

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

15-MJ-00130

Plaintiff,

vs.

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION TO COMPEL

VAL DEMARS,

Defendant.

Comes now, the United States of America, through its attorneys Randolph J. Seiler, United States Attorney, and Megan Poppen, Assistant United States Attorney, and files this response to Defendant's motion to compel discovery.

Defendant requests eleven items of discovery related to two CVB petty offense tickets that were issued on June 16, 2015. On December 1, 2015, the United States sent 140 pages of discovery to defendant's attorney, Gary Colbath. On December 9, 2015, the undersigned advised Mr. Colbath via email that the information sent applies to Rule 16 and that he would probably have to submit a FOIA request to obtain the remainder of the information. On December 10, 2015, Defendant filed his motion to compel discovery, referencing the FOIA request.

Items (a)¹, (e)², and (g)³ were sent on December 1, 2015.⁴ On December 14, 2015, the undersigned sent an email to Mr. Colbath regarding additional information regarding item (g). The email referenced 16 U.S.C. §§ 551⁵ and 559.⁶ Additionally, the United States Forest Service relies on the Hydrologist from the Mystic and Hell Canyon Ranger Districts for guidance pertaining to NEPA⁷ requirements as well as resource protection requirements.⁸ The hydrologist is Jessica Lucas,⁹ however, the undersigned has not been able to reach her as of the date of this filing.

¹ Information, probable cause statements re: DeMars' citations (all related incident reports, probable cause statements, and law enforcement reports related to these particular citations).

² USFS Supervisor's Closure Orders (camping, fires, roads, protected areas), in effect prior to May 5, 2015 for the BHNF and those additional Closure Orders issued after that day through August 1, 2015.

³ FS law enforcement handbook provisions re: prohibited construction/water diversion.

⁴ See Bates numbers 14-140.

⁵ 16 U.S.C. § 551: The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate judge specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of Title 18.

⁶ 16 U.S.C. § 559: All persons employed in the Forest Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national forests, and any person so arrested shall be taken before the nearest United States magistrate judge, within whose jurisdiction the forest is located, for trial; and upon sworn information by any competent person any United States magistrate judge in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.

⁷ National Environmental Policy Act.

⁸ See Bates numbers 1-13.

⁹ jjlucas@fs.fed.us, phone number: 605-716-2039.

On December 16, 2015, the undersigned sent Mr. Colbath aerial maps (2) of the road defendant parked on in violation of 36 C.F.R. § 261.12(d).¹⁰ The request defendant makes under item (f)¹¹ is not relevant. Fed. R. Evid. 402. The current issue before the court is whether defendant parked in a manner that “blocked, restricted, or otherwise interfered with the use of a road, trail, or gate.” 36 C.F.R. § 261.12(d). The aerial maps provided on December 16 as well as the photographs attached to the report¹² are the relevant images/maps to the case. It is the United States’ position that it has satisfied item (f).

On December 16, 2015, the undersigned received item (b)¹³ and will send to Mr. Colbath. With regard to item (c)¹⁴, the Incident Commander was Curtis Davis. With regard to item (d)¹⁵, there was never a formal agency list with specific representatives, however, members of the Pennington County Sheriff’s Office, South Dakota Highway Patrol, Rapid City Police Department, South Dakota Game Fish and Parks, and the Oglala Lakota Sioux Tribe offered assistance to the Black Hills National Forest Service.

Finally, with regard to items: (h)¹⁶, (i)¹⁷, (j)¹⁸ and (k)¹⁹ these items, with the exception of part of (i)²⁰, are neither in the undersigned’s possession nor

¹⁰ Blocking, restricting, or otherwise interfering with the use of a road, trail, or gate.

¹¹ A map of BHNF areas included in any closure order or authorization showing exclusion of parking areas and parking area designations.

¹² Bates 123-26.

¹³ The Operating Plan for the 2015 BHNF Rainbow Gathering.

¹⁴ The Delegation of Authority to Incident Commanders.

¹⁵ A listing of all public agencies included/represented on the Incident Command Team, including a list of agency representatives.

¹⁶ All campfire permits issued for 2015 Rainbow Gathering, including the one signed by defendant.

¹⁷ All written and map documents detaining parking restrictions at the Rainbow Gathering site, including material regarding limited vehicle tags issued.

¹⁸ All daily incident reports by ICT staff.

relevant to whether the defendant blocked a road or illegally improved a spring.²¹

Dated this 16th day of December, 2015.

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

/s/ Megan Poppen

MEGAN POPPEN
Assistant U.S. Attorney
515 Ninth Street, Suite 201
Rapid City, SD 57701
Telephone: (605) 342-7822
Facsimile: (605) 342-1108
E-Mail: megan.poppen@usdoj.gov

¹⁹ All cleanup reports, including the final USFS report on the 2015 Rainbow Gathering.

²⁰ These have been provided through items (a) and (f), partially satisfying defendant's request.

²¹ 36 C.F.R. § 261.10(a) Constructing, placing, or maintaining any kind of road . . . or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan when such authorization is required. (Ticket incorrectly cites to 36 C.F.R. § 261.10(b)).