Charmaine White Face appeared *pro se*, and Max Main appeared as counsel for Powertech (USA) Inc. ("Powertech"). The Oglala Sioux Tribe and the Defenders of the Black Hills did not appear.

Board member Lee M. McCahren had previously been appointed Hearing Chairman by Board Chairman Richard C. Sweetman.

The Board first considered Powertech's petition to intervene and the non-appearance of the Oglala Sioux Tribe and the Defenders of the Black Hills, and good cause appearing therefore, it is hereby:

ORDERED, that Powertech's petition to intervene be, and the same hereby is, granted, and it is further

ORDERED, that pursuant to ARSD § 74:29:10:14, the nominating petitions of the Oglala Sioux Tribe and the Defenders of the Black Hills be, and the same hereby are, dismissed based on the failure of said petitioners to appear at the hearing.

The Board having considered the pleadings and papers on file herein and the evidence admitted during the hearing, and a majority of the Board having voted to deny and dismiss the petitions of Charmaine White Face and Debra White Plume, and good cause appearing therefore, the Board makes and enters the following:

FINDINGS OF FACT

1. Pursuant to ARSD 74:29:10:12, Charmaine White Face and Debra White Plume each submitted a petition to DENR nominating the same lands (the “nominated lands”) for inclusion on the preliminary list of special, exceptional, critical, or unique lands (the “preliminary list”). The petition of Charmaine White Face was submitted December 29, 2008. The petition of Debra White Plume was submitted December 28, 2008. The nominated lands are described as follows:

CUSTER COUNTY, SOUTH DAKOTA

Township 6 South, Range 1 East, B.H.M.:

- Section 20: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; and S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.
- Section 21: W $\frac{1}{2}$; W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$; and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.
- Section 27: S $\frac{1}{2}$.
- Section 28: N $\frac{1}{2}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$; and SW $\frac{1}{4}$.
- Section 29: All.
- Section 30: All.
- Section 31: E $\frac{1}{2}$.
- Section 32: All.
- Section 33: NW $\frac{1}{4}$; SW $\frac{1}{4}$; SE $\frac{1}{4}$; and S $\frac{1}{2}$ NE $\frac{1}{4}$.
- Section 34: All.
- Section 35: All.

FALL RIVER COUNTY, SOUTH DAKOTA

Township 7 South, Range 1 East, B.H.M.:

- Section 1: All.
- Section 2: All.
- Section 3: All.

- Section 4: W $\frac{1}{2}$ W $\frac{1}{2}$.
- Section 5: All.
- Section 10: All.
- Section 11: All.
- Section 12: All.
- Section 14: NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$; and NE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 15: N $\frac{1}{2}$.

Containing 10,580 acres, more or less.

2. DENR caused notice of the date, time and location of the hearing on the nominating petitions to be published in the following newspapers, once a week for two successive weeks, as follows:

- Black Hills Pioneer, February 5 and 12, 2009.
- Brookings Register, February 5 and 12, 2009.
- Capitol Journal, February 5 and 12, 2009.
- Edgemont Herald-Tribune, February 4 and 11, 2009.

3. On October 6, 2008, Powertech completed its submission of a Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate ("Request and Notice") to DENR for the nominated lands.

4. DENR gave written notice of Powertech's Request and Notice to the following agencies:

- Custer County Commission
- Fall River County Commission
- Department of Game, Fish and Parks
- Department of Agriculture
- Department of Tourism
- Office of History
- State Archaeologist.

5. Representatives of DENR, Powertech, the Department of Game, Fish and Parks, the State Archaeologist's Office, the Archaeology Laboratory of Augustana College ("ALAC"), the United States Bureau of Land Management, the United States Forest Service, the United States Nuclear Regulatory Commission, and

others, inspected the nominated lands on August 26, 2008 and on October 8, 2008.

6. The nominated lands are poor to good quality rangeland, similar to the adjacent lands.

7. The vegetation on the nominated lands consists of western wheatgrass, buffalograss, green needlegrass, sagebrush, and prickly pear. These plants are common in most western South Dakota prairies. No threatened, endangered, or sensitive vegetative species were noted during the inspections or during the vegetative survey Powertech caused to be conducted.

