

PMB 2020
Department of Environment and Natural Resources
Minerals and Mining Program
523 E Capitol Ave
Pierre, SD 57501-3182
Telephone: (605) 773-4201 Fax: (605) 773-5286

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MAY 28 2013
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REQUEST FOR DETERMINATION
SPECIAL, EXCEPTIONAL, CRITICAL,
OR UNIQUE LANDS AND NOTICE OF
INTENT TO OPERATE

Name of Operator David C Hicks

Office Address 315 East State Street
Martin, S.D. 57551

Telephone (605) 891-9425

Local Address 315 East State Street
Martin, S.D. 57551

Telephone (605) 891-9425

Legal Description
Portion of the SE 1/4 NE 1/4 AND NE 1/4 SE 1/4 SEC. 14 T7S R4E

County Fall River

Name and Address of Surface Owner
Gary McClure
12379 Erskine Rd.
Hot Springs, S.D. 57579

Name and Address of Mineral Owner
Same as above

Name and Address of Surface Owners Within 500 Feet of the Proposed Mining Operation
Fall River County Hwy. Dept. - Right of way access
Thomas Miller - no address found
Terral Hammel - 12294 Hwy 18
Hot Springs, S.D. 57747

I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Signature 

Title Owner Date 5/13/2013

FOR DEPARTMENT USE ONLY

The land described in this Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate () is () is not eligible for inclusion on the list of special, exceptional, critical, or unique lands.

Secretary, Department of Environment and Natural Resources

Date _____

Operator Appeal Date _____

Intervenor Contest Date _____

The land described in this Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate () is () is not eligible for inclusion on the list of special, exceptional, critical, or unique lands.

Chairman, SD Board of Minerals and Environment

Date _____

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STATE OF SOUTH DAKOTA
BEFORE THE SECRETARY OF
THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF THE)
APPLICATION OF David C. Hicks) CERTIFICATION OF
APPLICANT

STATE OF South Dakota)
) SS
COUNTY OF Bennett)

I, David Hicks, the applicant in the above matter after being duly sworn upon oath hereby certify the following information in regard to this application:

South Dakota Codified Laws Section 1-40-27 provides:

"The secretary may reject an application for any permit filed pursuant to Titles 34A or 45, including any application by any concentrated swine feeding operation for authorization to operate under a general permit, upon making a specific finding that:

(1) The applicant is unsuited or unqualified to perform the obligations of a permit holder based upon a finding that the applicant, any officer, director, partner, or resident general manager of the facility for which application has been made:

- (a) Has intentionally misrepresented a material fact in applying for a permit;*
- (b) Has been convicted of a felony or other crime of moral turpitude;*
- (c) Has habitually and intentionally violated environmental laws of any state or the United States which have caused significant and material environmental damage;*
- (d) Has had any permit revoked under the environmental laws of any state or the United States;*
- (e) Has otherwise demonstrated through clear and convincing evidence of previous actions that the applicant lacks the necessary good character and competency to reliably carry out the obligations imposed by law upon the permit holder; or*

(2) The application substantially duplicates an application by the same applicant denied within the past five years which denial has not been reversed by a court of competent jurisdiction. Nothing in this subdivision may be construed to prohibit an applicant from submitting a new application for a permit previously denied, if the new application represents a good faith attempt by the applicant to correct the deficiencies that served as the basis for the denial in the original application.

All applications filed pursuant to Titles 34A and 45 shall include a certification, sworn to under oath and signed by the applicant, that he is not disqualified by reason of this section from obtaining a permit. In the absence of evidence to the contrary, that certification shall constitute a prima facie showing of the suitability and qualification of the applicant. If at any point in the application review recommendation, or hearing process, the secretary finds the applicant has intentionally made any material misrepresentation of fact in regard to this certification, consideration of the application may be suspended and the application may be rejected as provided for under this section.

Applications rejected pursuant to this section constitute final agency action upon that application and may be appealed to circuit court as provided for under chapter 1-26."

Pursuant to SDCL 1-40-27, I certify that I have read the forgoing provision of state law, and that I am not disqualified by reason of that provision from obtaining the permit for which application has been made.

I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Dated this ^{20th} ~~14th~~ day of May, 2013.



Applicant

Subscribed and sworn before me this 20 day of May, 2013.



