

Minutes of the
Board of Minerals and Environment
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

October 15, 2015
10:00 a.m. CT

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. A quorum was present.

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Pete Bullene, Linda Hilde, Dennis Landguth, Doyle Karpen, Gregg Greenfield, Daryl Englund, and Bob Morris

BOARD MEMBER ABSENT: None

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM SEPTEMBER 17, 2015, MEETING: Motion by Blumhardt, seconded by Greenfield, to approve the minutes from the September 17, 2015, Board of Minerals and Environment meeting. Motion carried unanimously.

MINING ISSUES

Consent Calendar: Prior to the meeting, the board received a table listing the department recommendations for transfers of liability, exchange of surety, release of surety, and releases of liability (see attachment).

Motion by Morris, seconded by Englund, to accept the department recommendations for transfers of liability, exchange of surety, release of surety, and releases of liability, as shown on the consent calendar. Motion carried unanimously.

Exchange of surety for Wharf Resources (USA) Inc. post closure financial assurance: Eric Holm stated that Wharf Resources (USA), Inc. requested the board approve the exchange of two surety bonds, which serve as the company's post closure bond, for one surety bond. The department reviewed the new surety company, Argonaut Insurance Company, and found that it is stable and has strong to excellent ratings.

The department recommended the board approve the exchange of Surety Bond No. 1000967509, US Specialty Insurance Company and Surety Bond No. K09047761, Westchester Fire Insurance Company, for Surety Bond No. SUR0032045, Argonaut Insurance Company, in the amount of \$30,783,000.

Motion by Karpen, seconded by Morris, to approve the exchange of Surety Bond No. 1000967509, US Specialty Insurance Company and Surety Bond No. K09047761, Westchester Fire Insurance Company, for Surety Bond No. SUR0032045, Argonaut Insurance Company, in the amount of \$30,783,000 for Wharf Resources (USA), Inc. Motion carried unanimously.

HEARING REGARDING THE REMAND TO THE BOARD IN THE MATTER OF THE PETITION OF LUFF EXPLORATION COMPANY, DENVER, CO, FOR AN ORDER POOLING ALL INTERESTS IN A SPACING UNIT FOR THE SOUTH MEDICINE POLE HILLS FIELD, HARDING COUNTY, SD, AND TO AUTHORIZE THE RECOVERY OF RISK COMPENSATION IN ADDITION TO THE PRO RATA SHARE OF REASONABLE, ACTUAL COSTS FROM THE INTEREST OF ANY LESSEE OR UNLEASED MINERAL OWNER WHO ELECTS NOT TO PARTICIPATE IN THE RISK AND COST OF DRILLING AND COMPLETING A WELL ON SAID SPACING UNIT:

Bob Morris, hearing chairman for this matter, opened the hearing at 10:15 a.m. CDT. He noted that no one was present on behalf of the intervenor, Ms. Golden.

John Morrison, attorney from Bismarck, ND, and Brett Koenecke, attorney from Pierre, represented Luff Exploration Company

Rich Williams, Assistant Attorney General, represented the Department of Environment and Natural Resources.

Charles McGuigan, Chief Deputy Attorney General, represented the Board of Minerals and Environment.

Scott Sumner, attorney from Rapid City, representing the intervenor, Linda Golden, arrived at 10:20 a.m. CDT.

Hearing Chairman Morris stated that the original hearing for this matter, Oil and Gas Case No. 28-2013, was held on October 17, 2013.

Case No. 28-2013 was the application of Luff Exploration Company, Denver, CO, for an order pooling all interests in a spacing unit for the South Medicine Pole Hills Field described as the E/2 of Section 33 and the W/2 of Section 34, T23N, R4E and the NW/4 of Section 3 and the NE/4 of Section 4, T22N, R4E, Harding County, SD, and to authorize the recovery of risk compensation in addition to the pro rata share of reasonable, actual costs from the interest of any lessee or unleased mineral owner who elects not to participate in the risk and cost of drilling and completing a well on said spacing unit.

At the conclusion of the October 17, 2013, hearing, the board approved Case No. 28-2013 and imposed compulsory pooling and assessed 100 percent risk compensation. The board adopted the Findings of Fact, Conclusions of Law, and Order on November 21, 2013.

Mr. Sumner, on behalf of intervenor Golden, appealed the board's decision to the Circuit Court. It was upheld at Circuit Court. It was then appealed to the Supreme Court and the Supreme Court remanded the matter back to the Circuit Court. The Circuit Court then remanded it back to the Board of Minerals and Environment.

