

STATE OF SOUTH DAKOTA
SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION 8195-3, CHAD ANDERSON	* * * * *	AGREEMENT AND JOINT REQUEST
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Applicant Chad Anderson ("Applicant") and the City of Sioux Falls ("City") have entered into negotiations regarding the presently pending water permit application and have agreed to make the following Joint Request:

1. Applicant and City ask that the Board adopt the "low flow" qualification on the proposed permit, as recommended by the Chief Engineer, but with revisions to monitor low flows at the USGS gaging station at North Cliff Avenue, downstream of City's diversions. The revisions are as follows (with deletions shown by overstrikes and additions shown by underlining):

Low flows as needed for downstream domestic use, including livestock water and prior rights must be bypassed. This permit does not authorize diversion of water from the Big Sioux River, when pumping, unless at least 20 cfs is flowing at the North Cliff Avenue USGS gaging station No. 06482020 and 43 cfs is flowing ~~when pumping~~, at the Dell Rapids USGS gaging station No. 06481000, or unless written orders have been issued by the Chief Engineer. Diversion under this permit shall be in accordance with any written orders by the Chief Engineer.

2. The City does not oppose Applicant's irrigation permit if it can be qualified to allow the City to use its senior water rights to the extent needed and to allow the

Applicant to use water when available.

3. Further basis for the proposal is as follows:

- a. City holds senior rights to about 90 cfs below the Applicant's diversion point and above the Cliff Avenue gaging station. Also, the City's permits require City to bypass 20 cfs, as measured at the Cliff Avenue gaging station. If City was using all its water rights at the same time, a flow of about 110 cfs would need to be available in order for the City to still release the 20 cfs. Moreover, the Board granted Future Use Permits to the City in 1977 which will provide the City with more senior priority rights when fully permitted by the Board.
- b. The bypass that would work best as between the Applicant and City should be based on actual contemporaneous use of Big Sioux River water as measured at the Cliff Avenue gaging station. Under this proposal, the City would use its senior water rights to the extent necessary (and honor the 20 cfs bypass at the Cliff Avenue gage as required by its own permits). However, if the Cliff Avenue gage records more than 20 cfs, the Applicant, an upstream junior user, would be able to irrigate. Conversely when the City needs to divert water during dry periods and can only bypass 20 cfs, the Applicant would not be able to irrigate.
- c. Although both the Applicant and the City would be required to bypass 20 cfs at the Cliff Avenue gaging station under this proposal, the law also requires the Chief Engineer to issue any shut off orders based on priority dates. Consequently, the Applicant and other upstream junior rights would be shut off prior to City.

4. Both the City and the Applicant support the other proposed qualifications recommended by the Chief Engineer and ask that the Board grant the applicant's permit with the qualifications stated above.

5. The parties wish to be heard on this matter by telephone conference call rather than appearing in person at the hearing now set for May 5 at 10:30 a.m. in Pierre.

6. If the Board adopts this request, the City waives any further right to appear and present testimony and further waives Findings of Fact and Conclusions or Law or other legal process.

7. The City reserves the right to proceed to hearing and present testimony if the

Board does not adopt this proposal. In such event, the City would ask for hearing at Board's next regularly scheduled meeting or at the Board's convenience.

CITY OF SIOUX FALLS, SD

CHAD ANDERSON


