



Board of Minerals and Environment

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3151 Fax: (605)773-4068

AGENDA

Board of Minerals and Environment
Telephone Conference Call Meeting

March 16, 2017
10:00 a.m. CDT

Live audio of the meeting can be heard at <http://www.sd.net/mtc>

10:00 a.m. Call meeting to order and roll call

Approval of minutes from the January 19, 2017, meeting

Mining issues:

- Consent Calendar – Tom Cline
- Annual Update of Post Closure Financial Assurance for LAC Minerals (USA), LLC, Mine Permit 445 – Eric Holm

Findings of Fact, Conclusions of Law, and Order in the matter of the contested enforcement hearing for Quartz Operations, LLC, Northern Points 1 Well; DENR petition to revoke permit and petition to forfeit surety (O&G Permit No. 2026)

Next meeting

Adjourn

A limited number of phone lines are available for this call. Interested parties who wish to participate in the telephone conference call should contact DENR at (605)773-3886 no later than 3:00 p.m. CDT on Wednesday, March 15, 2017. Interested parties may also participate at the Department of Environment and Natural Resources, Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, SD.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the meeting if you have a disability for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-4216.

Board members are reminded that effective July 1, 2016, members are subject to SDCL 3-23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

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

January 19, 2017
10:00 a.m. CT

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. He appointed Dennis Landguth as secretary pro tem. The secretary called the roll and Chairman Hagg declared that a quorum was present.

BOARD MEMBERS PRESENT: Rex Hagg, Dennis Landguth, Doyle Karpen, Daryl Englund, Pete Bullene, and Bob Morris.

BOARD MEMBER ABSENT: Gregg Greenfield, Glenn Blumhardt and Linda Hilde.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM NOVEMBER 17, 2016, MEETING: Motion by Karpen, seconded by Landguth, to approve the minutes from the November 17, 2016, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

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

Tom Cline, DENR Minerals and Mining Program, answered questions from the board regarding the Weatherton Contracting Co., Inc. transfer of liability and release of liability.

Motion by Englund, seconded by Morris, to accept the department recommendations for transfers of liability and release of liability listed on the consent calendar. A roll call vote was taken, and the motion carried unanimously.

SAND, GRAVEL, AND CONSTRUCTION AGGREGATE MINING GENERAL

INFORMATION: Mike Erickson, DENR Minerals and Mining Program, provided a PowerPoint presentation on general information about sand, gravel, and construction aggregate mining in South Dakota. Mr. Erickson answered questions from the board.

A court reporter was present for the following three contested case hearings, and a copy of the transcript may be obtained by contacting Cheri M. Wittler, Precision Reporting, 113 South Main Street, PO Box 232, Onida, South Dakota 57564, telephone number: 605-258-2678.

CONTESTED CASE HEARING IN THE MATTER OF THE PETITION FILED BY DENR FOR FORFEITURE OF WESTERN SURETY COMPANY (CNA SURETY) BOND NO. 141551847 ISSUED FOR STATE MINE LICENSE 88-364 FOR WEATHERTON CONTRACTING CO., INC.: Chairman Hagg opened the hearing.

Rich Williams, Deputy Attorney General, appeared on behalf of the Department of Environment and Natural Resources.

No one appeared on behalf of Weatherton Contracting Co., Inc.

Tom Cline, DENR Minerals and Mining Program, was administered the oath by the court reporter and testified regarding the surety forfeiture.

Mr. Cline stated that Mine License 88-364 was issued to Weatherton Contracting Co., Inc. on April 11, 1988. Weatherton Contracting Co., Inc. was issued Surety Bond No. 141551847 in the amount of \$20,000 by Western Surety Company, Minneapolis, MN, for statewide mining activities. Weatherton Contracting Co., Inc. conducted mining operations at 66 sites in 19 counties within the state of South Dakota.

In 2007, DENR conducted inspections of the sites licensed under Mine License 88-364 and indicated that approximately 413 acres were not reclaimed at that time. To date, some of those sites have been reclaimed and have been released of liability.

In March and April 2010, the Department of Environment and Natural Resources sent letters to Weatherton Contracting Co., Inc. indicating that the company had not submitted annual reports and fees as required by SDCL 45-6.

On May 20, 2010, Chris Nelson, Secretary of State, issued a Certificate of Administrative Dissolution of Weatherton Contracting Co. Inc., for failure to file the annual report when due.

The Department of Environment and Natural Resources issued a Notice of Violation to Weatherton Contracting Co. Inc., on August 31, 2010. The company did not respond to the Notice of Violation, therefore, Mine License No. 88-364 was revoked on October 13, 2010.

Weatherton Contracting Co., Inc. has not conducted mining activities at these locations since 2010. Under their revocation, 26 sites remain unreclaimed. Forty sites have been released of liability and are now inactive.