On September 23, 2015, Hearing Chairman Morris issued an Order and Notice of Hearing After Remand setting the hearing for October 15, 2015 at 10:15 a.m. for the board to take such action as necessary "for entry of a pooling order that affords Ms. Golden a time and manner of electing

to participate by paying her proportionate share of the cost of drilling, equipping, and operating the well” which is verbatim from the Supreme Court case found at 864 N.W.2d 4 (2015).

Mr. Morrison requested that the Board adopt an amended Order providing that Luff Exploration provide an additional notice to Ms. Golden by certified or registered mail return receipt request or by email to Ms. Golden with a requirement that election to participate be effectuated by submitting a check for the net amount due, which would be her proportionate share of the net remaining expenses; the total expenses reduced by the revenues to date from the well. Mr. Morrison stated that as of the end of August, the payoff balance on the well was \$1,507,492, and Ms. Golden’s proportionate share would be \$125,669.21. When the notice is given, that amount will change slightly because the September numbers will be in by that time.

Mr. Morrison answered questions from the board.

Mr. Sumner requested that the amended Board Order incorporate the period of time within which Ms. Golden should have the opportunity to elect to participate, but that the Order should also correct the provisions with regard to the economic consequences to her of not electing to participate by ruling that there will be no risk compensation penalty imposed should she elect not to participate.

Mr. Sumner answered questions from the board.

Hearing Chairman Morris stated that SDCL 45-9-32, which is the specific statute the court cited, stated that the board shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate in such well drilling, equipping, and operation; and shall provide for payment of the reasonable actual cost of the well drilling, equipping, and operation by all those who elect to participate, plus a reasonable charge for supervision and interest.

Mr. Morris stated that hypothetically, if a person wishes not to participate, then you go to SDCL 45-9-33, which indicates that an owner who does not elect to participate in the risk and costs of drilling may elect to surrender his leasehold interest to the participating owners on some reasonable basis and for reasonable consideration which, if not agreed upon, shall be determined by the Board of Minerals and Environment. The owner may elect to participate in the drilling and operation of the well, on a limited or carried basis, upon terms and conditions determined by the board to be just and reasonable.

Mr. Morris stated that his interpretation of the Supreme Court’s decision is that the Court wanted the Board to give Ms. Golden an opportunity to participate and also set forth alternatives under SDCL 45-9-33 that would give her notice and Luff notice as to what would happen if Ms. Golden elected not to participate.

The attorney’s discussed their interpretation of the Supreme Court decisions.

Mr. Morris said he does not interpret the Supreme Court’s remand as a vacation or reversal of any factual findings of the Board.

Mr. Sumner stated that the Amended Order should lay out both alternatives for Ms. Golden's election to participate or her election not to participate.

Mr. Sumner said the Supreme Court did not rule on the determination of risk compensation and they specifically declined to rule on that issue. He read the following from the Supreme Court ruling, "Although Golden also requests that we determine the issue of risk compensation, that issue will be mooted if Golden elects to participate. Therefore, we decline to address that issue."

Mr. Sumner stated that there is nothing in that ruling that confines the Board from considering that issue in issuing this Order now. He requested that the Order the Board adopts address both halves of the equation in a way that is not clarified as legal error. Mr. Sumner stated that it is a legal error in this case for the Board to issue an Order that imposes recovery of risk compensation from Linda Golden in the event she elects not to participate.

Mr. Williams stated that he believes the Order and Notice of Hearing after Remand that was signed by Mr. Morris is a succinct and accurate representation of the what the Supreme Court wanted the Board to consider today, and the Department of Environment and Natural Resources agrees with the procedure laid out by Mr. Morrison on behalf of Luff Exploration Company.

Motion by Hearing Chairman Morris, seconded by Karpen, that the Board of Minerals and Environment adopt the following Amended Pooling Order:

1. That the Petition of Luff as set forth above is granted and approved.
2. That all interests in a spacing unit for the South Medicine Pole Hills Field described as the E/2 of Section 33, the W/2 of Section 34, Township 23 North, Range 4 East, the NW/4 of Section 3 and the NE/4 of Section 4, Township 22 North, Range 4 East, Harding County, South Dakota, including the interests of Golden, are pooled for purposes of the drilling and operation of, and production from, the Well in accordance with Order No. 16-2013.
3. That Luff is hereby designated the operator and is authorized to drill and operate said Well on the Spacing Unit.
4. That all expenses incurred in drilling, equipping and operating said wells on the Spacing Unit, and all production from such wells, shall be allocated to the various tracts within the Spacing Unit on the basis of the ratio the number of acres contained in each separately owned tract bears to the number of acres in the Spacing Unit.
5. That operations incident to the drilling of said wells on any portion of the Spacing Unit shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit, and production allocated to each tract shall, when produced, be deemed for all purposes to have been produced from each tract by a well drilled thereon.
6. That Ms. Linda Golden, as an unleased mineral owner who owns a mineral interest in the Subject 960 Acre Spacing Unit is entitled to have, and is hereby declared to have, the right and opportunity to elect whether to fully participate in the well drilling, equipping, and operation by paying her proportionate share of the costs of drilling,

