

JOINT POWERS AGREEMENT

This JOINT POWERS AGREEMENT (AGREEMENT) is entered into by and between the State of South Dakota, acting through its Department of Game, Fish and Parks (STATE); and the City of Rapid City, South Dakota, a municipal corporation (CITY), acting by and through its duly elected Mayor and Acting Public Works Director.

RECITALS:

WHEREAS, STATE and CITY acknowledge that each has the separate statutory authority to enter into and undertake certain activities described herein and the provisions of SDCL 1-24 permit such activities to be jointly undertaken; and

WHEREAS, the South Dakota Department of Game, Fish and Parks (GFP) and the City of Rapid City, South Dakota, (City) share a joint interest in the long-term permitted use of the regional discharge of the Madison aquifer located at Jackson/Cleghorn Springs, and further, both parties have historically permitted uses of this water beginning as early as 1877 which are more fully described as follows: the City has water rights #504-2 (Jan. 1, 1877) for .89 cfs and #432-2 (Jan. 1, 1944) for 7.75 cfs and #2270-2 (August 22, 1956) for 2.71 cfs and future use permit #439-2 for 995 AF annually (September 22, 1956) lawfully issued by the State of South Dakota; and GFP has water right #388-2 (1877 during irrigation season and January 1, 1928 non-irrigation season) for 6.18 cfs of non-consumptive use lawfully issued by the State of South Dakota; and

WHEREAS, GFP has a documented non-consumptive use of 10.0 cfs from Cleghorn Springs for operation of its Cleghorn Springs State Fish Hatchery (Hatchery); and

WHEREAS, GFP must properly license water use at the Hatchery for the actual rate and volume of water used in fish culture; and the City, through this AGREEMENT, withdraws opposition to the GFP request for a water right for 3.82 (water permit application #2454-2) cfs with a priority date of February 13, 2001; and

WHEREAS, quantification of the regional discharge at Jackson/Cleghorn show water flows between 21.6 and 23.3 cfs during measurements in 1988-89 and again in 2002 and 15.0-19.2 cfs during 2004-05; and

WHEREAS, the mean discharge from Cleghorn Springs measured at USGS weir(s), i.e., USGS gage #06412810, has been 11.2 cfs (WY88-92) and 12.1 cfs (WY93-2000) and 10.1 cfs (WY2000-2006): two dry periods and a wet period; and

WHEREAS, the City and GFP seek to effectively co-manage the regional discharge of Jackson/Cleghorn Springs to the maximum extent possible by cooperatively monitoring water availability as determined by water flow over the USGS weirs, flow of water through each facility, and elevation of water in monitoring wells on site and Rapid Creek stage elevation; and

WHEREAS, STATE and CITY believe that it is a more efficient use of public resources to enter into this joint undertaking;

NOW, THEREFORE, in consideration of the covenants and AGREEMENTs contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this AGREEMENT, the parties agree as follows:

AGREEMENT

1. The AGREEMENT shall commence upon its execution by the parties and shall continue in effect indefinitely; provided, however, once this agreement has been in place for a period of fifteen (15) years from the date of its execution by both parties, and unless earlier terminated by mutual written agreement of the parties, either party shall have the right to terminate this AGREEMENT, with or without cause, by giving the other party ninety (90) days prior written notice to that effect, provided that such notice must be given between August 1 and September 30 of each year this AGREEMENT remains in effect.
2. This AGREEMENT may depend upon the continued availability of appropriated funds and expenditure authority from the Legislature for the purposes contemplated herein. In the event it becomes necessary that the Legislature appropriates funds and grants expenditure authority for the purposes contemplated herein but fails to do so, this AGREEMENT may be terminated by STATE.
3. That if water volumes measured at USGS gage #06412810 (Cleghorn Springs at Rapid City) drop below 10.0 cfs, the following measures will be implemented:
 - a.) Cleghorn Hatchery staff, and City Water Division staff, respectively appointed by the Secretary of GFP and the Public Works Director of the City, will immediately confer to determine potential causes of the drop in flow volume and, if necessary, staff from the USGS, Rapid City and the Department of Environment and Natural Resources (DENR) will be contacted.