Mr. Cline provided a PowerPoint presentation showing photographs of six mine sites, which total 200 unreclaimed acres. He answered questions from the board.

Mr. Williams offered DENR Exhibit 1, a copy of the agency file for Weatherton Contracting Co., Inc. and DENR Exhibit 2, a copy of Mr. Cline's PowerPoint presentation.

The following exhibits were also offered, which are included within DENR Exhibit 1:

Exhibit 1A – Petition for Forfeiture of Surety

Exhibit 1B – Notice of Hearing on Petition for Forfeiture of Surety

Exhibit 1C – Mine License 88-364 issued to Weatherton Contracting Co., Inc.

Exhibit 1D – Assumption of Liability Certificate

Exhibit 1E – March 1, 2010, letter to Weatherton Contracting Co., Inc. from Robert Townsend, Minerals and Mining Program, regarding the annual license fee and annual report forms being 30 days past due

Exhibit 1F – April 9, 2010, letter to Weatherton Contracting Co., Inc. from Robert Townsend, Minerals and Mining Program, regarding the annual license fee and annual report forms being 60 days past due

Exhibit 1G – Certificate of Administrative Dissolution executed by Chris Nelson, Secretary of State

Exhibit 1H – August 31, 2010, letter to Weatherton Contracting Co., Inc. from DENR Secretary Steven M. Pirner issuing a Notice of Violation and Notice of Revocation of Mine License

Exhibit 1I – October 12, 2016, letter to Rich Williams, Deputy Attorney General, from Mark S. McKibbin, authorized representative of Western Surety Company, acknowledging receipt of the Petition for Forfeiture of Surety and advising that Western Surety Company would not oppose the forfeiture request

Exhibit 1J – Amended Notice of Hearing on Petition for Forfeiture of Surety

The exhibits were accepted into the record.

Following Mr. Cline's presentation, Chairman Hagg made a verbal ruling that based on the petition for forfeiture of surety and that there was no response made by Weatherton Contracting Co., Inc., they defaulted in regard to the petition. Chairman Hagg further ruled that based on the evidence presented, the Western Surety bond in the amount of \$20,000 would be forfeited and the proceeds transferred to the Department of Environment and Natural Resources for performance of reclamation activities to the extent feasible.

Motion by Morris, seconded by Karpen to affirm Chairman Hagg's verbal ruling and to adopt the Findings of Fact, Conclusions of Law, and Order in the matter of forfeiture of Western Surety Company (CNA Surety) Bond No. 141551847 issued to Weatherton Contracting Co., Inc. for State Mine License 88-364 declaring the surety forfeited and transferring the \$20,000 to the Department of Environment and Natural Resources, Mined Land Reclamation Fund. A roll call vote was taken, and the motion carried unanimously.

Chairman Hagg declared the hearing closed.

CONTESTED CASE HEARING IN THE MATTER OF THE PETITION FILED BY DENR FOR FORFEITURE OF CERTIFICATES OF DEPOSIT NOS. 65314 AND 85362, FIRST NATIONAL BANK, PIERRE, SD, ISSUED FOR STATE MINE LICENSE 93-507 FOR JAMES P. WENANDE TRUCKING: Chairman Hagg opened the hearing.

Rich Williams, Deputy Attorney General, appeared on behalf of the Department of Environment and Natural Resources.

No one appeared on behalf of James P. Wenande Trucking.

Mr. Williams noted that he spoke by phone with Gina Schutzle, First National Bank, and she verbally indicated that the bank would not contest the forfeiture and would not be doing the reclamation.

Tom Cline, DENR Minerals and Mining Program, was administered the oath by the court reporter earlier in the day. He testified regarding the surety forfeiture for James P. Wenande Trucking.

Chairman Hagg stated that the board would take judicial notice of Mr. Cline's testimony in the previous matter and accept that testimony to the extent relevant to this matter.

Mr. Cline testified that Mine License 93-507 was issued to James P. Wenande Trucking on December 1, 1993. The department received no response to the Notice of Violation and Petition for Forfeiture of Surety. Mine License 93-507 was revoked November 23, 2015.

Mr. Cline presented a PowerPoint presentation and stated that mining was last conducted at Site 507001 in 2006. He showed photos of the site which is approximately 1.7 acres. Mr. Cline stated that there is approximately 400 feet of linear high wall that is 10 to 15 feet high which needs to be regraded. The topsoil pile would also need to be spread and revegetated. The cost of reclamation is estimated at \$3,000 to \$5,000 per acre; however, additional costs would be involved in the reclaiming of the high walls.

Mr. Cline answered questions from the board.

Board discussion took place regarding collecting the accrued interest on the forfeited CD.

Mr. Williams stated that SDCL 45-6-71 sets the surety amount at \$500 per affected acre or \$20,000 statewide. Mr. Williams noted that there may be other avenues to collect the additional monies, but for today's purposes, the department was only requesting the stated surety amount.

