

July 24, 2009

NOTICE OF REQUEST
SECTION 401 WATER QUALITY CERTIFICATION FOR
FEDERAL ENERGY REGULATORY COMMISSION PERMIT
CITY OF SPEARFISH

The South Dakota Department of Environment and Natural Resources (DENR) has received a request for Section 401 Water Quality Certification from the City of Spearfish. The request was submitted in support of the Federal Energy Regulatory Commission Licensing of the Spearfish Hydroelectric Project. The certification is required pursuant to Section 401 of the federal Clean Water Act and the Administrative Rules of South Dakota (ARSD) 74:51:01:63,et. seq.

The Spearfish Hydroelectric Project is an existing project located on Spearfish Creek in Lawrence County, South Dakota. The project was constructed by Homestake Mining Company in the early 1900s and is currently owned and operated by the city of Spearfish. Up to 120 cubic feet of water per second (cfs) is diverted from Spearfish Creek at an area known as Maurice located at in the NW ¼, SE ¼, Section 8, T5N, R2E. The water travels approximately 4.5 miles through an aqueduct to a forebay dam where water is then conveyed under pressure to a hydroelectric powerhouse located in the NE ¼, SE ¼ Section 15, T6N, R2E, in the city of Spearfish where electricity is generated. The reach of Spearfish Creek where flows have historically been bypassed by this aqueduct is referred to here as the “upstream reach.” The water is released back into Spearfish Creek at the powerhouse. Spearfish Creek at the powerhouse to its confluence with the Redwater River (downstream reach) has the following beneficial uses: domestic water supply waters, coldwater permanent fish life propagation waters; immersion recreation waters, limited-contact recreation waters; fish and wildlife propagation, recreation, and stock watering waters; and irrigation waters.

Current operation of the diversion dam at Maurice is to divert all flow up to 120 cfs in Spearfish Creek into the aqueduct to feed the hydroelectric plant. Flows in Spearfish Creek in excess of 120 cfs remain in Spearfish Creek. The City of Spearfish is proposing to modify the existing operation of the hydroelectric project by releasing at Maurice three cfs during the irrigation season and six cfs during the non-irrigation season, with a provision for suspending releases under low flow conditions, to be defined by DENR. Spearfish Creek from Maurice to the Spearfish City intake dam (upstream reach) has the following beneficial uses: coldwater permanent fish life propagation waters; limited-contact recreation waters; fish and wildlife propagation, recreation, and stock watering waters; and irrigation waters. There is a natural loss zone below the Spearfish City intake which absorbs about 20-25 cfs of flow according to the United States Geologic Survey. DENR is proposing to define the low flow conditions at Maurice as 40 cfs or less based on readings during each business day of stream flow as measured at the USGS gaging station 06431500 at Spearfish during the months of May through September. Therefore, the three cfs releases at Maurice from May 1 through September 30 will be suspended if Spearfish Creek falls below 40 cfs to protect downstream senior water rights and protect the water quality standards and beneficial uses of Spearfish Creek that flow through and downstream of the city of Spearfish (downstream reach).

The department is proposing to grant Section 401 Water Quality Certification based on the application and DENR’s extreme low flow conditions definition. The certification includes conditions with which the City of Spearfish will need to comply to assure the project meets state water quality standards. These conditions will become requirements of the FERC license for the project. The conditions

include flow monitoring, record keeping, inspections, reporting, and operation and maintenance. The draft certification and supporting documentation are available on DENR's website at www.state.sd.us/denr and from DENR at the address listed below.

Any person desiring to submit written comments on the department's draft certification must submit written comments to the address below. Comments may be directed to the following address: South Dakota Department of Environment and Natural Resources, Division of Environmental Services, Surface Water Quality Program, Joe Foss Building, Pierre, SD 57501-3181. These comments will be considered by the Department Secretary in making his certification determination.

In accordance with ARSD Chapter 74:50:02, any person desiring a public hearing on the draft certification must file a petition which complies with ARSD 74:50:02:02, directed to the foregoing address.

Any comments or petitions in response to this Notice must be postmarked by August 10, 2009 or, if delivered by other means, must be filed and received in the offices of the DENR no later than close of business August 10, 2009.

Additional information may be obtained by calling Patrick Snyder (605) 773-3351 or by writing to the address listed above.

A handwritten signature in black ink, appearing to read 'S. M. Pirner', with a stylized flourish at the end.

Steven M. Pirner