Notary Public

My commission expires: 10-17-2017

(SEAL)

**PLEASE ATTACH SHEET DISCLOSING ALL FACTS PERTAINING TO
SDCL 1-40-27 (1)(a) THROUGH (e).
ALL VIOLATIONS MUST BE DISCLOSED, BUT WILL NOT
AUTOMATICALLY RESULT IN THE REJECTION OF AN APPLICATION.**

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**REQUEST FOR DETERMINATION OF SPECIAL, EXCEPTIONAL,
CRITICAL OR UNIQUE LANDS AND NOTICE OF INTENT TO MINE.**

**GENERAL DISCRIPTION OF THE TYPE OF MINING OPERATION
AND HOW IT WOULD BE CONDUCTED. ARSD 74.29:10:03 (5)**

The small scale mining operation proposed is that of a typical surface mining operation with the extraction of gypsum mineral using heavy equipment only, no chemicals or blasting operation involved. The total disturbance area is not to exceed 10 acres with the annual extraction of mineral to be a maximum of 25,000 tons of material per year. We approximate 25,000 ton maximum per year stock piled as raw and bagged for industry in powder and granule form.

The ten acre area to be for mining of gypsum is outlined in map #1 and the actual mineral extraction is to be approximately 350 ft. x 700 ft. within this outlined area. The other area in the proposed mine area is a 2 acre future expansion area to the west. We will file for a large scale mine permit as to mine larger quantity of materials via our plan of operation.

Also included is (3) 200 x 100ft. buildings for crushing, bagging and storing bag materials.

Our method of our mining operation is the stripping of the topsoil in increments of 2 acres maximum at one time as per our map layout. This will be done as to not disturb any more natural resource as necessary for the extraction of minerals, which could take 2 years on this 2 acre area or longer depending on depth of mineral. We have included extra acreage as to accommodate for equipment and storage facilities in the proposed area.

In the proposed mining operation all top soil would be removed to expose the gypsum mineral and used as a berm (wind block) for the crushing operation of the gypsum mineral. Trees will need to be removed from the mine site as necessary and will be extracted, trimmed and placed in stacks off the site area as home owner desires for his personal use.

The process would consist of extraction of gypsum with excavator and using a hammer bit if necessary to break up the material. We would then move it to the crushing machine via dump truck where it would be crushed to various sizes which would include powdered, small granules which will then be moved to our bagging machine area to be bagged in small 10lb. 40lb. size. We will be stock piling a sum of material in rough crushed form for bulk delivery via rail system out of the

Edgemont station for the USG Corporation and other cement companies we have upcoming potential orders with.

Our bagging product materials will be processed inside one of the buildings and loaded on pallets and stored in the other storage facility that will be built on the proposed mining area.

Both the buildings are not permanent structures and will be dismantled and removed after mining operation is completed.

All septic and electrical run to the facilities will remain in place after operation is ceased.

Our method is to start on the 2 acres on the East end of the natural deposit which is mark out inside the 435' in width by 1000' area. (map #1) working in to the wall in a westerly direction.

The area affected by the mining is a 350 ft. width by 700 ft. length with the mineral deposit being under a few inches to 2 feet of topsoil. The elevation of the mineral is approximately 70 ft. in height and from 3 ft. – 30 ft. in depth. This is on a gradual slope upwards from east to west.

We will be going to a lower elevation of 10-12 feet maximum, due to safety precautions.

Access to the mine site is on a private road already in place on 800 acres of private land owned by landowner Gary McClure (map #2) The access to mine is within this area.

Our method for mining consists of the use of heavy equipment and other equipment needed for extraction, processing of gypsum mineral, excavator, front loader, bobcat, dump truck, rock crushing machine, scale, bagging equipment. Reclamation of claim site is necessary in the field area and any unexposed ground where the gypsum is not present. The method would then be taking some of the overburden from burm area and filling in any areas affected and seeded with spreaders. Possible replanting of trees if feasible in affected area.

There are other landowners within 500 ft. These land owners are Thomas Miller 300 ft. to the west, The Fall River county highway department which has the county road right of way 275 ft. to the south and Terral Hammel, 300 ft. on the south side of the county road.