Mr. Williams offered DENR Exhibit 1, a copy of the agency file for James P. Wenande Trucking, and Exhibit 2, a copy of Mr. Cline's PowerPoint presentation.

The following exhibits were also offered, which are included within DENR Exhibit 1:

- Exhibit 1A – Amended Petition for Forfeiture of Surety
- Exhibit 1B – Amended Notice of Hearing on Petition for Forfeiture of Surety
- Exhibit 1C – Mine License 93-507 issued to James P. Wenande Trucking
- Exhibit 1D – Certificate of Deposit No. 65314 in the amount of \$500 issued by First National Bank, Pierre, SD, for Mine License 93-507

Exhibit 1E – Certificate of Deposit No. 85362 in the amount of \$500 issued by First National Bank, Pierre, SD, for Mine License 93-507

Exhibit 1F – May 15, 2014, letter to Tom Cline from Don Wenande, Executor of the James P. Wenande Estate, requesting that Mine License 93-507 be closed and that the bond be forfeited for reclamation of the mine site

Exhibit 1G – Note from Don Wenande referring to his May 15, 2014, letter and stating that he had no intention of remitting the \$100 mine license fee

Exhibit 1H – October 26, 2105, letter to Don Wenande from Secretary Pirner issuing a Notice of Violation and License Revocation of Mine License

Exhibit 1I – Seconded Amended Notice of Hearing on Petition for Forfeiture of Surety

The exhibits were accepted into the record.

Following Mr. Cline's presentation, Chairman Hagg made a verbal ruling that based on the petition for forfeiture of surety and that there was no response made by James P. Wenande Trucking, they defaulted in regard to the petition. Chairman Hagg further ruled that based on the evidence presented, the two Certificates of Deposit totaling \$1,000 issued by First National Bank, would be forfeited and the proceeds transferred to the Department of Environment and Natural Resources for performance of reclamation activities to the extent feasible.

Motion by Englund, seconded by Landguth to affirm Chairman Hagg's verbal ruling, and to adopt the Findings of Fact, Conclusions of Law, and Order in the matter of forfeiture of First National Bank Certificates of Deposit Nos. 65314 in the amount of \$500.00 and 85362 in the amount of \$500 for State Mine License 93-507 for James P. Wenande Trucking, declaring the surety forfeited and transferring the \$1,000 to the Department of Environment and Natural Resources, Mined Land Reclamation Fund.

Mr. Morris suggested that the Findings of Fact, Conclusions of Law, and Order be amended to collect the principal amount plus accrued interest to date for forfeited Certificates of Deposit, if legally possible. He stated that when the operator makes the decision to submit a Certificate of Deposit as surety, the Certificate of Deposit grows according to the terms of the Certificate of Deposit. Mr. Morris said he believes when the Certificate of Deposit is forfeited, it should include all accrued interest, which would help with the ultimate reclamation of the site and minimize the cost to the state.

Mr. Williams stated that SDCL 45-6-71 speaks to revocation of the surety amount only. It does not take into account whether the surety is a certificate of deposit, surety bond, or cash.

Chairman Hagg stated that the last sentence in SDCL 34A-10-2.2 states that interest earned on any bond or deposit made under § 34A-10-2.1 shall be returned annually to the person required to provide the bond.

Charles McGuigan, Chief Deputy Attorney General, stated that the board does not have the authority to take any interest that may have been earned absent a prior agreement. On occasion the board has, as a condition of the financial assurance, stated that any interest earned would be rolled over into the principal amount. That is done by a separate agreement or is specifically stated within

the Order establishing the financial assurance amount. Absent that type of agreement, the board does not have the authority or ability to capture the earned interest.

Mr. Morris stated that he would withdraw his suggestion. He called for the question.

A roll call vote was taken, and the motion carried unanimously.

Chairman Hagg closed the hearing.

CONTESTED CASE HEARING IN THE MATTER OF THE PETITION FILED BY DENR FOR FORFEITURE OF CERTIFICATES OF DEPOSIT NOS. 3761 AND 4403, FIRST INTERSTATE BANK, BELLE FOURCHE, SD, ISSUED FOR STATE MINE LICENSE 86-339 FOR DAKOTA SAND AND GRAVEL, INC.: Chairman Hagg opened the hearing.

Rich Williams, Deputy Attorney General, appeared on behalf of the Department of Environment and Natural Resources.

No one appeared on behalf of Dakota Sand and Gravel, Inc.

Bob Morris stated that he was willing to recuse himself from participating in the matter because the branch manager of First Interstate Bank, Belle Fourche, SD, is the husband of his paralegal.

Responding to a question from Chairman Hagg, Mr. Williams stated that Mike Tyndall, manager of First Interstate Bank (formerly known as First Western Bank), submitted a letter to the Attorney General's Office stating that the bank would not contest the surety forfeiture.