- completing, equipping, and operating the well drilled or to be drilled on the Subject 960 Acre Spacing Unit.
7. That Ms. Golden shall exercise her right to make such election to fully participate in the well on the Subject 960 Acre Spacing Unit by paying to Luff Exploration her proportionate share of the costs and expenses of drilling, completing, equipping and operating the well that Luff has drilled on the Subject 960 Spacing Unit, which payment shall be made by Ms. Golden, if she so elects, within no less than thirty (30) days from and after the date of service of Notice of Entry of the Board's Amended Pooling Order. If Ms. Golden elects to participate, she shall thereafter be responsible for payment of her proportionate share of the reasonable actual cost of operating the well plus a reasonable charge for supervision and interest.
 8. That, in the alternative to electing to participate in the well on the Subject 960 Acre Spacing Unit as provided for above, Ms. Golden shall also have the right to elect to surrender her leasehold interest in the Subject 960 Acre Spacing Unit to Luff and the other participating owners by executing an Oil and Gas Lease on some reasonable basis and for reasonable consideration, which if not agreed upon, shall be determined by the Board, and such election shall be made, within no less than thirty (30) days from and after the date of service of Notice of Entry of the Board's Amended Pooling Order. Counsel for the parties stipulated on the record that the terms contained in that certain Oil and Gas Lease found in Exhibit 3 of the record (pages 0244 – 0245 of the settled record) as expressed in Luff's July 17, 2103 letter, Exhibit 3 of the record (pages 0239 – 0240 of the settled record) - \$200 per net mineral acre bonus consideration, three year primary term, with a 1/6 royalty rate – is deemed to be based upon a reasonable basis and for reasonable consideration.
 9. That, if Ms. Golden declines to elect to fully participate in the well on the 960 Acre Spacing Unit as provided for above or in the alternative declines to elect to surrender her leasehold interest in the Subject 960 Acre Spacing Unit as provided for above, Ms. Golden shall be deemed to have elected to participate in the drilling and operation of the Stearns Brothers B-33H well on a limited or carried basis and Luff, on behalf of the other working interest owners within the Spacing Unit who did share in the risk and cost of drilling and completing the Well, may recover from Ms. Golden's share of production from the Spacing Unit, exclusive of a one-eighth royalty, Ms. Golden's proportionate share of the reasonable actual costs of drilling, equipping and operating the Well until the market value of that production, exclusive of a one-eighth royalty, equals the sums paid by or charged to Ms. Golden's interest.
 10. That if Ms. Golden is deemed to participate on a limited or carried basis, Luff, on behalf of other working interest owners within the Spacing Unit who did share in the risk and cost of drilling and completing the Well, may recover from Ms. Golden's share of production from the Spacing Unit, exclusive of a one-eighth royalty, risk compensation equal to an additional 100% of the reasonable actual costs of drilling, reworking, side-tracking, deepening, plugging back, testing, completing and recompleting the Well and the costs of newly acquired equipment in the Well including the wellhead connection. Such risk compensation may be recovered only out of production from the Spacing Unit, exclusive of a one-eighth royalty.
 11. Pursuant to request of Ms. Golden's counsel and agreement by Luff's counsel, this executed Amended Pooling Order and the Notice of Entry of Amended Pooling Order

shall be sent by Luff to Ms. Golden by certified mail, return receipt requested, to her at 1700 Shattuck Avenue, Berkeley, California, 94709.

12. In the event of a dispute as to the costs of drilling, equipping, or operating the Well, the South Dakota Board of Minerals and Environment shall determine the costs in accordance with SDCL 45-9-35.

13. Further, the South Dakota Board of Minerals and Environment shall retain jurisdiction of this matter to address any disputes that arise between the parties, so long as such disputes are within the jurisdiction of the Board.

In response to a question from Chairman Hagg regarding the 100 percent risk compensation, Hearing Chairman Morris stated that he made the risk compensation determination based on the evidence that was presented. Mr. Morris discussed his interpretation of ARSD 74:12:10:03.

Discussion took place.

Mr. Greenfield moved to call the question, seconded by Englund. Motion carried unanimously.

A roll call vote was taken on the motion to approve the Amended Pooling Order carried unanimously.

Mr. Sumner stated that Ms. Golden objects to the portion of the Amended Pooling Order motion as made and passed which seeks to impose the 100 percent risk compensation penalty.

