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RECEIVED

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DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

September 17, 2010

Mr. Steven M. Pirner, Secretary
SD Department of Environment and Natural Resources
523 E. Capitol Avenue
Pierre, SD 57501-3181

Re : 401 Certification for City of Spearfish Hydroelectric Project
DENR Notice of Request, August 24, 2010

Dear Secretary Pirner:

I would like to submit comments in support of the most recent request to SD DENR by the City of Spearfish for Section 401 Water Quality Certification in connection with its request to the Federal Energy Regulatory Commission for a permit to operate a hydroelectric facility on Spearfish Creek. While I do not request a hearing in this most recent filing by the City of Spearfish, I ask that in the event that a hearing is requested by another party and this request is scheduled for hearing by SDDENR these comments be deemed to constitute a petition to intervene as an individual as a party in such a hearing.

The principal concern which I had expressed in my Petition to Intervene in the prior request by the City of Spearfish for 401 Certification by DENR related to the City's proposed bypass flows at Maurice Intake and the proposed adoption by DENR of the bypass flows as proposed by the City in DENR's proposed 401 Certification Letter which accompanied the Notice of Hearing dated June 28, 2010. I had urged DENR to adopt the bypass flows recommended by the Delphi Study and incorporated by the United States Forest Service as Mandatory Condition No. 17 in its "Preliminary Terms and Conditions for the Spearfish Hydroelectric Project' submitted to FERC as a part of the hydroelectric licensing application pending before FERC.

I am pleased to read the statement in Paragraph 3 of the Proposed Certification Letter in the present proceeding that USFS, DENR and the City of Spearfish have negotiated the flow conditions which are incorporated in the Proposed Certification Letter, as expressed in "Condition 1 – Spearfish Hydroelectric Project Minimum Flow Release Schedule." Although I continue to believe that the fishery in the in the 3 mile reach of Spearfish Creek below Maurice Dam (the "upstream reach") would be best supported by releases as recommended in the Delphi Study, I commend USFS for its persistence in requiring and negotiating minimum bypass flows which will provide for a sustainable fishery in this "upstream reach" of Spearfish Creek.

For the purposes of the current proceeding, I support the negotiated minimum bypass releases expressed in proposed Condition 1(a), the installation of the bypass release structure provided in Condition 1(c), and the installation of the bypass release measurement device with continuous recording capability as provided in Condition 2 of the Proposed Certification Letter.

In his report regarding historic flows in Spearfish Creek, DENR Staff Witness Gronlund

documented a number of fish kills due to irrigation withdrawals in the "downstream reach" of Spearfish Creek. I continue to believe that DENR should establish more effective monitoring and control of irrigation withdrawals in the downstream reach of Spearfish Creek. It appears that DENR flow monitoring devices are located below the recharge zone in the downstream reach of Spearfish Creek. Additional flow measuring devices should be placed above the recharge zone in the downstream reach of Spearfish Creek (at the critical area near Johnson Ranch) so that the effect of irrigation withdrawals can be more effectively measured.

We ask that these comments be included as part of the DENR file in the above entitled proceeding, and that if a hearing is held in this proceeding that these comments be considered as a petition to intervene in the proceeding.

Sincerely yours,

Everett E. Hoyt

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