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**DEFINING IF LAND IS SPECIAL, EXCEPTIONAL, CRITICAL, OR
UNIQUE ARSD 74:29:10:03 (6) and SDCL 45-6B-33.3**

The proposed mine area we believe does not appear to be ecologically fragile.

The area consists of pine trees and brush and small patches of grass.

The wild life in the area consists of some birds and rodents and possibly deer.

Due to the vast area surrounding the operation and the wildlife is naturally moving from area to area we believe they would not be affected. Since birds are migratory they are adapted to moving from one place to another and would not be harmed but possibly displaced to another location during the summer Months.

We feel the operation would not harmfully affect the ecosystem as to the plan we have in place for that purpose.

There is no water running on or near the operation thus is not an issue for the mining of minerals in the immediate area.

No rare, threatened or endangered species have been encountered in the area.

If any of the above species are encountered or biological concerns arise in the vicinity of our mining operation, we will notify the US. Forest service, Department of Environment and Natural Resources, S.D. Wildlife Fish Game and Parks for a detailed discussion on how to proceed on the matter if needed.

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LAND DOES NOT HAVE THE FOLLOWING ATTRIBUTES, SDCL 45-6B-33.3 (3.)

Scenic Value:

The scenic value of the operation would not affect any persons as we know. Persons driving down co. Rd. 17 would not have view of the operations due the ravine and hill along the hwy. All crushing and bagging will be contained in side large facilities as to cause least effects on the surrounding area.

As any disturbance to any land has scenic value.

we would restore the area when mining is completed to the best possible natural look as to match the surrounding environment.

Historic Value:

Due to the fact that this property has been in private ownership for generations and the property has been secluded from public for 120 years. All research of the area and family history shows no signs of historic value to the area to the best of our knowledge.

Archeological Value:

Due to the private land ownership, we have not found any sign identified as archeological. The area shows no sign of native or other cultures.

If any such discovery is made on the claim or the 800 surrounding acres, the state forest service and appropriate authorities will be contacted immediately and work on mining claim if necessary will be ceased until further notice.

Topographic:

The proposed mining area is a ridge that is located off Co. Rd. 17 and about 2000 ft. elevation.

It is surrounded by flat areas mostly old pasture land to the east with a draw to the north.

It has a small ridge area between the Co. rd. and the mining area.

The Cottonwood Dam Recreation area is to the northwest approx. 2.5 miles.

Geologic Value:

The property itself sits on 3 different formations.

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The Minnekahta Limestone and Opeche formation, Spearfish formation, and Mennlusa Sandstone formation.

The proposed mine area is in the Minnekahta formation running East to West for 1000'

The area has old creek beds that do not run in the spring anymore.

The natural minerals in the surrounding area are limestone, gypsum, flagstone, Lignite,

pegmatite, Sandstone A ancient river bed runs through the 800 acre area and small dry creek beds, none of which run in the spring.

Ethnological Value:

There are no known ethnological concerns we are aware of. If any should arise due to discovery under the Archaeological findings, we will contact the proper authorities for further discussion and the proper procedures.

Scientific Value:

Soils, vegetation and wildlife observed on the proposed mining claim area do not indicate any unique scientific characteristics, although may be in other areas not known to us in the Hot Springs area.

Any area's that may be sensitive to the environment will be mitigated with the U.S. Forest Service, S.D. Department of Environment and Natural Resources and S.D. Wildlife, Fish, Game and Parks.

Cultural Value:

There are no known cultural concerns on the proposed mining area other than what has been discussed in the previous statement under the Archaeological value.

Recreational Value:

There is no recreational value here on the proposed mining area. However the property owners use their 800 acres for some ATV riding.

There is the Cottonwood recreation area to the northeast of the property but mining in the proposed area should not have any diverse effects on such recreation areas in the vicinity

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Co Hwy 7

expansion
2 acres

crushing, bagging, storage
buildings 60 x 120

extraction area

384 ft

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Google earth

Imagery Date: 9/21/2011 lat 43.442564° lon -103.600743° elev 4026 ft eye alt 5670 ft

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Assessment of whether the land is special, exceptional, critical, unique land MINERALS & MINING PROGRAM

.45-6B-33.3. Special, exceptional, critical, or unique land defined. For the purposes of § 45-6B-33, land is special, exceptional, critical, or unique if it possesses one or more of the following characteristics:

- (1) The land is so ecologically fragile that, once it is adversely affected, it could not return to its former ecological role in the reasonably foreseeable future;
- (2) The land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide ecological reaction of unpredictable scope or dimension; or
- (3) The land has scenic, historic, archaeological, topographic, geologic, ethnologic, scientific, cultural, or recreational significance.