Hearing Chairman Morris stated that he would not accept any additional argument. He will submit the Amended Pooling Order and allow Mr. Sumner to make objections to a particular portion of the order for the record.

Mr. Morrison stated that Luff Exploration Company has a payoff statement that he can offer into the record so there is an evidentiary basis. It gives the gross number – the \$1,507,000 payoff balance and Ms. Golden's interest is 0.0833631. Mr. Morrison said with those two pieces of information, the Board would have everything in the record needed to come up with the number.

Hearing Chairman Morris stated that he is concerned about opening up the record for additional evidence. He stated that if the parties can agree on what the amount is without waiving their right to object they should let him know. If the number is not agreed upon, the Amended Pooling Order will contain the generic language under the statute, and the board maintains jurisdiction to address those issues if the parties cannot agree.

Mr. Morrison suggested that the Amended Order should set forth the terms of the lease. He noted that in the original Order the Board found that the three-year primary term, \$200 per acre bonus, and 1/6 royalty were reasonable terms. Mr. Morrison said Luff would agree to those terms for the new lease Ms. Golden would have the opportunity to enter into now, even though Mr. Sumner has stated that Ms. Golden has no interest in entering a new lease.

Mr. Morrison said the oil industry has changed significantly since that time; it is a very generous offer in today's market, and it would make sense to for this Amended Order to repeat those terms.

Mr. Sumner stated that he had no object to the reasonableness of the proposed terms of the lease, but he did object to Luff's failure to engage in a like-minded proposal and negotiation regarding participation.

Hearing Chairman Morris asked the parties to stipulate that Exhibit 3, which is included in the record from the original hearing, will be the terms and conditions relative to the surrender of the leasehold under just terms.

Mr. Sumner stated that insofar as Exhibit 3 addresses the subject of the lease, he would stipulate, however, Exhibit 3 contains additional information regarding a proposed authority for expenditure and cost of drilling equipment but he will not stipulate to the reasonableness of those costs because if the parties cannot agree on those, the Board still has jurisdiction to determine those costs. Mr. Sumner said he would stipulate to the reasonableness of the terms of the lease as found in Exhibit 3.

Mr. Morrison stipulated to terms and conditions of the lease included in Exhibit 3.

Hearing Chairman Morris closed the hearing at 11:10 a.m. CDT.

TRANSFER OF PERMITS 14 AND 444 FROM HILLS MATERIALS COMPANY TO SIMON CONTRACTORS OF SD, INC. DBA HILLS MATERIAL COMPANY: Mr. Holm reported that Hills Materials Company requested transfer of Small Scale Mine Permit No. 444 to Simon Contractors of SD, Inc. dba Hills Materials Company. The general location of the limestone mining operation is Rapid City, SD.

Under SDCL 45-6B-47, any mine permit can be transferred from one operator to another, with the successor operator assuming all reclamation liability. The transfer application, the \$100 transfer fee, and the \$2,500 replacement reclamation bond were all submitted on July 24, 2015. The application was deemed complete on August 26, 2015.

The department recommendation to transfer the permit was prepared on September 23, 2015, and published in the Rapid City Journal on October 1 and 8, 2015. The department has not received an Affidavit of Publication from the Rapid City Journal; however, the department has received confirmation of publication by email.

No intervention petitions were received.

Mr. Holm noted that under SDCL 45-6B-47, the board cannot deny a mine permit transfer unless the operation is not or cannot be brought into compliance with all applicable federal, state, or local laws or the successor operator is in violation of state mining laws or mine permit conditions for any mining operation in the state.

The current mine permit and Simon Contractors of SD Inc. dba Hills Materials Company are in compliance with all federal, state, and local laws and regulations.

The department recommended the board approve the transfer of Small Scale Mine Permit No. 444 from Hills Materials Company to Simon Contractors of SD, Inc. dba Hills Materials Company, release Surety Bond No. 8866122, Fidelity & Deposit Company of Maryland, in the amount of \$2,500, and accept replacement Surety Bond No. 014071182, Liberty Mutual Insurance Company, in the amount of \$2,500.

Mr. Holm answered questions addressing concerns some of the board members expressed regarding reclamation.

Motion by Blumhardt, seconded by Englund, to approve the transfer of Small Scale Mine Permit No. 444 from Hills Materials Company to Simon Contractors of SD, Inc. dba Hills Materials Company, release Surety Bond No. 8866122, Fidelity & Deposit Company of Maryland, in the amount of \$2,500, and accept replacement Surety Bond No. 014071182, Liberty Mutual Insurance Company, in the amount of \$2,500. Motion carried unanimously.

