

WATER PERMIT NO. 137A-1

Name of Applicant: SD Dept of Game, Fish & Parks

Address: Pierre SD Phone: 605 773-3718

Amount of Water Claimed: 75 cfs Total Acres:

Source of Water Supply: Spearfish Creek

Water to be used for: recreational and fish & wildlife use County: Lawrence

Type of Waste Disposal System:

Location: 6 miles west of Lead

PRIORITY Date Received: 5-20-06 Application/License Fee: SNA

Corrected Application Received: Period of Annual Use: January 1 – December 31

Remarks:

Diversion Point: Savoy intake – Sec 6- T4N-R2E

Land to be Irrigated: NA

Depth of Well: NA

Well Driller:

Remarks:

Type of Map: topo

Prepared by: Leslie Peterson

Reviewed and the Number Assigned on: 5-30-06

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>37A-1</u> (office use only) Hydrologic Unit <u>10120203</u>
	Basin <u>Belle Fourche R</u>
	Newspaper <u>Lawrence Co. Journal, Deadwood</u>

RECEIVED
MAY 30 2006
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

642-8822-

- | | | | |
|---|---|---|--|
| ☐ Municipal | ☐ Suburban Housing | ☐ Recreational | ☐ Institutional |
| ☐ Rural Water System | ☐ Commercial | ☒ Fish & Wildlife | ☐ Geothermal Heat |
| ☐ Domestic (over 18 gpm) | ☐ Industrial | ☐ Other | |

Type of Application: (check one)

- ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 137-1

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

See Exhibit "A" attached hereto and incorporated herein by this reference.

- Name of Applicant South Dakota Department of Game, Fish & Parks Phone (605) 773-3387
(check one) ☐ Owner ☐ Tenant/lessee
Mailing Address 523 East Capitol Avenue Pierre State SD 57501
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 75.000 *CFS or **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Spearfish Creek
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Lawrence
Spearfish Creek - HMC Lot 1 of Wyoming Placer Mineral Survey 991 located in Sections 5 and 6, T4N, R2E, B.H.M., as shown on Plat Document No. 91-1408 (commonly known as Savoy Intake)
- County or counties where water will be used Lawrence
- Annual period during which water is to be used Year Round
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)
This permit will provide for the 75 cfs instream flow year round and will extend and define the reach of the 75 cfs instream flow from the Savoy Intake on Spearfish Creek down to the Hydroplant No. 8 on Spearfish Creek
Intake

STATE OF SOUTH DAKOTA)

County of Hughes

SS

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, John L. Cooper, GFP Secretary, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature John L. Cooper

Subscribed and sworn to before me this 29th day of MAY 2006

(SEAL)

4-2000

My Comm Exp.: June 5, 2010.

Notary Public signature

Richard J. Neill - Notary Public
State of South Dakota

SOUTH DAKOTA
WATER PERMIT NO. 137A-1

Date of first receipt of application May 30, 2006.

The Water Management Board approved Water Permit No. 137A-1 on August 23, 2006 for SD Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 authorizing the placement of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 137A-1 amends Water Right No. 137-1 on Spearfish Creek from industrial to instream flow use and defines the stream reach .

Water Right No. 137-1 originally appropriated 75.0 cubic feet of water per second (cfs) from Spearfish Creek and Little Spearfish Creek for the industrial use of hydropower generation. The Little Spearfish Creek intake was abandoned and its flow became an instream flow right held by SDGFP under Water Permit No. 43C-1. Water Right No. 137-1 currently appropriates 75.0 cfs from Spearfish Creek at a point located NE ¼ NE ¼ Section 6, T4N, R2E (commonly know as the Savoy intake). Historically, water was diverted at the Savoy intake and carried through an aqueduct to the Hydro # 2 Powerplant located in the SW ¼ NE ¼ Section 17, T5N, R2E. Once power was generated, the water was discharged back into Spearfish Creek. Permit No. 137A-1 amends Water Right No. 137-1 to provide a year round instream flow on the Spearfish Creek stream segment beginning at the Savoy intake and extending downstream to the Hydropower Plant No 1 intake located in the NW ¼ SE ¼ Section 8, T5N, R2E near Maurice. The Savoy intake will no longer be used for hydropower generation. The diversion dam at the Savoy intake on Spearfish Creek will be maintained at the discretion of SDGFP as a small pond fishery.

The applicable portions of Water Right No. 137-1 have been included in Water Permit No. 137A-1.

2. The water appropriated shall be used for the purpose of instream flow use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is June 9, 1917 (established by Water Right No. 137-1).
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

Water Permit No. 137A-1 amends Water Right No. 137-1 without an increase in the diversion or volume of water appropriated authorized by Water Right No. 137-1.

WATER MANAGEMENT BOARD

By: Garland Erbele
Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 03 2006
date

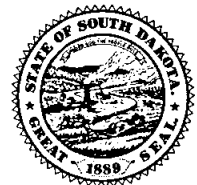
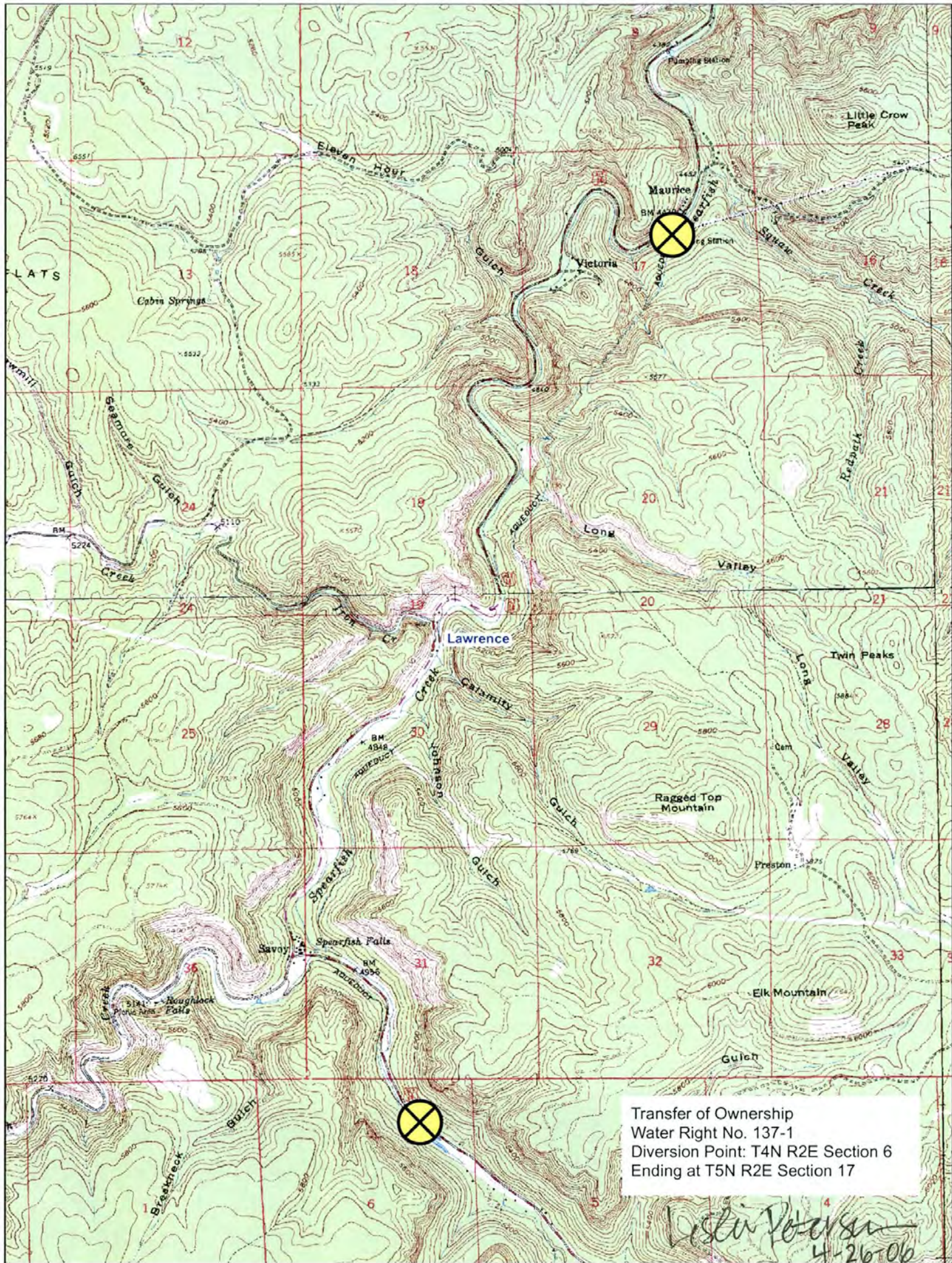