8. The northern portion of the nominated lands is referred to as the Dewey area, and the southern portion of the nominated lands is referred to as the Burdock area.

9. Beaver Creek, a tributary of the Cheyenne River, flows through the western portion of the Dewey area and about one mile west of the Burdock area. Pass Creek, an intermittent tributary of Beaver Creek, flows along the western edge of the Burdock area. Bennett Canyon, an intermittent tributary of the Cheyenne River, flows along the eastern end of the Burdock area. Impacts to the creeks should be minimal, given proper erosion control. No aquatic species of concern were noted in aquatic surveys of the two streams.

10. No federally listed threatened or endangered species were noted during the inspections or during the wildlife survey Powertech caused to be conducted. A bald eagle nest was observed in a cottonwood tree in the SW¼ of Section 30, T6S, R1E. During the wildlife survey, a golden eagle, merlin, Cooper's hawk, and pelican were observed flying over the nominated lands. Long-billed curlew and long-eared owl species are known or are suspected to have nested in the nominated lands. Antelope and prairie dog were observed in both the Dewey and Burdock areas during inspections. There is abundant antelope habitat.

11. No areas of scenic significance were noted during the inspections. The nominated lands consist mainly of rangeland with some scattered areas of ponderosa pine. The nominated lands are no different from many other rangeland ecosystems around the perimeter of the Black Hills in western South Dakota. Craven Canyon is

located more than five miles east of the nominated lands. Craven Canyon is not visible from the nominated lands.

12. No items of historic significance were noted during the inspections.

13. Powertech retained ALAC to conduct intensive on-the-ground cultural resources surveys of all the nominated lands. The cultural resources surveys were conducted in 2007 and 2008. The reports of the surveys were provided to the office of the State Archaeologist, Archaeological Research Center (“ARC”), in Rapid City, South Dakota.

14. ALAC documented a total of 217 cultural resources sites on the nominated lands. The majority of these sites are light lithic scatters where the reduction of tool manufacturing took place, while other sites suggest longer duration occupations by the presence of stone filled pits and hearths. Many of the sites have been completely eroded, exhumed and reburied or occur on topographic features that receive constant erosion. Of the 217 sites, 132 have been archaeologically evaluated or are not considered to contain significant cultural or archaeological data and require no further consideration. There are two Euro-American sites that are considered significant (railroad or other linear sites), two prehistoric sites that are potentially eligible for inclusion on the National Register of Historic Places, and one possible Euro-American burial site. These five sites will be avoided. The remaining 81 sites have not been evaluated for archaeological/cultural significance, and will be avoided.

15. The average cultural resources site density on the nominated lands of one site per 48.8 acres is lower than the site density on adjacent lands in the area.

16. Powertech and ARC have entered into a Memorandum of Agreement (“MOA”) regarding cultural resources sites on the nominated lands. As amended, the MOA covers all the nominated lands. Measures identified in the MOA concerning the avoidance, evaluation or mitigation and disclosure 30 days in advance of the potential effect on sites not evaluated, or the inadvertent discovery of new archaeological sites, stipulate the protocol and procedure that allow a recommendation to proceed with the proposed project from a cultural resources perspective.

17. In 2008, Mr. Donovan Sprague completed an ethnographic study for a proposed Dewey Conveyor Project. The project area of potential effect is comprised

of approximately 20,000 acres of conveyor route, mining claims, and adjacent lands (including a portion of the nominated lands) in the Dewey area. A 25-question survey of information was presented to tribal members from Pine Ridge, Rosebud, Cheyenne River, Standing Rock, and Lower Brule along with Lakota members located in the larger urban population in Rapid City. None of the persons surveyed could pinpoint present cultural, ceremonial or religious use in the project area.

18. There is no evidence of traditional cultural properties on the nominated lands.

19. From an anthropological standpoint, there is no evidence of Native American, or other ethnic group, sacred sites on the nominated lands.

20. There is no evidence of any Native American burials on the nominated lands.

21. There were no areas of topographic significance noted during the inspections. The nominated lands are along the southwestern edge of the Black Hills. The topography varies from the higher elevation edge of the Black Hills to the north and east to the flat rangeland to the west and south. The topography is no different from any other landforms along the edge of the Black Hills.