Mr. Holm reported that Hills Materials Company requested transfer of Large Scale Mine Permit No. 14 to Simon Contractors of SD, Inc. dba Hills Materials Company. The general location of the limestone mining operation is Rapid City, SD. Under SDCL 45-6B-47, any mine permit can be transferred from one operator to another, with the successor operator assuming all reclamation liability.

The transfer application, \$100 transfer fee, and \$99,000 replacement reclamation bond were submitted on July 24, 2015. The application was deemed complete on August 26, 2015.

The department recommendation to transfer the permit was prepared on September 23, 2015, and published in the Rapid City Journal on October 1 and 8, 2015. The department has not received an Affidavit of Publication from the Rapid City Journal; however, the department has received confirmation of publication by email.

No intervention petitions were received.

Under SDCL 45-6B-47, the board cannot deny a mine permit transfer unless the operation is not or cannot be brought into compliance with all applicable federal, state or local laws or the successor operator is in violation of state mining laws or mine permit conditions for any mining operation in the state. The current mine permit and Simon Contractors of SD Inc. dba Hills Materials Company are in compliance with all federal, state, and local laws and regulations.

The department recommended the board approve the transfer of Large Scale Mine Permit No. 14 from Hills Materials Company to Simon Contractors of SD, Inc. dba Hills Materials Company, release Surety Bond No. 8881076, Fidelity & Deposit Company of Maryland, in the amount of \$99,000, and accept replacement Surety Bond No. 014071181, Liberty Mutual Insurance Company, in the amount of \$99,000.

Motion by Bullene, seconded by Karpen, to approve the transfer of Large Scale Mine Permit No. 14 from Hills Materials Company to Simon Contractors of SD, Inc. dba Hills Materials Company, release Surety Bond No. 8881076, Fidelity & Deposit Company of Maryland, in the amount of \$99,000, and accept replacement Surety Bond No. 014071181, Liberty Mutual Insurance Company, in the amount of \$99,000. Motion carried unanimously.

IN THE MATTER OF LAC MINERALS (USA) LLC'S PETITION FOR RELEASE OF RECLAMATION LIABILITY, UPDATED RECLAMATION PLAN AND FINANCIAL ASSURANCE, REQUEST TO EXTEND RECLAMATION PERIOD, POST CLOSURE AND FINANCIAL ASSURANCE, AND REQUEST TO RETAIN WATER MANAGEMENT FACILITIES AND ACCESS ROADS: Hearing Chairman Greenfield opened the hearing.

Bob Morris stated in accordance ARSD 74:09:01:21 he would recuse himself from participating due to a potential conflict of interest.

The purpose of the hearing was to consider the petition of LAC Minerals (USA), LLC Richmond Hill Mine petition for release of reclamation obligations, updated reclamation plan and financial assurance, post closure plan and financial assurance, request to extend reclamation period, and request to retain water management facilities and access roads for Mine Permit Nos. 445 and 460.

Hearing Chairman Greenfield stated that originally a hearing on the petition was public noticed and the notice is part of the public record. Following public notice, a petition to intervene was filed by Harlan Schmidt on behalf of Robert Fowler.

At the prehearing conference Mr. Schmidt agreed to voluntarily dismiss the third issue stated in the petition, which was whether the recommendation violates the legal rights of the petitioners in respect to their reversionary property rights.

Also at the prehearing conference briefing schedules were established on the intervenor's two remaining issues, which were whether the landowner had received sufficient notice pursuant to SDCL 45-6B-44 and whether the LAC's request without payment of an application fee is actually a proposed amendment under SDCL 45-6B-18 because it makes minor modifications of the terms and conditions of the reclamation plans.

Following the prehearing conference, the parties submitted briefs and response briefs.

Hearing Chairman Greenfield read and considered the briefs and issued a Memorandum Decision on October 5, 2015. He ruled that Mr. Fowler does not need to be consulted as he is not the current record title holder, and overruled Fowler's objection as to LAC's submission of a response brief as the Hearing Chairman's ruling was not based on the authorities cited by either party and the Board of Minerals and Environment does have jurisdiction.

In the Memorandum Decision Hearing Chairman Greenfield stated that he did not have sufficient information to allow him to rule as a matter of law whether LAC's submissions constitute an amendment such that a filing fee is required. Subsequent to Hearing Chairman Greenfield's

decision, LAC withdrew its updated reclamation plan and the May 28, 2015, letter requesting to extend the reclamation period that were filed in this matter.

Max Main, attorney from Belle Fourche, represented LAC Minerals (USA), Inc.

Steve Blair, Assistant Attorney General, represented the Department of Environment and Natural Resources.

Harlan Schmidt, attorney from Spearfish and representing the intervenor, Robert Fowler, did not appear at the hearing, but he submitted a letter on Mr. Fowler's behalf.

Mr. Main and Mr. Blair offered opening statements.