- b.) Should water flow through the Hatchery (GFP) between November 1 and April 30 become reduced to the level that fish production is compromised; the City will incrementally divert water withdrawals necessary for municipal use away from Jackson Springs gallery to another available City production site. Reduction in water withdrawals will be accomplished initially by the City which will give the Hatchery (GFP) staff time, not to exceed one month, to develop a plan and accomplish a reduction in fish inventory that will provide a safe margin for continued operation of the Hatchery (GFP) at some reduced level. Hatchery (GFP) staff will, at the same time as the City is preparing to incrementally divert water production away from Jackson Springs gallery, begin to examine ways to reduce water needs at the Hatchery (GFP) through accelerated stockings, and decreased loading of culture facilities.
 - c.) If flows cooperatively monitored, continue to be inadequate, and water availability for fish culture is problematic, staff from the City and Hatchery (GFP) will seek to meet with the USGS and DENR to examine potential trends/causes/ times for the observed reduction in water yield.
 - d.) Based upon a jointly determined likely future condition of the water yield from Jackson/Cleghorn, the Hatchery (GFP) and City may take steps to reduce the future demand for water at the site.
 - e.) The City will use, if available, other sources of water to supplement the reduced pumping rate at Jackson/Cleghorn to meet their demands.
 - f.) The Hatchery (GFP) will develop a contingency plan for programming less fish production in the next production cycle as well as reducing biomass on site to match anticipated water yield.
 - g.) Regular communications between the City, Hatchery (GFP), DENR, and USGS will continue as long as water yields are inadequate and water use reductions by the City and Hatchery (GFP) at the regional discharge are ongoing. These communications will be directed at maintaining adaptive management strategies at the two sites.
4. This AGREEMENT provides for use of water between the parties without regard to the specific priority dates for the water rights involved. The agreement to forego priority dates for purposes of this AGREEMENT is limited to the terms of this AGREEMENT and is not intended to transfer, convey, assign, or waive any legal rights to water or priority dates except as specifically contained herein. Further, to the extent that Rapid City foregoes any water use authorized by its water rights and allows for use of said water by the GFP, Rapid City does not intend to abandon such water permit or right and instead, intends to preserve the water right by allowing for continuous beneficial use by GFP. To the extent that GFP

foregoes any water use authorized by its water rights and allows for use of said water by Rapid City, GFP does not intend to abandon such water permit or right and instead, intends to preserve the water right by allowing for continuous beneficial use by Rapid City.

5. Upon the written request of either party, and for reasonable cause, this AGREEMENT may be amended at any time; provided, however, that this AGREEMENT may not be amended except in writing which shall be signed by an authorized representative of each of the parties hereto.
6. The parties shall negotiate in good faith the terms of any other AGREEMENT that is determined to be necessary or desirable to carry out the terms of this AGREEMENT.
7. Time is of the essence of this AGREEMENT and all of its covenants, terms, conditions, and provisions.
8. The "Recitals" to this AGREEMENT are considered to be an integral part of this AGREEMENT and enforceable as such.
9. This AGREEMENT and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, successors in interest, and assigns of the respective parties hereto.
10. The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this AGREEMENT, and that the cooperative undertaking herein described shall be administered by the Director of the Division of Wildlife for STATE and the Public Works Director for CITY or their authorized designees.
11. All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the following addresses:

CITY:

City of Rapid City

Rapid City, South Dakota 57709
Attention: Public Works Director

STATE:

S.D. Department of Game, Fish and Parks
523 E. Capitol
Pierre, SD 57501
Attention: Director, Division of Wildlife

The parties, by notice given hereunder, may designate any further or different methods of notification and addresses to which notices and communications shall be provided.

12. In the event that any court of competent jurisdiction in the state of South Dakota shall hold any provision of this AGREEMENT unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
13. This AGREEMENT is intended to only to govern the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.
14. The parties acknowledge that a true copy of this AGREEMENT will be filed with the Office of Attorney General and the Legislative Research Council within fourteen (14) days of the execution hereof, as required by law.
15. By the signature of their representative below, STATE and CITY certify that approval of this AGREEMENT by ordinance, resolution or other appropriate means has been obtained by that governmental body's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representatives are authorized to sign on the party's behalf. A copy of any authorizing resolution or ordinance is attached to this AGREEMENT and incorporated herein by reference

IN WITNESS WHEREOF, the parties have executed the same effective on the date of their respective signatures.

South Dakota Department of Game, Fish and Parks

By _____ Date _____
Jeffery Vonk, Secretary

By _____ Date _____
Tony Leif, Director of the Wildlife Division

City of Rapid City, South Dakota

By _____ Date _____
Alan Hanks, Mayor

By _____ Date _____
Robert Ellis, Public Works Director