

PETITION TO INTERVENE  
IN THE MATTER OF LAC MINERALS (USA), LLC, RICHMOND HILL MINE  
PETITION FOR RELEASE OF RECLAMATION OBLIGATIONS, UPDATED  
RECLAMATION PLAN AND FINANCIAL ASSURANCE, POSTCLOSURE 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

**Petition:**

Comes now Harlan A. Schmidt, attorney for Petitioner Robert G. Fowler and personally, and petitions to contest the Department's recommendation.

This petition is conditional in that Notice was only served a few business days before the deadline to file this petition. As a result, petitioners have not had reasonably sufficient time to investigate either the facts or the issues, despite the generous cooperation of the Department and LAC this week.

Your petitioner states that this petition may be withdrawn in whole or in part depending upon the results of petitioners' legal and factual investigations. Presently, petitioners' exclusive interest is that LAC use its best efforts and good faith to preserve and enhance the value of Fowler's reversionary interest, leaving in place as much improvements such as roads, wells and utilities as may be reasonable.

**Statement of interest:**

Robert Fowler is 80 years of age, infirm and legally blind. In the late 1960s and early 1970s, Fowler, a forty-some year old father of five small children quit his job selling clothes in a Wyoming clothing store and moved his family to a cabin in the Hills. There Fowler spent years sampling ore in the dozen or so old mines at the former Carbonate Mining Camp. After Fowler found rich deposits, he was befriended by the faculty at the School of Mines. The efforts became more sophisticated. Fowler found a way to form a publicly traded corporation (Dakota Minerals, Inc.) economically and raised \$5.5 million in public offerings, all of which was dedicated to exploration and to accumulating the 944 acres in Richmond Hill. Dakota Minerals successor, Viable Resources, entered into the first of the three or four mining agreements with St. Joe American Corporation, the first of the many entities whose interests in Richmond Hill now repose in LAC. Eventually, Fowler acquired the interests of Viable. Fowler's claim to the reversionary rights to the 944 acres was contested by LAC. After extensive litigation, Fowler's reversionary rights to the property when no longer needed for mining were confirmed in federal district court and affirmed by the 8<sup>th</sup> Circuit Court of Appeals. Dakota Minerals', Viable's and then Fowler's 944 acres were never mined and never received any mining proceeds because LAC's predecessors consolidate those 944 acres with adjacent claims owned by them. Mining commenced only on the other land. The Operator used Fowler's 944 acres only for processing.

Therefore, with no mining benefits, those 944 acres became burdened with the processing site and its problems, mainly being the leach pads and the settling ponds. The mine site is on the adjacent property, not on the 944 acres accumulated by Fowler.

**Statement of the elements contested and reference to statutes involved:**

The issues which concern petitioners are three-fold. First, whether the Department has jurisdiction to conduct this hearing where LAC failed to comply with the provisions of SDC 45-6B-44 requiring it, as a precondition, to "confer" with landowners? Secondly, whether 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"? Thirdly, whether the recommendation violates the legal rights of petitioners in respect to their reversionary property rights?

By way of clarification, the first issue may be dispositive, because the sole motivating factor in electing to file this petition to intervene was the hope on Fowler's part that LAC would come to realize that it should "consult" in good faith with Fowler, as required by statute. The second two issues only mature, as here, when and if the resulting consultation results in a recommendation which Fowler perceives to be unwarranted.

**Statement of relevant facts and issues known to petitioner upon which the contest or request of the board is based:**

Upon information and belief, LAC has removed wells and roads and is proposing the removal of additional improvements, all without consulting with your petitioners, as is required by SDCL 45-6B-44.

**Relief sought:**

Summary entry of an order, without further hearing, postponing this hearing and requiring compliance with the statutory requirement that LAC confer with petitioners as landowners prior to further proceedings.

Alternatively, petitioners have been given only a few work days notice of the pendency of this hearing. Petitioners are entitled to more notice. This is a massive filing such that petitioners need preparation time in excess of the now existing schedule for hearings.

Therefore, alternatively, petitioners move that this hearing be postponed for sixty days.

Dated this 13<sup>th</sup> day of August, 2015.



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Harlan A. Schmidt, attorney for Robert G.  
Fowler  
POB 1048  
Spearfish, SD 57783  
605-645-2118



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Harlan A. Schmidt

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MINERALS & MINING PROGRAM

CERTIFICATE OF SERVICE  
IN THE MATTER OF LAC MINERALS (USA), LLC, RICHMOND HILL MINE  
PETITION FOR RELEASE OF RECLAMATION OBLIGATIONS, UPDATED  
RECLAMATION PLAN AND FINANCIAL ASSURANCE, POSTCLOSURE PLAN  
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Petitioners' Petition to Intervene was served Thursday, August 13, 2015 by FAX to the Department of Environment and Natural Resources to 605-773-5286, by email to Mike Cepak at Mike.Cepak@state.sd.us and to Max Main representing LAC at [max@bellelaw.com](mailto:max@bellelaw.com) and to the following by first class mail:

Steven M. Pirner, Secretary, Department of Environment and Natural Resources, Joe Foss Building, 523 E Capitol, Pierre, SD 57501.

Mike Cepak, Department of Environment and Natural Resources, Joe Foss Building, 523 E Capitol, Pierre, SD 57501.

Max Main, 618 State Street, Belle Fourche, SD 57717.

Dated this 13<sup>th</sup> day of August, 2015.

  
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Harlan Schmidt, Attorney for Robert G.  
Fowler and personally