Hearing Chairman Greenfield stated that neither Mr. Fowler nor Mr. Schmidt appeared except through the letter submitted by Mr. Schmidt, which has been provided to the Board of Minerals and Environment and which will be entered as part of the record.

The following witnesses were administered the oath and testified on behalf of LAC Minerals (USA), Inc.:

Todd Duex, Closure Manager for LAC Minerals
Mark Tieszen, Environmental Manager for LAC Minerals
Ted Cota, Consultant and Senior Project Manager for LAC Minerals

Exhibits offered and admitted into the record for LAC Minerals:

LAC Exhibit 1 – Packet including Todd Duex's resume and slide presentation
LAC Exhibit 2 – Packet including Ted Cota's resume and slide presentation

Witnesses administered the oath and testifying on behalf of the Department of Environment and Natural Resources:

Roberta Hudson, Engineer III
Eric Holm, Engineer III

Exhibit offered and admitted into the record for the Department of Environment and Natural Resources:

DENR Exhibit A – Department's administrative file for LAC Minerals (USA), Inc.
DENR Exhibit B – Notices of recommendation and hearing
DENR Exhibit C – Procedural completeness checklist
DENR Exhibit D – Schmidt/Fowler intervention petition and Notice of Voluntary Dismissal
DENR Exhibit E – PowerPoint slides
DENR Exhibit F – Recommended conditions for LAC Minerals post closure period
DENR Exhibit G – Post closure financial assurance
DENR Exhibit H – Near term reclamation financial assurance
DENR Exhibit I – LAC Minerals reclamation liability release map

Following testimony, Hearing Chairman Greenfield requested board action.

Motion by Hagg, seconded by Bullene, to approve LAC Minerals' petition for release of reclamation obligations for 265.94 acres of reclaimed land under Mine Permit Nos. 445 and 460 and replace LAC Minerals' current \$10,700,000 reclamation bond with a \$61,100 surety bond to cover remaining reclamation. A roll call vote was taken, and the motion carried unanimously.

Motion by Hagg, seconded by Landguth, to release 45.29 acres meeting the post mining land use and surface and ground water quality standards. The reclamation liability for these acres will be released; however, this land will not enter into the post closure period. A roll call vote was taken and the motion carried unanimously.

Motion by Blumhardt, seconded by Karpen, to release 220.65 acres meeting the post mining land use. As these areas require long-term maintenance and monitoring or may be needed for long-term water treatment, upon reclamation release, this acreage will enter into a post closure monitoring and maintenance period. A roll call vote was taken, and the motion carried unanimously.

Motion by Karpen, seconded by Englund, to approve LAC Minerals' post closure plan for approximately 220.65 acres, set a post closure care period at 100 years (2016-2115), and set the post closure financial assurance in the amount of \$19,667,216, subject to the Board's ability to adjust such amounts. A roll call vote was taken, and the motion carried unanimously.

Motion by Landguth, seconded by Hagg, to allow 73.33 acres of roads, buildings, and structures needed for water management to remain throughout the post closure period pursuant to ARSD 74:29:07:12(10) and ARSD 74:29:07:13. A roll call vote was taken, and the motion carried unanimously.

Motion by Englund, seconded by Landguth, to approve LAC Minerals' request to retain the Richmond Hill Access Road, Main Haul Road, Carbonate Road, Spearfish Fire Trail, Rubicon Gulch Access Road, and Limestone Quarry Road, and roads that provide third party access following the completion of water management activities pursuant to ARSD 74:29:07:12(10). A roll call vote was taken, and the motion carried unanimously.

Motion by Hagg, seconded by Blumhardt, to adopt the conditions as set forth in DENR Exhibit F for LAC Minerals post closure period. A roll call vote was taken, and the motion carried unanimously.

Hearing Chairman Greenfield requested that Max Main prepare the proposed Findings of Fact, Conclusions of Law, and Order in this matter consistent with the evidence submitted and the findings made by the Board, and that the Findings of Fact and Conclusions of Law be forwarded to the parties in this matter within the applicable time periods.

Hearing Chairman Greenfield closed the hearing at 3:35 p.m.