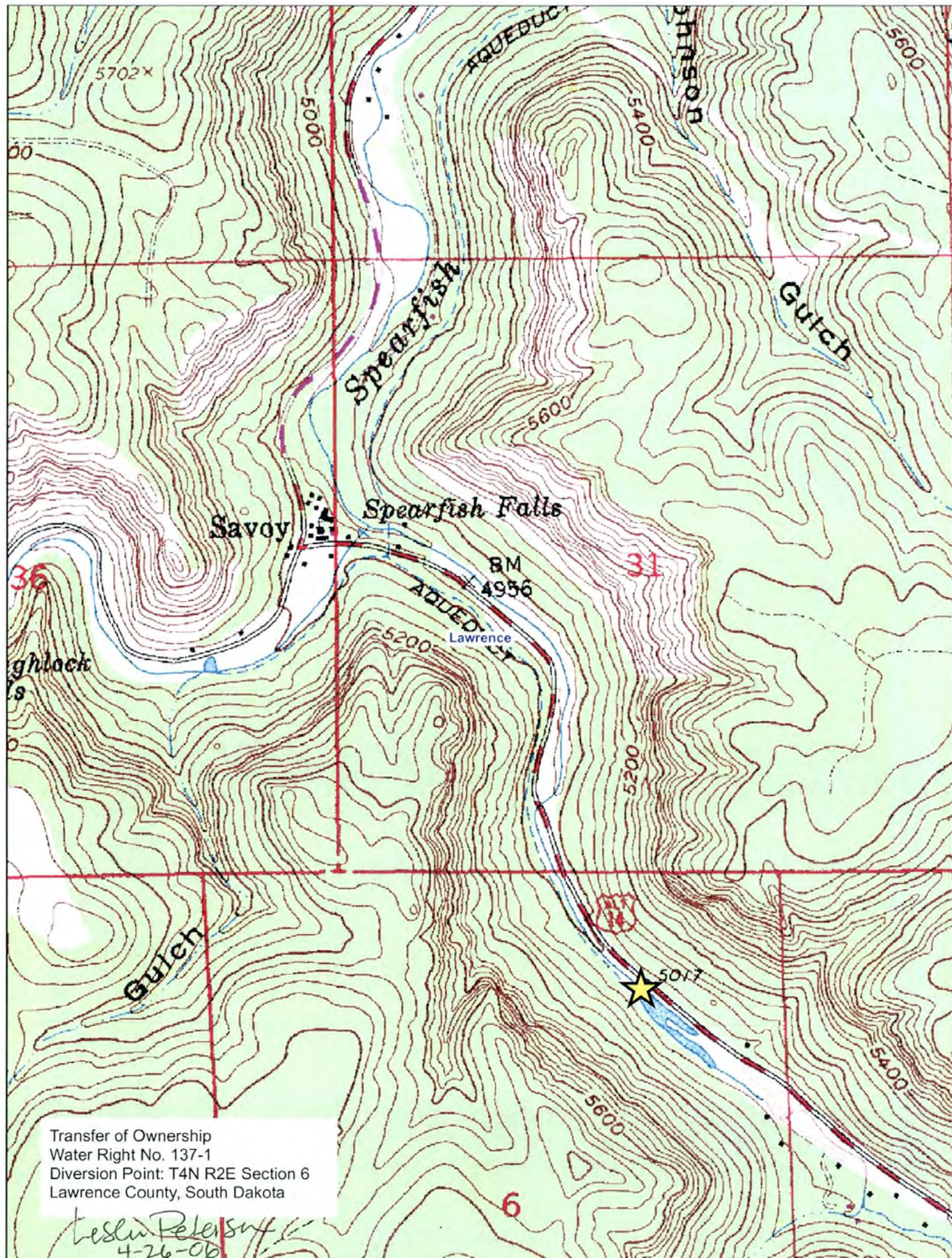
EXHIBIT "A"

Amend permit to year around instream flow for up to 75 cfs from Spearfish Creek starting at HMC Lot 1 of the Wyoming Placer Mineral Survey 991 located in Sections 5 and 6, Township 4 North, Range 2 Easter B.H.M., Lawrence County, South Dakota as shown on that certain plat recorded in the Office of the Lawrence County Register of deeds as Plat Document Number 91-1408 (and commonly known as the Savoy Intake) and ending at SW 1/4 NE 1/4 Section 17, T5N, R2E (commonly known as Hydro No. 2 Powerplant)



Transfer of Ownership
Water Right No. 137-1
Diversion Point: T4N R2E Section 6
Ending at T5N R2E Section 17

Leslie Petersen
4-26-06





DEPARTMENT OF GAME, FISH AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

Mr. Eric Gronlund
Department of Environment and Natural Resources
523 E. Capitol Avenue
Pierre, SD 57501

Re: Amendment to "Application for Permit to Amend Water Right No. 137-1"
on Spearfish Creek

Withdrawal of "Application for Permit" for a new in-stream flow from
Hydro #2 plant to Hydro #1 plant on Spearfish Creek

Dear Mr. Gronlund:

Please consider this letter as a request by the South Dakota Department of Game, Fish and Parks to amend its "Application to Amend Water Permit No. 137-1" to extend and define the reach of Water Right No. 137-1 from the Savoy Intake on Spearfish Creek down to the Hydroplant No. 1 intake on Spearfish Creek. Such an amendment would appear to be authorized by SDCL 46-2A-12 and SDCL 46-5-30.4.

In addition, the Department wishes to withdraw its application for a new in-stream water right between Hydro Plant #2 and Hydro Plant #1 on Spearfish Creek.

If you have any questions, please advise.

Best wishes.