**DESCRIPTION OF THE TYPE OF MINING OPERATION PROPOSED AND HOW IT
WOULD BE CONDUCTED ARSD 74:29:10:03 (5)**

The proposed mining operation is to be conducted on a 800 acre area of privately owned property in Fall River County, Hot Springs, S.D. The mining operation proposed is similar to a sand and gravel or pit mine operation where the material (gypsum) would be extracted (non chemically) with heavy equipment. Product is to be crushed to various size and powders then stockpiled.

The total area of disturbance is not to exceed a 10 acre area as to be within the codified law of a small mining claim.(SDCL 45-6B-63), with a maximum extraction of 25,000 tons, and is to be mined in 2 acre increments as to not cause any unnecessary land disturbance.

Our method of mining and planed proposal is stripping in 2 acre increments, stockpiling all overburden, topsoil material and using it as a "burm" or wind break for the crushing operation area. There will be some tree removal and the timber is to be stockpiled in a determined location by land owner for his private use.

There is no water used in our mining process or on our mining claim area and would not be a concern for water permitting or contamination issues. The nearest water source is the Cottonwood Dam Recreation area 2 miles to the North East.

Our plan of the reclamation of the area is to be completed when mining operation has ceased between a 7- 10 year time period for this small claim area.

Due to the mine plan proposal, (see map) reclamation could not be done without disturbance to unnecessary areas until mining is completed due to the direct east to west mining into ridge area.

The proposed mining site is on private land with roads already in place to access the site with in 150 ft through a small flat field area which was used for cattle grazing previously.

See attached map for access location, property aerial view and mine site.

The proposed mine site would have a 50' x 100' storage facility and office for material and equipment storage built adjacent to mine operation. A permit for building the facility will be filed with the Hot Springs city office.

The equipment for the operation consists of standard heavy equipment such as an excavator, front loader, Bobcat with hammer jack, dump truck, equipment for crushing materials, possible conveyor system, electronic weight scales.

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DEFINING IF LAND IS SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE
ARSD 74:29:10:03 (6) and SDCL 45-6B-33.3

Attached is the picture of the entire property, the surrounding area of proposed site and the mine site area itself. The roads leading to the mine site area are private roads on private land one of which leads to one of landowners dwellings over 1000 ft. to the north. To the south of the site area is County road # 17 that passes through the land owners property.

The mine area is in a much lower elevation area than the road and do not believe it will affect the road area or traffic on the road either by air or noise disturbance. The mining will be a fairly slow process and due to the solid mineral being extracted should not have much affect on the surrounding land. There is no blasting or chemical processing being used in the operation. The actual rock crushing location is on the north side of the ridge, this should keep any dust well block from north winds toward the county road.

LAND IS NOT ECOLOGICALLY FRAGILE AND OPERATIONS WILL NOT
HAVE A STRONG INFLUENCE ON THE TOTAL ECOSYSTEM SDCL45-
6B-33

The mining area proposed for the mining operation does not appear to be ecologically fragile. The vegetation in the area consists of mostly ponderosa pines and brush with the majority being that of the gypsum mineral outcrop throughout the ridge area. Vegetation will be affected during the mining operation until reclamation is commenced.

There is no water in the immediate area of the mining location. The Cottonwood Dam is approximately 2 miles to the northwest. There is a small run of water .04 miles directly to the south of the claim area on the opposite side of Co. Rd. #17 on the south side of ridge called Hot Brook. There are no homes within a 1000ft of the claim location.

The wildlife in the area consists of mainly birds and rodents and possibly deer although none have been observed in this particular area. The wildlife easily adapts to environmental changes. Due to their migratory nature, the birds would move to other locations during the mining period without much distress unless there are nests with chicks, we would then work around that situation if it arises and contact proper authorities to render any situation. Other wildlife being adaptable due to the harsh winter environments should also adapt by moving to another location nearby. Being an environmentalists and on a number of wildlife activist funding sponsorships, we would do all in our power to protect any creatures in the environment.