South Dakota Board of Minerals & Environment

Consent Calendar

October 15, 2015

<u>License/Permit Holder</u>	<u>License/Permit</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
<u>Transfers of Liability:</u>						
Hills Materials Company Rapid City, SD	83-42		\$20,000	8881210	Fidelity & Deposit Company of Maryland	Transfer liability.
		42003				NE1/4 Section 35 & N1/2 NW1/4 & SW1/4 NW1/4 Section 36; T6N-R3E, Lawrence County
		42004				Section 33 & Section 34; T5S-R4E, Custer County
		42006				N1/2 SW1/4, N1/2 SE1/4 Section 12; T2N-R6E & Lot 3 SW1/4 Section 7; T2N-R7E, Meade County
		42007				S1/2 Section 30; T2N-R7E, Pennington County
		42009				Portion of SW1/4 NE1/4, NW1/4 SE1/4, NE1/4 SE1/4, E1/2 NW1/4 Section 33 & Portion of SW1/4 SW1/4 & SE1/4 SW1/4 Section 28; T2N-R7E, Pennington County
		42013				Section 34; T7S-R6E, N1/2 Section 3 & W1/2 Section 2; T8S- R6E, Fall River County
		42014				Section 11, 14, & NE1/4 SE1/4 Section 10; T7S-R5E, Fall River County
		42020				Tract A NE1/4 SE1/4 & Lot NW-1 SE1/4 SE1/4 Section 6 & Lot NW-2 SW1/4 SW1/4 Section 5; T5N-R5E, Meade County
		42022				Portion of E1/2 Section 18 North of I-90 except N1/2 NE1/4 Section 18; T6N-R3E, Lawrence County
		42027				NE1/4 NE1/4 Section 14; T8S-R6E, Fall River County
Transfer to:						
Simon Contractors of SD, Inc. DBA Hills Materials Company Rapid City, SD	14-977		\$20,000	014069558	Liberty Mutual Insurance Company	

South Dakota Board of Minerals & Environment

Consent Calendar

October 15, 2015

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<u>Exchange of Surety:</u>						
Simon Contractors of SD, Inc. DBA Hills Materials Company Rapid City, SD	14-977		\$20,000	014069558	Liberty Mutual Insurance Company	Exchange Bond No. 014069558, Liberty Mutual Insurance Company, for Bond No. 014071180, Liberty Mutual Insurance Company in the amount of \$20,000.
<u>Release of Surety:</u>						
Dakota Trucking Inc. Wessington Springs, SD	10-899		\$2,500	104967	American Bank & Trust, Wessington Springs	Release \$2,500.
<u>Releases of Liability:</u>						
Allen S. Abbas DBA A & M Trucking Chancellor, SD	02-743		\$500	56308	First National Bank, Pierre	Release liability.
			\$3,000	81888	First National Bank, Pierre	
			\$1,000	6455200	Home Federal Bank, Lennox	
			\$1,000	6444053	Home Federal Bank, Lennox	
			\$1,500	6433105	Home Federal Bank, Lennox	
			\$1,500	6424104	Home Federal Bank, Lennox	
			\$1,500	234349	Reliabank Dakota, Tea	
	743001	West 40 acres of Section 26; T99N-R53W, Turner County				

South Dakota Board of Minerals & Environment

Consent Calendar

October 15, 2015

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<u>Releases of Liability:</u>						
Campbell County Highway Department Mound City, SD	83-237		EXEMPT	NA	NA	Release liability.
		237007	S1/2 Section 11; T126N-R77W, Campbell County			
Hyde County Highway Department Highmore, SD	83-88		EXEMPT	NA	NA	Release liability.
		88001	NE1/4 Section 9; T115N-R73W, Hyde County			
		88002	NW1/4 Section 36; T116N-R72W, Hyde County			
		88005	SE1/4 Section 12; T111N-R72W & SW1/4 Section 7; T111N-R71W, Hyde County			
		88006	NW1/4 Section 11; T109N-R71W, Hyde County			
		88010	NW1/4 Section 32; T111N-R71W, Hyde County			
		88013	SE1/4 Section 4; T115N-R73W, Hyde County			
		88014	NW1/4 Section 17; T112N-R72W, Hyde County			

South Dakota Board of Minerals & Environment

Consent Calendar

October 15, 2015

<u>License/Permit Holder</u>	<u>License/Permit</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Jerauld County Highway Department Wessington Springs, SD	83-80		EXEMPT	NA	NA	Release liability.
		80001	NE1/4 Section 16; T107N-R67W, Jerauld County			
		80039	NW1/4 Section 24; T108N-R66W, Jerauld County			
		80049	SE1/4 Section 23; T106N-R65W, Jerauld County			

South Dakota Board of Minerals & Environment

October 15, 2015

<u>License or Permit Holder</u>	<u>License or Permit Number</u>	<u>Site Number or Legal</u>	<u>Surety Amount</u>	<u>Surety Number</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Exchange of Surety for Wharf Resources (USA) Inc.'s Post Closure Financial Assurance:</u>						
Wharf Resources (USA) Inc. Lead, SD	356, 434, 435, 464, & 476		\$25,000,000	1000967509	US Specialty Insurance Company	Exchange Bond No. 1000967509, US Specialty Insurance Company and Bond No. K09047761, Westchester Fire Insurance Company, for Bond No. SUR0032045, Argonaut Insurance Company, in the amount of \$30,783,000.
			\$5,783,000	K09047761	Westchester Fire Insurance Company	