Chairman Hagg stated that since there was no objection to the surety forfeiture, he did not see the need for Mr. Morris to recuse himself.

Tom Cline, DENR Minerals and Mining Program, was administered the oath by the court reporter earlier in the day. He testified regarding the surety forfeiture.

Chairman Hagg stated that the board would take judicial notice of Mr. Cline's testimony in the previous matters and accept that testimony to the extent relevant to this matter.

Mr. Cline stated that Mine License 86-339 was issued to Dakota Sand and Gravel, Inc. on December 29, 1986. The department received no response to the Notice of Violation and Petition for Forfeiture of Surety.

Mr. Cline presented a PowerPoint presentation and stated that mining was last conducted in four different locations, three in Butte County and one in Lawrence County. Three of the four sites have been released from liability by the Board of Minerals and Environment.

Mr. Cline stated that Site 339003 had not been released from liability. Mining was last conducted at this site in 2010. Mr. Cline noted that the mine license was revoked on January 28, 2016.

Mr. Cline showed photos of Site 339003, which is approximately 1.9 acres. Approximately 500 linear feet of high wall that is five to eight feet high remains to be regraded and have the topsoil pile spread and revegetated. Mr. Cline reiterated the reclamation costs of \$3,000 to \$5,000 per acre, with additional costs involved for reclamation of high walls.

Mr. Williams offered DENR Exhibit 1, a copy of the agency file for Dakota Sand and Gravel, and Exhibit 2, a copy of Mr. Cline's PowerPoint presentation.

The following exhibits were also offered, which are included within DENR Exhibit 1:

Exhibit 1A – Petition for Forfeiture of Surety

Exhibit 1B – Notice of Hearing on Petition for Forfeiture of Surety

Exhibit 1C – Mine License 86-339 issued to Dakota Sand and Gravel, Inc.

Exhibit 1D – Certificate of Deposit No. 3761 in the amount of \$500 issued by First Interstate Bank (formerly known as First Western Bank), Belle Fourche, SD, for Mine License 86-339

Exhibit 1E – Certificate of Deposit No. 4403 in the amount of \$500 issued by First Interstate Bank (formerly known as Frist Western Bank), Belle Fourche, SD, for Mine License 86-339

Exhibit 1F – Note from Douglas Falzerano, Personal Representative for the Estate of Alvin Falzerano, stating that the Estate had no intention of mining

Exhibit 1G – January 27, 2016, letter from Douglas Falzerano stating that the Estate had no intention of mining

Exhibit 1H – December 23, 2015, letter to Douglas Falzerano from Secretary Pirner issuing a Notice of Violation and License Revocation of Mine License

Exhibit 1I – October 31, 2016, letter from First Interstate Bank stating the bank would not be contesting the petition for surety forfeiture

Exhibit 1J – Amended Notice of Hearing on Petition for Forfeiture of Surety

The exhibits were accepted into the record.

Mr. Cline answered questions from the board.

Chairman Hagg noted that the exhibits show that the total amount of the Certificates of Deposit exceeded \$1,000.

Mr. Williams stated that the amount in excess of \$1,000 reflects the accrued interest, which will go back to the estate of Mr. Falzerano.

Chairman Hagg stated that the Certificates of Deposit were held jointly in the names of Dakota Sand and Gravel, Inc. and the Department of Environment and Natural Resources. He stated that one of the certificates included a note that there was a joint survivor interest, so the question of whether the state is entitled to the accrued interest is revisited. Chairman Hagg said he wondered if there was consent by the estate to pay that as opposed to making an additional claim for reclamation funds. He asked whether that would take a separate action?

Mr. Williams stated that it would take a separate action based on the statutes that were cited during the previous hearing.

Chairman Hagg asked if Dakota Sand and Gravel was still a viable corporation?

Mr. Williams answered that the department's file did not contain a Certificate of Dissolution for Dakota Sand and Gravel, Inc.

Chairman Hagg said an inquiry should be made as to whether any interest on the Certificates of Deposit would be conceded and paid voluntarily to help with the cost of the reclamation.

Following Mr. Cline's presentation, Chairman Hagg made a verbal ruling that based on the petition for forfeiture of surety and that there was no response made by Dakota Sand and Gravel, Inc., they defaulted in regard to the petition. Chairman Hagg further ruled that based on the evidence presented, the two Certificates of Deposit totaling \$1,000 issued by First Interstate Bank, would be forfeited and the proceeds transferred to the Department of Environment and Natural Resources for performance of reclamation activities to the extent feasible.

Motion by Karpen, seconded by Bullene, to affirm Chairman Hagg's verbal ruling and to adopt the Findings of Fact, Conclusions of Law, and Order in the matter of forfeiture of First Interstate Bank Certificates of Deposit Nos. 3761 in the amount of \$500.00 and 4403 in the amount of \$500 for State Mine License 86-339 for Dakota Sand and Gravel, Inc., declaring the surety forfeited and transferring the \$1,000 to the Department of Environment and Natural Resources, Mined Land Reclamation Fund. A roll call vote was taken, and the motion carried unanimously.