Sincerely,

Richard J. Neff
Legal Counsel
SD Department of Game, Fish & Parks

Encls.

cc: John Kirk
Ron Koth



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 7, 2006

Cheryl Johnson, Public Works Director
City of Spearfish
625 5th Street
Spearfish SD 57783

Dear Ms. Johnson:

Please find enclosed a copy of the public notice, report and recommendation on Department of Game, Fish and Parks' application to change the use of Water Right No. 137-1 (Hydropower Plant No. 2) from power generation to instream flow.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 7, 2006

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717

Dear Mr. Main:

Please find enclosed a copy of the public notice, report and recommendation on Department of Game, Fish and Parks' application to change the use of Water Right No. 137-1 (Hydropower Plant No. 2) from power generation to instream flow.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

enclosure

Report on Water Permit Application No. 137A-1
South Dakota Department of Game, Fish and Parks
523 East Capitol Avenue
Pierre SD 57501
(605) 773-3387

The South Dakota Department of Game, Fish and Park (SDGFP) has filed Application No. 137A-1 proposing to amend Water Right No. 137-1 to provide 75 cubic feet of water per second (cfs) year round instream flow use in the segment of Spearfish Creek from the Savoy intake to the Hydropower Plant No.1 intake at Maurice. This application, if approved, will retain the priority date of June 9, 1917 established by Water Right No. 137-1. See Attachment 1 which is a map of area.

Background

Water Right No. 137-1 originally appropriated 75.0 cubic feet of water per second (cfs) from Spearfish Creek and Little Spearfish Creek for the industrial use of hydropower generation. This water right appropriated the use of water from an intake on each creek to convey water through an aqueduct for hydropower generation at what is commonly referred to as Hydropower Plant No. 2. The Little Spearfish Creek intake has been abandoned and this component has since become a year round instream flow held by SDGFP under Water Permit No. 43C-1. Water Right No. 137-1 currently appropriates 75.0 cfs from Spearfish Creek at a point located NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 6, T4N, R2E (commonly know as the Savoy intake). Historically, water diverted at the Savoy intake was carried through an aqueduct to the Hydropower Plant No. 2 located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17, T5N, R2E. Once power was generated, the water was discharged at this same location back into Spearfish Creek and recaptured a little over a mile downstream at the intake for Hydropower Plant No. 1.

Homestake Mining Company stopped diversion of water from the Savoy intake on Spearfish Creek in mid-August of 2003. The land where the Savoy intake is located and Water Right No. 137-1 are part of a Spearfish Canyon Homestake Lands Acquisition currently being negotiated between Homestake Mining Company and the SDGFP. Upon finalization of the agreement, Water Right No. 137-1 will be transferred to SDGFP.

The purpose of Application No. 137A-1 is to amend Water Right No. 137-1 by changing its use to provide a year round instream flow on the Spearfish Creek stream segment beginning at the Savoy intake and extending downstream to the Hydropower Plant No. 1 intake. The Savoy intake will no longer be used to divert water for hydropower generation. The diversion dam at the Savoy intake on Spearfish Creek will be maintained at the discretion of SDGFP as a small pond fishery. This application, if approved, will retain the June 9, 1917 priority date established by Water Right No. 137-1.

Applicable Water Right/Permit – Statutes

46-2A-12. Amendment of permit or license--When granted. An amendment of an existing permit or license may be granted for a change in use, a change in point of

diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.

- 46-5-30.4. Amendment of permits or rights. Subject to the limitations in §§ 46-5-33 and 46-5-34 governing changes in irrigation rights from one parcel of land to another, any water permit or right holder may apply for a change of use of the water, a change of location of the use or other amendment to the permit or right. Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.
- 46-5-31. Change of use or place of diversion. Any appropriator of water may use the water for purposes other than for which it was appropriated, or may change the place of diversion, storage, or use, in a manner and under conditions approved by the Water Management Board, except that changes in irrigation permits shall be as prescribed by §§ 46-5-34 to 46-5-36, inclusive.
- 46-5-32. Assignment of permit or license. Subject to the limitations provided in §§ 46-5-33 and 46-5-34, any permit or license to appropriate water, including a permit issued under § 46-5-8.1, may be assigned, but no assignment is binding, except upon the parties thereto, unless filed for record in the Division of Water Rights. No assignment may carry with it the right to use the water for any purpose or in any manner other than that specified in the permit or license without the approval of the Water Management Board. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed with the division, upon assignment. A sale, grant, conveyance, assignment, lease, or other transfer of a permit or license issued under § 46-5-8.1 may be assigned only in accordance with the terms of the contract or instrument of conveyance between the district and the energy industry user.

These statutes provide a process and criteria for the assignment of a water right and amending the water right to change the use and change the location of the use. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated. A change of use may not unlawfully impair existing rights and is a beneficial use that is in the public interest.

Water Source

Originating in the northern Black Hills of SD, Spearfish Creek flows north joining the Redwater River approximately six and one-half miles north of Spearfish. The Redwater River is a major tributary of the Belle Fourche River, the main water source for the U.S. Department of Agriculture, Bureau of Reclamation, Belle Fourche Irrigation Project. Little Spearfish and Iron Creeks join Spearfish Creek upstream of the Maurice Dam diversion point. Downstream of the

Maurice Dam diversion point there are no significant perennial streams contributing flow to Spearfish Creek.

The USGS has maintained a gaging station on Spearfish Creek near Cheyenne Crossing, since October 1, 1988. This gage is located approximately 3 ½ miles upstream of the Savoy intake. For the 1988 to 2004 period of record, the Cheyenne Crossing USGS gage median and mean flows are 27.0 and 28.9 cfs, respectively. Minimum and maximum values recorded during the period of record are 7.5 and 108 cfs, respectively.

The USGS has maintained a gaging station on Spearfish Creek at Maurice, SD, since October 1, 1988. This gage is located downstream of the Hydropower Plant No. 2 and upstream of the Hydropower Plant No 1 intake. Spearfish Creek's average daily flows upstream of the Maurice Dam are available except for the period August 18, 1998 to September 30, 2001, when it was only used for recording yearly peak flow due to limited funding. For the 1988 to 2004 period of record, the Maurice USGS gage median and mean flows are 54.00 and 63.13 cfs, respectively. Minimum and maximum values recorded during the period of record are 18 and 1,470 cfs, respectively. The median and mean flows from both gages are likely skewed high as the area received above normal precipitation during the 1990s.

In 2002, the Water Management Board determined that there is not a reasonable probability that there is unappropriated water available in Spearfish Creek (see FOF in matter of Application No. 1348-1, G. Eugene Johnson). The Board determined it would not be in the public interest to grant further water rights on the river complex at this point because it sees a strong obligation to maintain a flow of water in the rivers for fish habitat. The pending application is an amendment to an existing water right for non-consumptive instream flow purposes. This instream flow will compliment the Board's past determination to maintain a flow of water in Spearfish Creek for fish habitat.

Review of Existing Water Rights

The only water right above the Savoy intake on Spearfish Creek is Vested Water Right No. 1587-1 held by Lead Deadwood Sanitary District. This authorizes diversion of water on Spearfish Creek approximately 7 ½ miles upstream of the Savoy intake as part of the historic Homestake surface water collection system. This water is conveyed through a pipeline to the Hanna pump station where it is pumped when necessary or discharged into East Spearfish Creek (Hanna Creek) and ultimately flows back into the Spearfish Creek. The Sanitary District's water right from Spearfish Creek has an 1877 senior priority date. This change of use request will not impact the Sanitary District's ability to make diversions authorized by Right No. 1587-1.