22. Nothing of geologic significance was noted during the inspections. The stratigraphy in the region consists of Precambrian rocks near the center of the Black Hills Uplift. Rocks range in age from ~~Cretaceous~~^{Eocene} through recent. The geology in the area is not considered unique, as it is found in other areas of the Black Hills.

23. The Fall River and the Lakota Formations of the Inyan Kara Group comprise the focus of the Inyan Kara Aquifer. The aquifer found within this area contains elevated levels of uranium, radium, radon, TDS, and sulfate. The levels of uranium, radium, and radon within the water make this water unusable based on state ground water standards and federal drinking water standards. The next deepest recognized regional ground water aquifer is the Minnekahta Aquifer, which is more than 500 feet and possibly ^{more} more than 1,000 feet deeper than the Inyan Kara Aquifer. These aquifers are separated by large quantities of materials with lower permeability such as the shales of the Spearfish Formation, so communication between this aquifer and other regional aquifers is highly unlikely.

24. No items of scientific significance were noted during the inspections.

25. No areas of recreational significance were noted during the inspections.

The area is primarily used for livestock grazing. Recreational use is limited to trapping and deer and antelope hunting, which has been restricted on private lands.

26. None of the agencies listed in Finding of Fact No. 3 above recommended that any part of the nominated lands be included on the preliminary list.

27. Based on the foregoing facts, DENR determined that the nominated lands do not constitute special, exceptional, critical, or unique lands.

Based upon the foregoing Findings of Fact, the Board makes and enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter hereof and the parties hereto.

2. DENR caused notice of the hearing on the nominating petitions to be served and published as required by law.

3. The nominated lands are not so ecologically fragile that, once they are adversely affected, they could not return to their former ecological role in the reasonably foreseeable future.

4. The nominated lands do not have such a strong influence on the total ecosystem of which they are a part that even temporary effects felt by them could precipitate a system-wide ecological reaction of unpredictable scope or dimension.

5. The nominated lands do not have scenic, historic, archaeological, topographic, geologic, ethnologic, scientific, cultural, or recreational significance.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of law, it is hereby:

ORDERED, that petitioners Charmaine White Face and Debra White Plume having failed to prove that the nominated lands are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands, said petitioners' nominating petitions be, and the same hereby are, denied and dismissed.

DATED this 20th day of April, 2009.

**SOUTH DAKOTA BOARD OF MINERALS
AND ENVIRONMENT**

By: 
Lee M. McCahren, Hearing Chairman

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

IN THE MATTER OF POWERTECH
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NOTICE OF ENTRY OF
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PLEASE TAKE NOTICE, that the Findings of Fact, Conclusions of Law, and Order of the Board of Minerals and Environment ("Board") in the above-referenced matter, a copy of which are attached hereto and by this reference incorporated herein, were made and entered by the Board on April 20, 2009 in Pierre, South Dakota.

Dated this 21st day of April, 2009.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Powertech

By Max Main
Max Main
618 State Street
Belle Fourche, SD 57717-1489
Telephone: 605.892.2011

CERTIFICATE OF SERVICE

I, MAX MAIN, one of the attorneys for Powertech (USA) Inc., do hereby certify that on the 21st day of April, 2009, I caused the original of the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER with attached copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER to be filed as follows:

Department of Environment & Natural Resources
Attn: Brenda Binegar
PMB 2020, Joe Foss Bldg.
523 East Capitol
Pierre, SD 57501-3182

and I caused full, true and complete copies of said documents to be served upon the following named persons at their last known mailing addresses, as follows:

Charmaine White Face
PO Box 2003
Rapid City, SD 57709-2003

Bruce H. Ellison
PO Box 2508
Rapid City, SD 57709

Roxanne Giedd, Esq.
Assistant Attorney General
Office of the Attorney General
1302 E. Hwy. 14, Ste. 1
Pierre, SD 57501-8501

by depositing the same in the United States Mail in Belle Fourche, South Dakota with first class postage thereon fully prepaid, in envelopes addressed as above.



Max Main