Chairman Hagg closed the hearing.

UPDATE ON POWERTECH (USA), INC. APPLICATION FOR LARGE SCALE MINE PERMIT NO. 480 (DEWEY-BURDOCK PROJECT): Chairman Hagg stated this matter was essentially placed on hold by the Board of Minerals and Environment until the federal government acts in their various capacities to make determinations. It was determined by the board chair at that time, that the state couldn't fully fulfill its obligation without knowing the determination of some of the federal issues.

Charles McGuigan, Chief Deputy Attorney General, reported that in November 2013 the Board of Minerals and Environment issued a stay for the matter pending Powertech's applications for a source and byproduct material license from the United States Nuclear Regulatory Commission and also an aquifer exemption and underground injection control Class III and Class V permit from the United States Environmental Protection Agency.

The Nuclear Regulatory Commission has held some hearings on the source and byproduct material license. On December 23, 2016, the Nuclear Regulatory Commission issued an opinion, which dismissed five of the seven contentions that were pending before the commission. There are still two contentions pending before the Nuclear Regulatory Commission. One deals with consultation with the tribes and the survey that was conducted for cultural and historical resources within the property boundaries. The other contention deals with the boreholes that exist in the area and how they will be remediated.

The Environmental Protection Agency hasn't taken any action regarding the aquifer exemption and underground injection control permit. In addition, the Board of Minerals and Environment also conditioned the stay on action by the Water Management Board. The Water Management Board has not held any further hearings on this matter.

CONTESTED ENFORCEMENT HEARING IN THE MATTER OF QUARTZ OPERATIONS, LLC, NORTHERN POINTS 1 WELL; DENR PETITION TO REVOKE PERMIT AND PETITION TO FORFEIT SURETY (O&G PERMIT NO. 2026): A court reporter was present for this hearing and a transcript was prepared. A copy of the transcript may be obtained by contacting Cheri Wittler, Precision Reporting, PO Box 232, Onida, South Dakota 57564, telephone number: 605-258-2678.

The original transcript is filed at the Department of Environment and Natural Resources office in Pierre, SD. Please refer to the transcript for the proceedings of this hearing.

Hearing Chairman Bob Morris opened the hearing.

In October 2016, the Department of Environment and Natural Resources, Minerals and Mining Program, petitioned the Board of Minerals and Environment for a contested enforcement hearing regarding the potential revocation of Quartz Operations, LLC's permit to drill at the Northern Points 1 well site (O&G Permit No. 2026), and potential forfeiture of surety associated with Permit No. 2026. The petition was filed pursuant to SDCL 1-26, SDCL 45-9, ARSD 74:09, and ARSD 74:12.

Steve Blair, Assistant Attorney General, appeared on behalf of the Department of Environment and Natural Resources.

Lance Shurtleff, attorney from Laramie, WY, and Mark Eske, attorney from Sioux Falls, SD, appeared on behalf of Quartz Operations, LLC.

Hearing Chair Morris noted that Charles "Tom" Patterson, attorney from Custer, SD was present in the audience. Mr. Patterson represented Woodford Construction Co., Inc. in the matter of Quartz Operations, LLC surety bond: 2015 partial disbursement request (O&G 2-2015). Chairman Hagg was the hearing chair for that matter, and based upon the Findings of Fact and Conclusions of Law, Chairman Hagg Ordered the following:

1. DENR's Motion of Judgement as a matter of law is granted;
2. Woodford's Petition Initiating a Contested Case is dismissed without prejudice; and
3. The Petition of Richard Davis, allowed by intervention, is also dismissed without prejudice.

Hearing Chair Morris stated that today the Board of Minerals and Environment received a Notice of Levy in Hughes County Small Claims concerning Woodford Construction Co. Inc., Charles Patterson, attorney, versus Quartz Operations, LLC. Hearing Chair Morris acknowledged for the record receipt and service of that Notice of Levy.

Mr. Patterson stated that he was present at the November 2016 Board of Minerals and Environment meeting in Pierre because he thought there was going to be a hearing, but that hearing was continued to today. Mr. Patterson said he had been apprised by DENR's counsel, Steve Blair, that a Motion for Intervention would not be allowed because of the nature of this hearing, and because of the position that Mr. Blair had taken, Mr. Patterson said he had not sought to intervene in the proceedings, but that he was present to hear the evidence. Mr. Patterson said any objections that he might have to the proceedings or exhibits would be reserved for a later time during a different proceeding.

Steve Blair offered the following on behalf of DENR. The exhibits were accepted into the record.