In the vicinity of the proposed instream flow SDGFP holds Water Permit No. 43C-1 providing a 20 cfs year round instream flow on Little Spearfish Creek and extending downstream on Spearfish Creek approximately 6 ½ miles to the Hydropower Plant No. 1 intake. This application and Water Permit No. 43C-1 are for instream flow which is a non-consumptive in-channel use. This application will not unlawfully impair Permit No. 43C-1 but is in fact intended to compliment each other by protecting Spearfish Creek flows from other off-stream diversions.

The city of Spearfish holds Water Right No. 43-1 appropriating 120 cfs for hydropower generation at Hydropower Plant No. 1. The intake location is the north most (downstream) extent of stream segment proposed for instream flow. The reach from the Savoy intake to the intake for Hydropower Plant No. 1 is a gaining stream. SDGFP's proposal, which would result in the permanent discontinuing carriage of Spearfish Creek water through the pipeline between Savoy intake and Hydropower Plant No. 2, will not have an adverse effect on the city's water right for Hydropower Plant No. 1.

Downstream of the Hydropower Plant No. 1 intake are Water Right No. 1542-1 held by Rim Rock Lodge (0.045 cfs) and Water Right No. 1598-1 (0.67 cfs) held by the city of Spearfish. Spearfish Creek is a gaining stream from the Hydropower Plant No. 1 intake downstream to where it flows over the Madison and Minneluse aquifer recharge zone. Under normal flow conditions, the water available to satisfy these two water rights is the gain in the stream prior to the recharge zone since most of the creek flow is diverted for the Hydropower Plant No. 1 intake. Neither of these water rights will be unlawfully impaired by this proposed change.

Finally, there are a number of water rights appropriating water from Spearfish Creek at and below the city of Spearfish including use by irrigators and the DC Booth Historic National Fish Hatchery. The base flow of Spearfish Creek in this lower reach of the creek is primarily water discharged at Hydropower Plant No.1. As stated previously, the reach from the Savoy intake to the Hydropower Plant No. 1 intake is a gaining stream, therefore, this amendment will not have an adverse effect on irrigators downstream of the city of Spearfish.

Public Interest and Beneficial Use

The Water Management Board considered Water Permit Application No. 43C-1 in March of 2004. The Board approved the permit and adopted Findings of Fact, Conclusion of Law, and a Final Decision which are applicable to this application. In making their decision to approve Water Permit No. 43C-1 the Board found:

- The instream flow use would allow for public access and opportunities for fishing and other outdoor recreation, fish and wildlife habitat protection, scenic beauty, and enhancement of scenic, natural, and recreational values of Spearfish Canyon.
- Granting SDGFP the authority for 20 cfs for instream flow use would protect Little Spearfish Creek and part of Spearfish Creek from other off-stream diversions that would impair such instream flow use.
- The proposed use for instream flow is a beneficial use in that preserving trout streams and recreational values are beneficial uses.
- The proposed use is in the public interest in that it allows for recreation, fishing, and preservation of aesthetics.

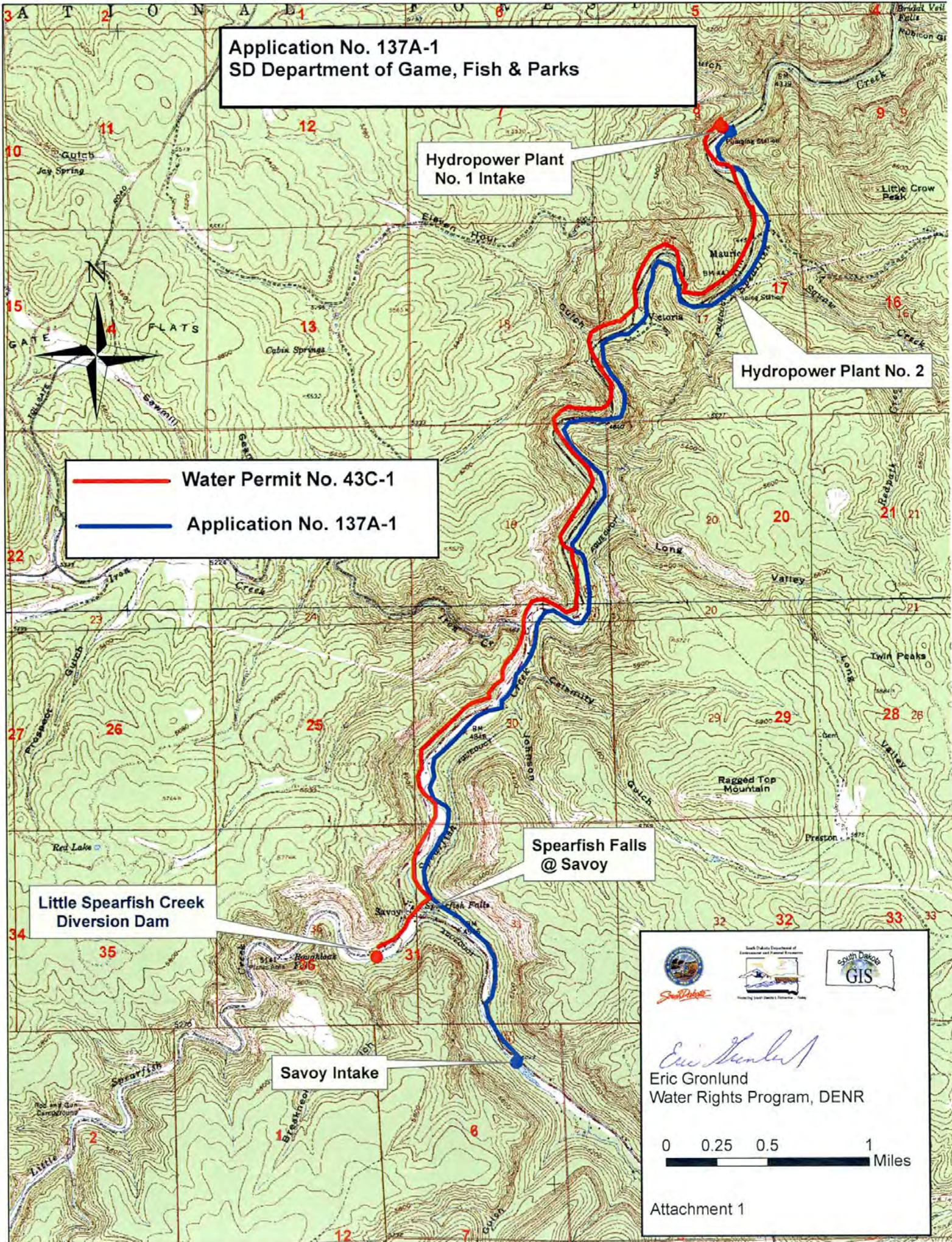
A copy of the Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit No. 43C-1 are on file with the Water Rights Program.

Conclusions

1. Application No. 137A-1 proposes to amend Water Right No. 137-1 to provide 75 cubic feet of water per second (cfs) year round instream flow use in the segment of Spearfish Creek from the Savoy intake authorized by Water Right No. 137-1 and extend downstream to the Hydropower Plant No. 1 intake.
2. Application No. 137A-1 does not seek to increase the diversion rate or volume of water appropriated by Water Right No. 137-1.
3. The approval of Application Nos. 137A-1 and 1862-1 will not unlawfully impair existing water rights.
4. The use of water for instream flow purposes is a beneficial use and in the public interest.
5. The priority date of June 9, 1917 established by Water Right No. 137-1 should be retained.



