

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

15-MJ-00130

Plaintiff,

vs.

UNITED STATES' RESPONSE TO  
DEFENDANT'S FIRST MOTION TO  
RECONSIDER DISCOVERY MOTION  
ORDER

VAL DEMARS,

Defendant.

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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 the Defendant's first motion to reconsider discovery motion order.

The defendant requests the Court reconsider its January 19, 2016 order regarding discovery matters relating to two CVB petty offense tickets that were issued on June 16, 2015. The items at issue are: (b)<sup>1</sup>, (c)<sup>2</sup>, (g)<sup>3</sup> and (h)<sup>4</sup>.

First, the defendant requests that the redacted portions of item (b) be provided because it is material to his defense. Pursuant to Federal Rules of Criminal Procedure Rule 16(a)(1)(E), the United States requests that the Court deny the defendant's motion for reconsideration.

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<sup>1</sup> The Delegation of Authority to Incident Commander(s).

<sup>2</sup> A listing of all public agencies included/represented on the Incident Command Team, including a list of public agency representatives.

<sup>3</sup> All Daily Incident Reports by ICT staff.

<sup>4</sup> All Cleanup Reports, including the Final USFS Report on the 2015 Rainbow Gathering.

The United States does not plan to introduce the “Budget Planning and Financial Management Guidance” in its case-in-chief at trial. Additionally, this item was not obtained from, nor does it belong to the defendant. Finally, the United States does not believe that the redacted portion section would be material to preparing the defense for a CVB ticket charging the defendant with blocking a roadway and illegally improving a spring. Fed. R. Crim. P. 16(a)(1)(E)(i-iii).

With respect to item (c) “a listing of Agencies and Agency Representatives on the Incident Command Team,” again, the United States does not have this list. Contrary to what the defendant stated in its motion, the agencies that participated did so voluntarily and casually.

With regard to items (g) and (h), the defendant has again failed to cite relevant case law that would entitled him to review those items.<sup>5</sup> The issues before the court are whether the defendant parked in a manner that “blocked, restricted, or otherwise interfered with the use of a road, trail, or gate” and whether the defendant illegally improved a spring. 36 C.F.R. § 261.12(d) and 36 C.F.R. § 261.10(a).

The United States relies on earlier filings and ask that the Court deny the defendant’s request for further information related to (b), (c), (g) and (h).

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<sup>5</sup> Defendant refers to the “Specificity” test in his brief. However, the defendant provides no authority outlining the prongs of such test. Moreover, the defendant does not outline what the test actually is, or how this is material to his defense on the charges he is cited with violating.

Dated this 4th day of April, 2016.

RANDOLPH J. SEILER  
UNITED STATES ATTORNEY

***/s/ Megan Poppen***

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