- Exhibit 1 – DENR Minerals and Mining Program file regarding Quartz Operations, LLC, Northern Points 1 (NP1) Well
- Exhibit 2 – Mike Lees curriculum vitae
- Exhibit 3 – Permit and permit conditions for NP1 Well
- Exhibit 4 – Certificate of Deposit No. 205428
- Exhibit 5 – Certificate of Deposit No. 207486
- Exhibit 6 – Sundry notice and report on wells dated 4/17/2013
- Exhibit 7 – Sundry notice and report on wells dated 5/7/2013
- Exhibit 8 – Diagram: Downhole overview of NP 1 Well – drilling the hole
- Exhibit 9 – Diagram: downhole overview of NP1 Well – required plugs
- Exhibit 10 – Diagram: downhole overview of NP1 Well – actual state of abandoned well
- Exhibit 11 – Map: wells producing from Inyan Kara Aquifer in vicinity of NP1 Well
- Exhibit 12 – Map: total dissolved solids Minnelusa Aquifer vs. Inyan Kara Aquifer in western South Dakota
- Exhibit 13 – Map: estimated maximum extent impact in Inyan Kara Aquifer – 4-mile scale
- Exhibit 14 – Map: estimated maximum extent impact to Inyan Kara Aquifer – 1-mile scale
- Exhibit 15 – Mike Lees PowerPoint presentation
- Exhibit 16 – Derric Isles curriculum vitae
- Exhibit 17 – Velocity of lateral ground water flow calculation
- Exhibit 18 – Atlantic 1 Knoll State log excerpt
- Exhibit 19 – SDCL 45-9-15
- Exhibit 20 – ARSD 74:12:03:02(4)(a)(i)
- Exhibit 21 – Affidavit of Natali Ormiston dated January 18, 2017

Mr. Blair and Mr. Shurtleff presented opening statements.

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

Mike Lees, DENR Minerals and Mining Program, and Derric Isles, DENR SD Geological Survey

Leon Somsen was administered the oath and testified on behalf of Quartz Operations, LLC.
Mr. Blair and Mr. Shurtleff presented closing statements.

Hearing Chair Morris made a verbal ruling that Quartz Operations, LLC does not contest revocation of O&G Permit No. 2026, that the permit is revoked for failure to comply with the terms and conditions of the permit and the applicable statutes and administrative rules, that Quartz Operations, LLC does not contest the forfeiture of the two Certificates of Deposit, and that the two Certificates of Deposit totaling \$130,000 are forfeited to the State of South Dakota, and that DENR staff is instructed to carry out all activities necessary to transfer the proceeds from the Certificates of Deposit to the DENR.

Motion by Hagg, seconded by Karpen, to affirm Hearing Chair Morris' rulings. A roll call vote was taken, and the motion carried unanimously.

Mr. Blair will prepare the proposed Findings of Fact, Conclusions of Law, and Order, and the board will consider adoption at the next meeting.

NEXT MEETING: The next meeting will be March 16, 2017.

ADJOURN: Motion by Morris, seconded by Englund, that the meeting be adjourned. A roll call vote was taken, and the motion carried unanimously.

Secretary

Date

Witness

Date

**South Dakota Board of Minerals & Environment
Consent Calendar**

						<i>January 19, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Release of Surety:</u>						
Mike or Norma Beeson Dante, SD	96-571		\$7,000	48922	Commercial State Bank, Wagner	Release \$7,000.
Russell Olson Murdo, SD	92-469		\$3,000	ILOC No. 2008-01	Dakota Prairie Bank, Draper	Release \$3,000.
<u>Release of Liability and Surety:</u>						
Wheeler Farms Inc. Brookings, SD	95-567		\$6,000	1103514	Boston Indemnity Company	Release liability and \$6,000.
		567001	N1/2 NE1/4 Section 12; T110N-R49W, Brookings County			
<u>Transfer of Liability and Release of Surety:</u>						
North American Mining Co. Custer, SD	11-930		\$1,000	7201000908	First Interstate Bank, Custer	Transfer liability and release \$2,000.
			\$1,000	7201001282	First Interstate Bank, Custer	
		930001	SW1/4 Section 7; T5S-R5E, Custer County			
Transfer to:						
Pacer Corporation Custer, SD	88-370		\$20,000	SUR20000678	Iron Shore Indemnity Inc.	