Eric S. Gronlund, PE
Natural Resource Engineering Specialist
Water Rights Program, DENR





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 137A-1, SD Department of Game, Fish and Parks**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 137A-1. South Dakota Department of Game, Fish and Parks, c/o Secretary John L. Cooper, 523 E. Capitol Avenue, Pierre SD 57501.

The Chief Engineer is recommending APPROVAL of Application No. 137A-1 because 1) existing rights will not be unlawfully impaired, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualification:

1. Water Permit No. 137A-1 amends Water Right No. 137-1 without an increase in the diversion or volume of water appropriated authorized by Water Right No. 137-1.

See report on application for additional information.

Garland Erbele, Chief Engineer
June 6, 2006

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF LAWRENCE

Teri Adler, being duly sworn, says: That the *Lawrence County Journal* is, and during all times hereafter mentioned, was a legal newspaper as defined in SDCL 17-2-2, as amended, published at Spearfish, Lawrence County, South Dakota, by Lee Enterprises; that affidavit is and, during all of said times, was employed as Customer Service Representative by the publisher of such newspaper and has personal knowledge of the facts stated in the affidavit; that the notice, order or advertisement, a printed copy of which is attached, was published in said newspaper for successive issues, bearing the following dates:

<u>June 14th</u>	<u>200 6</u>	<u>200</u>
<u>June 21st</u>	<u>200 6</u>	<u>200</u>
<u>200</u>	<u>200</u>	<u>200</u>
<u>200</u>	<u>200</u>	<u>200</u>
<u>200</u>	<u>200</u>	<u>200</u>

that the full amount of the fee charged for publishing the same, to-wit, the sum of \$ 93.02, insures solely to the benefit of the publisher of said newspaper: that no agreement or understanding for the division of the fee has been made with any person, and that no part of the fee has been agreed to be paid to any other person.

RECEIVED

JUN 23 2006

WATER RIGHTS
PROGRAM

Teri Adler
Customer Service Rep

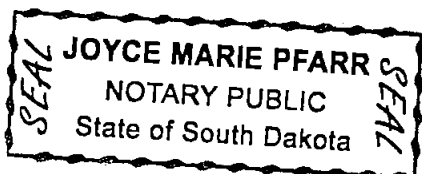
Subscribed and sworn to before me this

21st day of June, 2006

Joyce Marie Pfarr

My commission expires. 08/14/06

Notary Public, South Dakota



Account No. 60001651

Total Amount \$ 93.02

NOTICE OF HEARING
on Application Nos. 137A-1 for
Instream Flow in Spearfish Creek

Notice is given that the South Dakota Department of Game, Fish and Park (SDGFP), c/o Secretary John Cooper, 523 E. Capitol Avenue, Pierre SD 57501 has filed a water permit application proposing to amend Water Right No. 137-1 on Spearfish Creek from industrial to instream flow use and define the reach of instream.

Water Right No. 137-1 originally appropriated 75.0 cubic feet of water per second (cfs) from Spearfish Creek and Little Spearfish Creek for the industrial use of hydropower generation. The Little Spearfish Creek intake was abandoned and its flow became an instream flow right held by SDGFP under Water Permit No. 43C-1. Water Right No. 137-1 currently appropriates 75.0 cfs from Spearfish Creek at a point located NE ¼ NE ¼ Section 6, T4N, R2E (commonly known as the Savoy intake). Historically, water was diverted at the Savoy intake and carried through an aqueduct to the

Hydro # 2 Powerplant located in the SW ¼ NE ¼ Section 17, T5N, R2E. Once power was generated, the water was discharged back into Spearfish Creek. The purpose of Application No. 137A-1 is to amend Water Right No. 137-1 to provide a year round instream flow on the Spearfish Creek stream segment beginning at the Savoy intake and extending downstream to the Hydropower Plant No 1 intake located in the NW ¼ SE ¼ Section 8, T5N, R2E near Maurice. The Savoy intake will no longer be used for hydropower generation. The diversion dam at the Savoy intake on Spearfish Creek will be maintained at the discretion of SDGFP as a small pond fishery. This application if approved will retain the June 9, 1917 priority date established by Water Right No. 137-1. The land where the Savoy intake is located and Water Right No. 137-1 are part of an acquisition currently being negotiated between Homestake Mining Company (Barrick) and the SDGFP. Water Right No. 137-1 will be transferred to SDGFP upon finalization of the agreement.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 137A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing

or supporting the application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to either of the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by July 3, 2006. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 AM on July 12, 2006 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD 57501. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the facts presented at the public hearing. The July 12, 2006 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any

interested person opposing the application. The request for an automatic delay must be filed by July 3, 2006.

Any hearing may be an adversarial proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by July 3, 2006, at the above Water Rights Program address to request copies of information pertaining to the applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since the application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by July 3, 2006.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1

See "Public Notices" on page 17

thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pimer, Secretary, Department of Environment and Natural Resources.

Published June 14, 2006
Lawrence County Journal

Instruction to Newspaper - Publish first Notice on June 14, 2006 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application Nos. 137A-1 for Instream Flow in Spearfish Creek

Notice is given that the South Dakota Department of Game, Fish and Park (SDGFP), c/o Secretary John Cooper, 523 E. Capitol Avenue, Pierre SD 57501 has filed a water permit application proposing to amend Water Right No. 137-1 on Spearfish Creek from industrial to instream flow use and define the reach of instream.

Water Right No. 137-1 originally appropriated 75.0 cubic feet of water per second (cfs) from Spearfish Creek and Little Spearfish Creek for the industrial use of hydropower generation. The Little Spearfish Creek intake was abandoned and its flow became an instream flow right held by SDGFP under Water Permit No. 43C-1. Water Right No. 137-1 currently appropriates 75.0 cfs from Spearfish Creek at a point located NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 6, T4N, R2E (commonly know as the Savoy intake). Historically, water was diverted at the Savoy intake and carried through an aqueduct to the Hydro # 2 Powerplant located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17, T5N, R2E. Once power was generated, the water was discharged back into Spearfish Creek. The purpose of Application No. 137A-1 is to amend Water Right No. 137-1 to provide a year round instream flow on the Spearfish Creek stream segment beginning at the Savoy intake and extending downstream to the Hydropower Plant No 1 intake located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, T5N, R2E near Maurice. The Savoy intake will no longer be used for hydropower generation. The diversion dam at the Savoy intake on Spearfish Creek will be maintained at the discretion of SDGFP as a small pond fishery. This application if approved will retain the June 9, 1917 priority date established by Water Right No. 137-1.

The land where the Savoy intake is located and Water Right No. 137-1 are part of a acquisition currently being negotiated between Homestake Mining Company (Barrick) and the SDGFP. Water Right No. 137-1 will be transferred to SDGFP upon finalization of the agreement.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 137A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting the application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to either of the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by July 3, 2006. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 AM on July 12, 2006 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD 57501. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the facts presented at the public hearing. The July 12, 2006 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by July 3, 2006.