South Dakota Board of Minerals & Environment

October 15, 2015

<u>License or Permit Holder</u>	<u>License or Permit Number</u>	<u>Site Number or Legal</u>	<u>Surety Amount</u>	<u>Surety Number</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Small Scale Mine Permit :</u>						
Hills Materials Company Rapid City, SD	444		\$2,500	8866122	Fidelity & Deposit Company of Maryland	Transfer Permit 444 to Simon Contractors of SD, Inc. DBA Hills Materials Company and release Bond No. 8866122, Fidelity & Deposit Company of Maryland in the amount of \$2,500. Accept Bond No. 014071182, Liberty Mutual Insurance Company, in the amount of \$2,500.
		Legal:	S1/2 Section 30; T2N-R7E, Pennington County			
Transfer to:						
Simon Contractors of SD, Inc. DBA Hills Materials Company Rapid City, SD			\$2,500	014071182	Liberty Mutual Insurance Company	

South Dakota Board of Minerals & Environment

October 15, 2015

<u>License or Permit Holder</u>	<u>License or Permit Number</u>	<u>Site Number or Legal</u>	<u>Surety Amount</u>	<u>Surety Number</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Large Scale Mine Permit:</u>						
Hills Materials Company Rapid City, SD	14		\$99,000	8881076	Fidelity & Deposit Company of Maryland	Transfer Permit 14 to Simon Contractors of SD, Inc. DBA Hills Materials Company and release Bond No. 8881076, Fidelity & Deposit Company of Maryland in the amount of \$99,000. Accept Bond No. 014071181, Liberty Mutual Insurance Company, in the amount of \$99,000.
		Legal:	Portions of SW1/4 NE1/4, NW1/4 SE1/4, NE1/4 SE1/4, & E1/2 NW1/4 Section 33 & Portions of SW1/4 SW1/4 & SE1/4 SW1/4 Section 28; T2N-R7E, Pennington County			
Transfer to: Simon Contractors of SD, Inc. DBA Hills Materials Company Rapid City, SD			\$99,000	014071181	Liberty Mutual Insurance Company	

South Dakota Board of Minerals & Environment

October 15, 2015

<u>License or Permit Holder</u>	<u>License or Permit Number</u>	<u>Site Number or Legal</u>	<u>Surety Amount</u>	<u>Surety Number</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Request for Partial Release of Reclamation Liability, Updated Reclamation Plan, Approval of Post Closure Plan, Retention of Water Management Facilities and Access Roads, Request to Extend Reclamation Period, and Setting Reclamation and Post Closure Financial Assurance Types and Amounts:</u>						
LAC Minerals (USA), LLC Central City, SD	445 & 460		\$10,700,000	ILOC # P53190T04092	Royal Bank of Canada, Ontario, Canada	
		Legal:	Portions of Sections 10, 11, 14, 15, 22, 23, 26, & 35; T5N-R2E except for 1.76 unreclaimed acres included in the updated reclamation plan and 73.33 unreclaimed acres of roads and facilities needed for water management throughout the post closure period. These acres will not be released until final reclamation has been completed.			Release ILOC #P53190T04092 in the amount of \$10,700,000 in exchange for a financial assurance type in the amount of \$61,100 as reclamation surety and \$19,667,216 as post closure surety.
Department Recommendation:						
<ol style="list-style-type: none"> 1) Approve LAC Minerals' petition for release of reclamation obligations for 265.94 acres of reclaimed land under Mine Permit Nos. 445 and 460 and release LAC Minerals' reclamation financial assurance in the amount of \$10,700,000. 2) Approve LAC Minerals' post closure plan for approximately 220.65 acres under Mine Permit No. 445, set a post closure care period at 100 years (2016 to 2115), and set the post closure financial assurance in the amount of \$19,667,216 in a form acceptable to the Board. 3) Approve LAC Minerals' request to extend the reclamation period for five years for 1.76 unreclaimed acres under Mine Permit No. 445. 4) Approve LAC Minerals' updated reclamation plan for 1.76 unreclaimed acres, and set a new reclamation financial assurance in the amount of \$61,100 in a form acceptable to the Board. 5) Allow 73.33 acres of roads, buildings, and structures needed for water management to remain throughout the post closure period. 6) Grant LAC Minerals' request to retain the Richmond Hill Access Road, Main Haul Road, Carbonate Road, Spearfish Fire Trail, Rubicon Gulch Access Road, and Limestone Quarry Road following the completion of water management activities. 						