

August 24, 2010

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”) received a request for Section 401 Water Quality Certification from the city of Spearfish (“City”) in September 2008. That request was withdrawn and resubmitted in August 2009 and again in July 2010. The request was submitted in support of the Federal Energy Regulatory Commission (“FERC”) licensing of the Spearfish Hydroelectric Project. The certification is required pursuant to Section 401 of the federal Clean Water Act, 33 U.S.C. Section 1341 (d) and the Administrative Rules of South Dakota (ARSD) 74:51:01:64, 74:51:01:64.03, and 74:51:01:65.

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. In 2004, Homestake sold the project to the City, and it has owned and operated the project since then. The city is authorized to divert up to 120 cubic feet of water per second (cfs) from Spearfish Creek to generate power at the hydroelectric plant in accordance with an approved state water right permit. The water is diverted from Spearfish Creek at an area known as Maurice located in the NW 1/4 of the SE 1/4 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 powerhouse located in the NE 1/4 of the SE 1/4 Section 15, T6N, R2E, in the City. The water is then released from the powerhouse into Spearfish Creek.

Spearfish Creek from Maurice to the City intake dam located in Spearfish Canyon for the purposes of this notice is referred to as the “upstream reach”. This section of creek has been designated by ARSD 74:51:03:10 for 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. This section of creek is currently a productive cold water permanent trout fishery. Immediately below the Spearfish City intake there is a natural loss zone where flow in the creek is lost to the geologic formations underlying the creek. According to studies completed by the United States Geological Survey, the loss zone has the potential to diminish flow by 20-25 cfs when water is flowing across it.

Spearfish Creek at the powerhouse to its confluence with the Redwater River is referred to in this notice as the “downstream reach” and has been designated by ARSD 74:51:03:10 for 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.

The City is allowed by its current water right to divert up to 120 cfs in Spearfish Creek into the aqueduct to feed the hydroelectric plant. Any flows not diverted at Maurice remain in the upstream reach. However, under typical stream flow, the flow at Maurice is less than 120 cfs, and the City diverts the entire stream flow to generate power at the plant.

The City is proposing in its FERC license and 401 Certification applications to modify the existing operation by allowing stream flows to bypass the Maurice diversion and remain in the upstream reach

at Maurice. This bypassed flow will enhance the existing flows in the upstream reach that is currently producing a cold water permanent fishery. The amount of flow to remain in the upstream reach will vary depending on the season and the amount of flow going through the power plant as described in the following table:

Season	Average Powerhouse Flow	Minimum Flow Release at Maurice
Oct. 1 through Apr. 30	n/a	6 cfs
May 1 through Sep. 30	> 40 cfs	4 cfs
	> 35 cfs, but ≤ 40 cfs	3 cfs
	> 30 cfs, but ≤ 35 cfs	2 cfs
	≤ 30 cfs	1 cfs

Once the Minimum Flow Release is reduced, it shall remain at the reduced level or lower, as per the Table above, until September 30. Beginning October 1 each year, the Minimum Flow Release shall be raised to 6 cfs, regardless of the Average Powerhouse Flow.

The proposed releases at Maurice and the reductions that will occur during low flows are consistent with the DENR Division of Environmental Services evaluations of stream flow that shows 40 cfs or less as the critical low flow during the months of May through September to ensure continued protection of all uses of the upstream and downstream reaches.

In July 2009 and June 2010, DENR Division of Environmental Services issued a proposed Water Quality Certification with mandatory conditions pertaining to releases in the upstream reach. In July 2009, the United States Forest Service (USFS) issued preliminary mandatory conditions for the Project's FERC license including conditions requiring releases in the upstream reach through the Black Hills National Forest. The preliminary USFS conditions and the DENR Division of Environmental Services conditions were in conflict, and if all mandatory conditions were placed into a FERC license, compliance with the FERC license, if it were issued, would not have been possible for the city of Spearfish. Therefore, USFS, DENR Division of Environmental Services, and the City negotiated the flow criteria listed in the table above. The flow criteria conditions listed above are based on critical low flows as measured at the generating units in the Project powerhouse, DENR's determination of critical low flow conditions in the downstream reach, a biological study (DELPHI Team report), the city's ability to comply with the operational conditions, and the reasonable likelihood that the resulting flow regime will protect and maintain the beneficial uses and water quality standards of Spearfish Creek.

The negotiated flow criteria are included in the proposed water quality certification conditions and are subject to final approval by the Secretary of the DENR under SDCL 34A-2-33 and 34.

DENR Division of Environmental Services is proposing that Section 401 Water Quality Certification be granted based on the application and the proposed reduced flow condition described above. The proposed certification also 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. The conditions include flow monitoring, record keeping, inspections, reporting, and operation and maintenance. The complete draft certification, all of its conditions, 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 regarding the Division of Environmental Services 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, 523 E. Capitol Ave., Pierre, SD 57501-3181. These comments will be considered by the Department Secretary in making his certification determination.

In accordance with SDCL 34-2-33 and 34 and 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 September 23, 2010, or, if delivered by other means, must be filed and received in the offices of the DENR Division of Environmental Services no later than close of business September 23, 2010.

The Secretary's final decision will be provided to the applicant and filed with the FERC pursuant to 18 C.F.R. 4.34(b)(5)(iii)(2008), Clean Water Act Section 401, SDCL 34A-2-33 and SDCL 34A-2-34 and ARSD 74:51:01:65.

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

Tim Tollefsrud, Director
Division of Environmental Services

Published once at the total approximate cost of _____.