Any hearing may be an adversarial proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by July 3, 2006, at the above Water Rights Program address to request copies of information pertaining to the applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since the application do not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by July 3, 2006.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Gronlund, Eric

From: Neill, Richard
Sent: Thursday, June 08, 2006 8:21 AM
To: 'lcjlegals@rushmore.com'
Cc: Gronlund, Eric; Kirk, John (GFP, Pierre)
Subject: Publication of Notice of Hearing on Application No. 137A-1 to Appropriate Water

To Whom It May Concern:

Your newspaper will be receiving a letter from Eric Gronlund, Natural Resources Engineer with the South Dakota Department of Environment and Natural Resources, with an enclosed "Notice of Hearing" on Application No. 137A-1 to Appropriate Water for publication in the *Lawrence County Journal* on Wednesday, June 14, 2006, and again on Wednesday, June 21, 2006. The purpose of this communication is to authorize your newspaper to publish the "Notice of Hearing" on behalf of the South Dakota Department of Game, Fish and Parks and, once you have done so, provide an "Affidavit of Publication", together with a statement for your costs of publication, to me at the address set forth below. I will then see that your costs of publication are remitted forthwith.

Thank you for your assistance in this matter. If you have any questions, please feel free to either respond directly to this e-mail, or contact me at (605) 773-2750. In any event, I would ask that you confirm your receipt of this e-mail by either direct response thereto or by calling me at the phone number provided herein.

Sincerely,

Richard J. Neill, Special Counsel
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre, SD 57501
(605) 773-2750

emailed notice to paper 6/9/06



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 7, 2006

Lawrence Co. Journal
376 Main Suite A
Deadwood SD 57732

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 137A-1 to Appropriate Water to be published twice. Please publish the first notice on June 14, 2006 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is SD Department of Game Fish & Parks, 523 E Capitol Ave, Pierre SD (Ph # 605-773-3387).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

No. 137A-1

TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of June 7, 2006 enclosing Notice to Appropriate Water by Application No. 137A-1 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.

June 7, 2006

South Dakota Department of Game Fish & Parks
% John Cooper, Secretary
523 East Capitol Avenue
Pierre SD 57501

Dear Secretary Cooper:

Water Permit Application No. 137A-1 for recreational and fish & wildlife use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Lawrence Co. Journal printed at Deadwood, SD (Ph # 605-578-3305). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Richard J Neill, Dept. of Game Fish & Parks

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 24, 2006

NOTICE

TO: Richard Neill, Attorney
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed Diane Best, Assistant Attorney General and Richard Neill, counsel for the SD Department of Game, Fish and Parks to jointly prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application No. 137A-1. The Board approved Water Permit No. 137A-1 on July 12, 2006 pending adoption of findings.

The Board will conduct a telephone conference call to consider the proposed Findings, Conclusions and Final Decision at 2:00 PM, on Wednesday, August 23, 2006. GFP may participate in the telephone conference call at the lower level conference room in the Foss Building.

A copy of the proposed Findings, Conclusions and Final Decision is to be mailed to each Board member and John Guhin by August 18, 2006. The mailing list is enclosed

The public hearing was completed on July 12, 2006. No additional testimony will be received on August 23, 2006.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Leslie Petersen, SD GF&P

WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer, Vice Chairman
29416 395TH Avenue
Wagner, SD 57380

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks, Secretary
219 42nd Street
Rapid City, SD 57702-0240

Dwayne Rollag
320 Lincoln Lane S
Brookings SD 57006-2741

James Hutmacher, Chairman
802 East 7th Street
Oacoma SD 57365

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702-6874

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best, Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on July 24, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 24, 2006, regarding preparation of findings of fact, conclusions of law and final decision in the matter of Water Permit Application No. 137A-1, SD Department of Game, Fish and Parks, addressed as stated below.

Hand delivered to:

Richard Neill, Attorney
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Leslie Petersen
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

A copy of the Notice was sent Inter-office to:

John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General



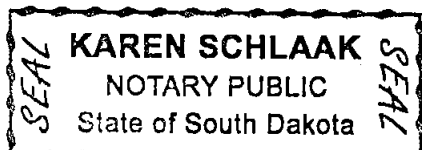
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of July, 2006.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 5, 2006

NOTICE

TO: Richard Neill, Attorney
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted August 23, 2006, by the Water Management Board approving Water Right Permit No. 137A-1 filed by South Dakota Department of Game, Fish and Parks. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Leslie Petersen, SD GF&P

CERTIFICATION

I hereby certify that on September 5, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 5, 2006 regarding adoption of findings of fact, conclusions of law and final decision in the matter of Water Permit Application No. 137A-1, SD Department of Game, Fish and Parks, addressed as stated below.

Hand delivered to:

Richard Neill, Attorney
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Leslie Petersen
SD Department of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

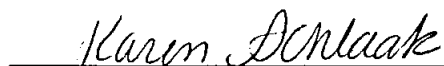
A copy of the Notice was sent Inter-office to:

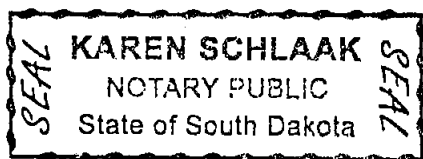
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General


Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of September, 2006.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



BEFORE THE WATER MANAGEMENT BOARD

FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF:	)	
SOUTH DAKOTA GAME, FISH AND	)	FINDINGS OF FACT, CONCLUSIONS
PARKS WATER PERMIT	)	OF LAW, AND FINAL DECISION
APPLICATION NO. 137A-1	)	

FINDINGS OF FACT

1. The South Dakota Department of Game, Fish and Parks ("GFP") filed Application 137A-1 to amend Water Right No. 137-1, a permit originally granted to Homestake Mining Company ("Homestake"). GFP is Homestake's successor in interest to Water Right 137-1.

2. Under Water Right No. 137-1, Homestake historically appropriated 75 cfs from Spearfish Creek and Little Spearfish Creek for hydropower generation. Water Right No. 137-1 is a permit issued by the State Engineer in 1917 with a priority date of June 4, 1917, and remains in place.

3. There were originally two diversion points for Water Right 137-1. The diversion point at issue here is the Savoy intake on Spearfish Creek located in the NE1/4NE1/4 of Section 6, T4N-R2E, Lawrence County. Water has historically been conveyed by an aqueduct from the Savoy intake to Homestake Hydropower Plant No. 2 located in the SW1/4NE1/4 of Section 17, T5N-R2E (located in Spearfish Canyon). Once power was

generated, the water was discharged at this same location back into Spearfish Creek and recaptured a little over a mile downstream at the intake for Hydropower Plant No. 1 located at NW1/4SE1/4 of Section 8, T5N-R2E (near Maurice).

4. The total 75 cfs authorized by Water Right No. 137-1 is now attributable to that portion of the Water Right historically diverted from the Savoy intake. The other historical diversion point for Water Right No. 137-1 was an intake on Little Spearfish Creek that has already been abandoned and dismantled. That abandonment was instrumental in a previous water proceeding involving instream flow, Water Permit No. 43C-1.

5. Water Permit 43C-1 is held by GFP and authorizes instream flow on approximately 6.3 miles of Little Spearfish Creek and Spearfish Creek. The 6.3-mile reach began in the NE¼SE¼ of Section 36, T5N-R1E, on Little Spearfish Creek, extended beyond the confluence of Little Spearfish Creek with Spearfish Creek, and continued on in Spearfish Creek to a point in the NW¼SE¼ of Section 8, T5N-R2E (diversion point for Homestake Hydropower Plant No. 1). GFP holds a January 4, 1909, priority date for Water Right No. 43C-1.