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>January 19, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Liability:</u>						
Duininck Bros. Inc. Prinsburg, MN	06-835		\$20,000	929529702	National Fire Insurance Company of Hartford	Transfer liability.
		835003	SW1/4 Section 12, NW1/4 Section 13, & NE1/4 Section 14; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	190-002-030	Liberty Mutual Insurance Company	Transfer liability.
		54121	NW1/4 Section 13; T126N-R71W, McPherson County			
		54134	NE1/4 Section 11; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>January 19, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Liability:</u>						
Jensen Rock & Sand Inc. Mobridge, SD	83-112		\$20,000	41-16-48	New Hampshire Insurance Company	Transfer liability.
		112040	NW1/4 Section 13; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	
McPherson County Highway Department County Leola, SD	83-41		EXEMPT	NA	NA	Transfer liability.
		41029	NW1/4 Section 13; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>January 19, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Liability:</u>						
Morris Inc. Pierre, SD	83-2		\$20,000	037 S 103597878	Travelers Casualty & Surety Company of America	Transfer liability.
		2043	NW1/4 Section 33; T120N-R74W, Potter County			
Transfer to:						
Potter County Highway Department Gettysburg, SD	83-147		EXEMPT	NA	NA	
Weatherston Contracting Co., Inc. Beresford, SD	88-364		\$20,000	141551847	Western Surety Company	Transfer liability.
		364047	E1/2 NW1/4 & NE1/4 Section 12; T94N-R56W, Yankton County			
Transfer to:						
Concrete Materials Sioux Falls, SD	83-144		\$20,000	55-194372	United Fire & Casualty Company	
<u>Release of Liability:</u>						
Mike Ford Redfield, SD	98-639		\$-0-	NA	NA	Release liability.
		639003	NE1/4 Section 29; T115N-R65W, Spink County			

***South Dakota Board of Minerals & Environment
Consent Calendar***

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<i>January 19, 2017</i> <u>DENR Recommendation</u>
<u>Release of Liability:</u>						
Herrick Services Roslyn, SD	98-641	641002	\$-0-	NA	NA	Release liability.
		NE1/4 Section 1; T123N-R53W, Day County				
Weatherston Contracting Co., Inc. Beresford, SD	88-364	364049	\$20,000	141551847	Western Surety Company	Release liability.
		NW1/4 Section 26; T4S-R7E, Custer County				

South Dakota Board of Minerals & Environment

Contested Cases – Surety Forfeitures

January 19, 2017

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Surety Forfeitures:</u>						
James P. Wenande Trucking Alexandria, SD	93-507		\$500 \$500	65314 85362	First National Bank,, Pierre	Declare CD Nos. 65314 and 85362, First National Bank, Pierre, forfeited and transfer \$1,000 to the Mined Land Reclamation Fund.
		507001	SE1/4 Section 17; T102N-R58W, Hanson County			
Dakota Sand & Gravel, Inc. Belle Fourche, SD	86-339		\$500 \$500	3761 4403	First Interstate Bank, Belle Fourche First Interstate Bank, Belle Fourche	Declare CD Nos. 3761 and 4403, First Interstate Bank, Belle Fourche, forfeited and transfer \$1,000 to the Mined Land Reclamation Fund.
		339003	E1/2 NW1/4 Section 9; T8N-R5E, Butte County			

South Dakota Board of Minerals & Environment

Contested Cases – Surety Forfeitures

January 19, 2017

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Surety Forfeitures:</u>						
Weatheron Contracting Co., Inc. Beresford, SD	88-364		\$20,000	141551847	Western Surety Company	Declare Surety No. 141551847, Western Surety Company, forfeited and transfer \$20,000 to the Mined Land Reclamation Fund.
		364001	Sections 19 & 20; T101N-R69W, Brule County			
		364002	Sections 10 & 11; T99N-R79W, Tripp County			
		364003	NE1/4 NE1/4 Section 5; T97N-R58W, Hutchinson County			
		364004	W1/2 Section 2; T94N-R58W, Bon Homme County			
		364007	SW1/4 Section 26; T110N-R56W, Kingsbury County			
		364015	N1/2 NE1/4 & NE1/4 NW1/4 Section 28; T1S-R11E, Pennington County			
		364016	SE1/4 Section 20; T120N-R74W, Potter County			
		364018	NE1/4 Section 3; T124N-R75W, Walworth County			
		364020	NE1/4 Section 29; T120N-R74W, Potter County			
		364026	NW1/4 Section 5 & NE1/4 Section 6; T8N-R2E, Butte County			
		364027	Section 27; T122N-R53W, Day County			
		364029	NE1/4 Section 23; T2S-R12E, Pennington County			

South Dakota Board of Minerals & Environment

Contested Cases – Surety Forfeitures

January 19, 2017

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Surety Forfeitures:</u>						
Weatherton (continued)	88-364	364030	N1/2 Section 26 & SW1/4 Section 23; T118N-R67W, Faulk County			
		364031	NW1/4 Section 20; T108N-R68W, Buffalo County			
		364035	NW1/4 Section 12, SW1/4 Section 1, SE1/4 Section 2, & NE1/4 Section 11; T8N-R3E; Butte County			
		364036	Section 12; T6N-R8E, Meade County			
		364039	SE1/4 SW1/4 Section 17 & NW1/4 NE1/4 Section 20; T114N-R50W, Deuel County			
		364041	SE1/4 Section 24; T113N-R61W, Beadle County			
		364042	NW1/4 Section 29; T100N-R74W, Tripp County			
		364044	SW1/4 Section 6; T35N-R41W, Oglala Lakota County			
		364048	Section 3; T108N-R63W, Jerauld County			
		364056	NE1/4 Section 26 (Area North of Hwy 18); T97N-R72W, Gregory County			
		364063	Section 18; T4N-R6E, Meade County			
		364064	SE1/4 Section 24; T96N-R69W, Gregory County			
364065	SW1/4 SW1/4 Section 21; T106N-R71W, Lyman County					
364066	NW1/4 Section 26; T122N-R53W, Day County					

