

United States House of Representatives
Committee on Resources
Water and Power Subcommittee Hearing

Thursday, September 7, 2006

H.R. 5566

To Facilitate the Transfer of Spearfish Hydroelectric Plant
Number 1 to the City of Spearfish, South Dakota

Testimony of Jerry Krambeck

Mayor, City of Spearfish, South Dakota

Chairman Radanovich and Members of the Committee:

My name is Jerry Krambeck. For the past six years, I have served as Mayor of Spearfish, South Dakota, a municipality of approximately 9,000 people located in the heart of South Dakota's Black Hills. I am here today to testify in support of House bill 5566. It is my understanding that the section of this legislation directing the U.S. Geological Survey to conduct a study of the hydrology of Spearfish Creek falls under the jurisdiction of the committee. My testimony will discuss the need for this study as an alternative community-based solution to the Federal Energy Regulatory Commission asserting jurisdiction over the project.

When visiting our City, one cannot help but appreciate the scenic beauty of Spearfish Canyon. We are proud of this heritage and take seriously our responsibility to preserve it for future generations to enjoy and appreciate.

The City is located at the base of Spearfish Canyon, through which Spearfish Creek runs. Spearfish Creek is the lifeblood to the many farms and ranches that operate in the area. Farmers have been irrigating fields for nearly 150 years in Spearfish, with some water rights dating back to the mid-nineteenth century. Our community also has a rich mining history. For years, many citizens in our community were employed by the Homestake Mine in Lead, South Dakota.

These values prompted our City, in 2004, to purchase the small, 4,000 kilowatt Spearfish Hydroelectric Plant Number One from Homestake Mining Company. At that time, Homestake was closing its gold mine in Lead and no longer needed the hydro power from this plant to support its operations. The project had been in continuous operation since 1912, and had been meticulously maintained and preserved. The City saw an opportunity to preserve this historical landmark which stands as a reminder of the resilience and ingenuity that was required of those early settlers in the West.

This project is important for more than its historical value. In a very real way, it supports these deeply held values of our community. For example, the hydro facility bypasses a significant "sinkhole" in Spearfish Creek, where surface waters are lost to the underlying aquifer.

By diverting flows around this sinkhole, the project provides additional water for recreation, irrigation, fire protection, and the National Historic D.C. Booth Fish Hatchery. In addition, since acquiring the hydro facility, the City has worked to develop an agreement with the Spearfish Canyon Home Owners Association to provide for additional water to be left in Spearfish Creek for aesthetic and environmental benefit.

The reason I am here today is that the multiple benefits provided by this project are in danger of being forever lost. In a series of orders issued in 2001 and 2002, the Federal Energy Regulatory Commission ruled that this hydroelectric facility – which at the time had been operating for about 80 years—falls under its mandatory licensing jurisdiction under the Federal Power Act.

This statute was enacted about a decade *after* Homestake started generating electricity at the facility. FERC justified its claim of jurisdiction over the project by finding that certain rights-of-way grants issued by the federal government for the project in the early twentieth century had expired. These grants are currently administered by the Forest Service.

FERC issued its rulings without ever even consulting with the Forest Service. In fact, the Forest Service is on record that the rights-of-way grants continue to be valid, even after the hydro facility was conveyed from Homestake to the City. Despite the urging of the entire South Dakota Congressional delegation, FERC refuses to change its jurisdictional rulings.

The City does not oppose the goals of the Federal Power Act of making sure that our Nation's waterways are best managed

for multiple public interests such as power development, energy conservation, the protection of fish and wildlife resources, recreation, and flood control. We believe that we have already accomplished that on Spearfish Creek.

Our objection is that FERC's licensing of this facility would be an unnecessary exercise at a tremendous cost. Studies conducted by FERC find that even small projects like this one can take over 6 years to license at a cost that could approach millions of dollars. Costs of this magnitude *alone* would require that the City mothball the project and shut it down.

The City does not believe that policies and goals of the Federal Power Act support this result—discriminating against a source of clean, renewable energy that is already operated in a manner that best balances public interest considerations, through the sheer imposition of overwhelming administrative costs.

Rather, we believe the public interest is best served by respecting long held water rights and water uses from the project, while allowing the community to take every opportunity to enhance and restore the watershed based on a thorough understanding of the hydrology of the watershed. HR 5566 accomplishes this by directing the U.S. Geological Survey to conduct a study of the complex hydrology of Spearfish Creek. The results of that study will be the basis by which the City, working with the Spearfish Canyon Owners Association and other community groups, will work to increase instream flows and undertake stream restoration activities in Spearfish Canyon.

Thank you for the opportunity to present this testimony.