6. Approval of the proposed amendment will complement Water Permit 43C-1.

7. Application 137A-1 seeks authority to use water for instream flow purposes at the same rate of diversion (75 cfs) as Water Right 137-1. It differs in three ways, from Water Right 137-1. First, the application seeks authority for instream use for the reach from the area of the historic Savoy diversion to the intake for Hydro Plant No. 1 rather than hydropower use at Hydropower Plant No. 2. The change in use requires board action under SDCL 46-5-31. Second, the diversion works at Savoy have been abandoned. The diversion point location is, however, the same and requires no board action. Third, it was filed by GFP, the successor in interest. The change in ownership was filed pursuant to SDCL 46-5-32 and requires no further action from this Board.

8. As this Board has previously found (Water Permits 43A-1, 43B-1 and 43C-1), Spearfish Creek flows over the Deadwood formation from Savoy to the Hydropower Plant No. 1 intake (February 7, 1996, Finding of Fact 8) (March 4, 2000, Finding of Fact 14) (March 11, 2004, Finding of Fact 17).

9. The stretch of Spearfish Creek between Savoy and the intake for Hydropower Plant No. 1 is a gaining stream. Increases in the flow of Spearfish Creek come from smaller tributaries to Spearfish Creek and numerous small springs along

the Creek (February 7, 1996, Finding of Fact 9) (March 4, 2000, Finding of Fact 15) (March 11, 2004, Finding of Fact 18).

10. Since the pertinent stretch of Spearfish Creek is a gaining stream, discontinuing carriage of water through the aquaduct between Savoy and the intake for Hydropower Plant No. 1 would not have an adverse effect on downstream water users. At the intake, water is diverted by the City of Spearfish for nonconsumptive use at Hydropower Plant No. 1. This diversion by the City of Spearfish carries water through an aquaduct for electric generation and discharges the water downstream. Once the water is discharged it is used for irrigation downstream. The irrigators will not be harmed since they will still be, at least in part, receiving water carried through the pipelines (as they have since 1917). No irrigators intervened in this proceeding.

11. The instream flow use for the reach of the stream at issue here would allow for public access and opportunities for fishing and other outdoor recreation, fish and wildlife habitat protection, scenic beauty, and enhancement of scenic, natural, and recreational values of Spearfish Canyon.

12. Spearfish Creek is designated by this Board for cold water fishery, ARSD 74:51:03:10, and is considered to be a blue ribbon trout stream.

13. Granting GFP the authority for 75 cfs for instream flow use would protect part of Spearfish Creek from other off-stream diversions that would impair such instream flow use.

14. The proposed use for instream flow is a beneficial use in that preserving trout streams and recreational values are beneficial uses.

15. The proposed use is in the public interest in that it allows for recreation, fishing, and preservation of aesthetics.

16. There are no other existing water rights/permits along the reach involved in this application. The proposed instream flow use will not impair existing water rights.

CONCLUSIONS OF LAW

1. The State of South Dakota, and consequently this Board, has subject matter jurisdiction since: (a) the State acquired the right to regulate water use upon statehood in 1889; (b) water involved in this matter was originally permitted by the State Engineer pursuant to the 1907 water law, 1907 S.D. Sess. Laws ch. 180; and (c) the water is part of the State's continuing public trust responsibility.

2. The Legislature has delegated the State's authority to grant water appropriation permits to this Board. Pursuant to SDCL chs. 46-1 and 46-6, this Board is authorized to hear and decide this application.

3. The application is complete and meets the requisites of a properly filed application as required by SDCL ch. 46-2A and SDCL 46-5-31, and rules promulgated thereunder.

4. The Chief Engineer issued his recommendation in this matter on a timely basis pursuant to SDCL 46-2A-2.

5. Notice of hearing was timely published in an area newspaper as required by SDCL 46-2A-4. The notice included the required information set forth in SDCL 46-2A-4.

6. No petitions to intervene or application to otherwise participate in this proceeding was filed with the Chief Engineer.

7. Under SDCL 46-1-6(3), a proposed use is a beneficial use if it is reasonable, useful, and beneficial to the appropriator and is also in the interest of the public in the best utilization of water supplies.

8. This proposed use is in the best interest of both the appropriator and of the public in the best utilization of water supplies. Since this use would enhance recreational values in Spearfish Canyon, GFP would be benefited since the Department's mission is to foster recreation and fisheries.

9. The proposed use is a beneficial use in terms of the best utilization of public resources in that water would be used both for nonconsumptive aesthetic and recreational uses.

10. The proposed beneficial use is consistent with DeKay v. USFWS, 524 N.W.2d 855, 858 (1994) (affirming this Board's decision that appropriation of water for in site waterfowl habitat and other wildlife use is a beneficial use).

11. The proposed use is in the public interest in that it allows for recreational use including improvement in quality of existing trout habitat.

12. This proposal involves consideration of the instream flow use based on three rationale: recreation, aesthetics, and fisheries habitat. This Board concludes that any one of these three reasons would, alone, demonstrate that the proposal constitutes a beneficial use and is in the public interest.

13. The GFP proposal would not result in an increase of the diversion rate.

14. The GFP proposal meets the criteria set forth in SDCL §§ 46-2A-9, 46-2A-12, and 46-5-30.4.

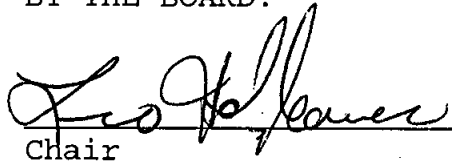
FINAL DECISION

Water Permit No. 137A-1 is approved with the following qualifications as recommended by the Chief Engineer:

Water Permit No. 137A-1 amends Water Right No. 137-1
without an increase in the appropriation authorized by Water
Right No. 137-1.

Dated this 29 day of August, 2006.

BY THE BOARD:


Chair

S.D. Water Management Board
(on behalf of the Board)

s-pld.db FOF & COL (GFP Water Permit App) Water Mgmt. Board



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

NOV 03 2008

137-1
137A-1

SD Department of Game, Fish and Parks
John L Cooper, Secretary
523 E Capitol
Pierre SD 57501

Dear Mr. Cooper:

Enclosed is Water Permit No. 137A-1 amending Water Right No. 137-1 located on Spearfish Creek. The permit authorizes a change in use from industrial to instream flow and defines the stream reach.

The applicable portions of Water Right No. 1137-1 have been included in Water Permit No. 137A-1.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

Permit No. 137A-1
Upper Cheyenne River - Water District

Report of Examination of Works and/or Application of Water to Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have on this day, 9/15/2015, made a thorough examination of the water use system constructed by SD Department of Game, Fish & Parks, 523 E Capitol, Pierre SD 57501 holder of Permit No. 137A-1 bearing the priority date of June 9, 1917.

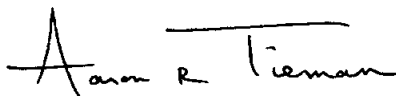
Water Right No. 137-1 originally appropriated 75.0 cubic feet of water per second (cfs) from Spearfish Creek & Little Spearfish Creek for industrial use in the generation of hydropower. The Little Spearfish Creek portion has been abandoned and the associated flow changed to an instream flow right held by SDGF&P under Water Permit No. 43C-1.