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center
523 E. Capitol, Pierre, SD

Date Jan. 19, 2017

NAME (PLEASE PRINT)	ADDRESS	REPRESENTING
Bret Graves	Foss	MJM
Thomas Cline JR	523 East Capitol	DENR - M+M
Steve Blair		ATG
Mark Elcse	Sionx Falls	Quartz Operations
Mike Les	Foss Bld, Pierre	DENR
Lucy Dani	523 E. Capitol	DENR
Mike Cupak		"
Eric Holm		"
Jeff Klenner	"	"
Brian Walsh	"	"
Ryan Fitzpatrick	"	"
Scott Waltman	Aberdeen	American New J
R. Hudson	Pierre	DENR
Bob Tund	Pierre	DENR
Derric Iles	Vermillion	DENR
Leon Somsen	Yankton	Quartz

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>March 16, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Liability and Release of Surety:</u>						
Curley & Rose Haisch Charitable Remainder Trust Burke, SD	92-433		\$6,160 \$5,030 \$1,000	2100297 201426 202162	First Fidelity Bank, Bonesteel First Fidelity Bank, Bonesteel First Fidelity Bank, Bonesteel	Transfer liability and release \$12,190.
		433001	Section 16; T97N-R68W, Gregory County			
Transfer to:						
Mulehead Gravel LLC Fairfax, SD	16-1001		\$20,000	RC-0027	Sun Surety Insurance Company	
<u>Transfers of Liability:</u>						
Darrell's Rock Sand & Gravel Inc. Wessington Springs, SD	86-320		\$20,000	RC-0016	Sun Surety Insurance Company	Transfer liability.
		320016	SW1/4 Section 16; T108N-R64W, Jerauld County			
Transfer to:						
Swenson Partnership Wessington Springs, SD	16-1013		\$20,000	41353972	Platte River Insurance Company	

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>March 16, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfers of Liability:</u>						
Jackson County Highway Department Kadoka, SD	83-79		EXEMPT	NA	NA	Transfer liability.
		79033	NW1/4 Section 10; T43N-R36W, Jackson County			
Transfer to:						
David Vander May Long Valley, SD	16-1014		\$1,000	1050500-20	Black Hills Federal Credit Union, Rapid City	
<u>Releases of Liability:</u>						
Bob Bak Construction Pierre, SD	83-61		\$3,000	4981	American State Bank, Pierre	Release liability.
			\$3,500	7410	American State Bank, Pierre	
			\$1,000	64334	First National Bank, Pierre	
			\$500	65266	First National Bank, Pierre	
			\$500	0621959600	Wells Fargo, White River	
			\$500	7305	American State Bank, Pierre	
			\$500	13751	American State Bank, Pierre	
			\$500	13850	American State Bank, Pierre	
			\$4,000	13871	American State Bank, Pierre	
		61011	N1/2 Section 16; T111N-R79W, Hughes County			

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>March 16, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Bowes Construction, Inc. Brookings, SD	83-164	164038	\$20,000	HGMW-10-206-0065	Hudson Insurance Company	Release liability.
			NW1/4 Section 20; T108N-R50W, Moody County			
C & W Enterprises, Inc. Harrisburg, SD	98-671	671006	\$-0-	NA	NA	Release liability.
		671009	SW1/4 Section 11; T99N-R79W, Tripp County			
		671013	E1/2 Section 33; T103N-R74W, Tripp County			
		671014	SW1/4 Section 27 & N1/2 NW1/4 Section 34; T103N-R77W, Tripp County			
		671014	S1/2 Section 3; T15N-R26E, Dewey County			
Rechnagel Construction, Inc. Hurley, SD	83-135	135022	\$20,000	55-122632	United Fire & Casualty Company	Release liability.
			NE1/4 Section 9; T99N-R53W, Turner County			

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>March 16, 2017</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Dewey County Highway Department Timber Lake, SD	83-25		EXEMPT	NA	NA	Release liability.
		25001	Section 3; T15N-R26E, Dewey County			

South Dakota Board of Minerals & Environment

March 16, 2017

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Annual Update of Post Closure Financial Assurance:</u>					
LAC Minerals (USA), LLC Central City, SD	445	\$19,667,216	09177703	Fidelity & Deposit Company of Maryland and Zurich American Insurance Company	Accept rider to Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the Post Closure Financial Assurance amount to \$19,906,292.