Water Permit No. 137A-1 is authorized to amend Water Right No. 137-1 to change the type of use from industrial to a year-round instream flow and define the stream segment of Spearfish Creek beginning at an upstream point located at the Savoy intake (NE¼ NE¼ Section 6, T4N-R2E) and ending at a downstream point located at the Hydropower Plant #1 intake (NW¼ SE¼ Section 8, T5N-R2E) near Maurice in Spearfish Canyon.

Water Permit No. 137A-1 does not authorize an increase in the diversion or volume of water appropriated authorized by Water Right No. 137-1 and will retain the June 9, 1917 priority date established by Water Right No. 137-1.

All structures, wells and lands on map Y
Exceptions to compliance are: none.

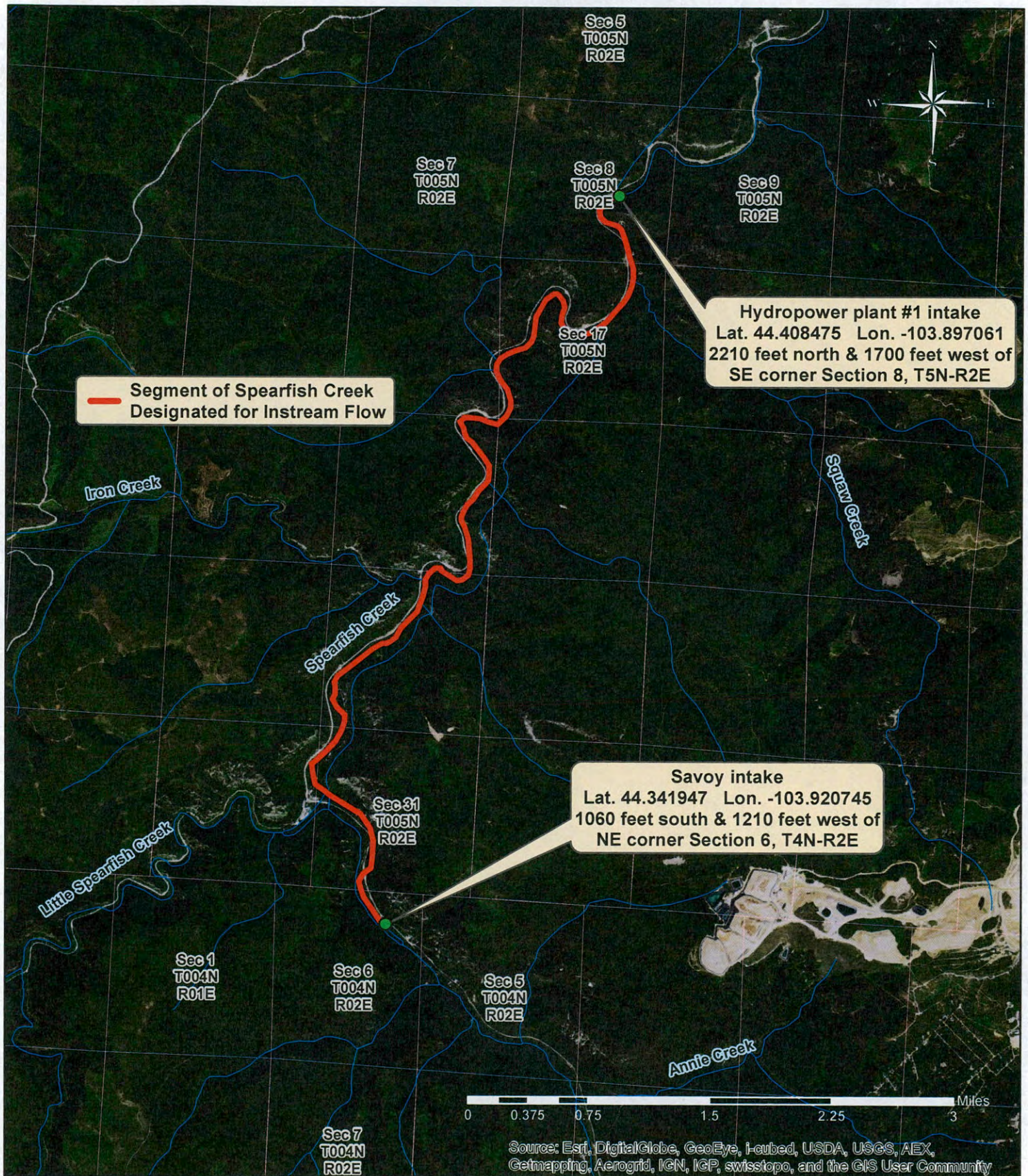
Comments: The applicable portions of Water Right No. 137-1 have already been incorporated into Water Permit No. 137A-1.



Aaron Tieman
Natural Resources Engineer II
DENR, Water Rights Program

Date report completed: September 29, 2015

Water Right 137A-1
SD Game, Fish & Parks
September 29, 2015



Aaron R. Tieman

Aaron Tieman
Natural Resources Engineer II
DENR Water Rights Program





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

NOV 09 2015

137A-1

Leslie Murphy
SD Department of Game, Fish & Parks
523 E Capitol Ave
Pierre SD 57501

Dear Ms. Murphy:

Enclosed is Water License No. 137A-1. This is the final water right document completing the process of obtaining a Water Right. Included with the license is a map prepared by the staff engineer who conducted the field investigation.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 137A-1

(1) The SD Department of Game, Fish & Parks, 523 E Capitol, Pierre SD 57501 made Application No. 137A-1, May 30, 2006 for a water permit to amend Water Right No. 137-1 on Spearfish Creek from industrial to instream flow use and to define the stream reach. Permit No. 137A-1, with a priority date of June 9, 1917 (established under No. 137-1) was approved August 23, 2006.

Water Right No. 137-1 originally appropriated 75.0 cubic feet of water per second (cfs) from Spearfish Creek & Little Spearfish Creek for industrial use in the generation of hydropower. The Little Spearfish Creek portion has been abandoned and the associated flow changed to an instream flow right held by SD GF&P under Water Permit No. 43C-1.

Water Permit No. 137A-1 amended Water Right No. 137-1 to change the type of use from industrial to a year-round instream flow and defined the stream segment of Spearfish Creek beginning at an upstream point located at the Savoy intake in the NE¼ NE¼ Section 6, T4N-R2E and ending at a downstream point located at the Hydropower Plant #1 intake in the NW¼ SE¼ Section 8, T5N-R2E near Maurice in Spearfish Canyon.

(2) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use for year-round instream flow purposes.

(3) Pursuant to South Dakota Water Law 46-5-30.1 the SD Department of Game, Fish & Parks, 523 E Capitol, Pierre SD 57501 the holder and/or owner of Water Right No. 137A-1 is issued a license for instream flow purposes on Spearfish Creek beginning at the Savoy intake and extending downstream to the Hydropower Plant No. 1 intake near Maurice. The diversion dam at the Savoy intake on Spearfish Creek will be maintained at the discretion of the SD Department of Game Fish and Parks as a small pond fishery.

Water Right No. 137A-1 retains a priority date of June 9, 1917 as established under Water Right No. 137-1.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 137A-1 and subject to the following qualification:

- Water Permit No. 137A-1 amends Water Right No. 137-1 without an increase in the diversion or volume of water appropriated authorized by Water Right No. 137-1.



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 09 2015

date