No rare, threatened or endangered species have been observed in the mining area. Due to the lack of water in the location most wild life would most likely to be on the east end of property where the cottonwood dam is located. If any rare, endangered, threatened species where be encountered we would then contact the U.S. Forest Service, S.D. Department of Environment and Natural Resources and S.D. Fish, Game and parks to mitigate the situation.

Tree removal will be required in the claim area (2ac.) 200 ft. deep into the ridge by 345 ft. in width (see map) and will affect a small portion of trees in the claim area. All trees will be cut and placed in an area determined by the land owner for his personal use.

The reclamation of the area would not be a ongoing effort and all reclamation would be done after mining operation is complete in this area due to the set up of our plan.

After mining in this area is complete which could be several years, we would however replace all top soils removed from the area and seed to the best of our efforts over the area. The area being of hard mineral deposit, this may be done sporadically and only in areas that would look the most beneficial and some saplings could be replanted in appropriate areas if possible.

The mineral to be mined in this particular area is an oblong type ridge 400 ft. by 1000 ft. with the deposit ranging from the low ends to the east rising up at a slope of approximately 70 ft in height. The deposit will fluctuate any where from 3 ft in depth in some areas to possibly 30 ft. We will be mining in a horizontal manner into a vertical wall of mineral but may be excavating downward to extract the cleanest and best quality material. If this is done some reclamation of subsoil could be replaced as we mine to keep our elevations at a safe level.

MINING LAND DOES NOT HAVE THE FOLLOWING ATTRIBUTES

SCENIC VALUE:

Some scenic value may be lost visually from the standpoint of the landowner. The scenic value to other persons would not pertain to this due to the area is hidden by hill and trees. The mining area is only visible if driving on the private land to access the claim.

HISTORIC VALUE:

As far as research and information giving by landowner there is no historical values to this small claim area. This land has been in a family ancestry for approximately 120 years and shows no historic markers or signs of any past remnants of occupation.

ARCHEOLOGICAL VALUE:

As far as research and landowners information given we have found no evidence of Archeological value on or near the claim area. If any discovery is made during operations we would cease all activities and contact the Historic Preservation office and the S.D. Forest Service for review of the findings.

TOPOGRAPHIC VALUE:

The mining claim area runs from approximately 4000ft. elevation up to 4100 ft elevation to top of ridge area or top plateau. There is no spring run offs or wet area here.

GEOLOGICAL VALUE:

The mining are is situated on the Spearfish formation and the private land it is located on covers 3 formations called the Spearfish formation, the Minnekatha formation, and the Mennelusa formation. The particular mining area consists of exposed outcropping of gypsum mineral through out the Spearfish formation on the lower section of the 800 acres.

ETHNOLOGIC VALUE:

There are no known ethological concerns on the proposed mine claim area other than that that may be of concern covered under the Archeological value topic..

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SCIENTIFIC VALUE:

The soil, vegetation, and wildlife do not show indication of any scientific value. No endangered, threatened, rare species, plants or animals have been observed on or near the proposed area for mining. Any area's that may be environmentally sensitive will be mitigated with the U.S. Forest Service, S.D. Department of Environmental and Natural Resources and S.D. Fish, Game and Parks departments for a detailed discussion on procedure and protocol.

CULTURE VALUE:

There is no known culture value to the proposed mine claim area and have had no observations of any cultural value in the surrounding area of claim site other than discussed in the Archeological value topic area.

RECREATIONAL VALUE:

There is no recreational value to this site area due to private land location. The nearest recreational area is located at the Cottonwood Dam recreational area 2 miles to the northeast.

MINE CONTACT REPORT FORM

Date of Call: _____ **Date of E-mail:** 06/06/13-06/12/13
Telephone call to: _____ **DENR Employee Contacted:** Roberta Hudson
Operator Contacted: David Hicks
Company: Lightning Strike Mining Company
Telephone: _____
Staff Signature: \s/

On June 6, 2013, while working on Mr. Hicks Request for Determination of Special, Exceptional, Critical, or Unique Lands it came up that Mr. Hicks had failed to request return receipts for the certified mailings showing he had sent the application to the various agencies required under ARSD 74:29:10:04(2). As a result, we requested he get email verification. We also did not have an acceptable level of proof showing that the Fall River County Register of Deeds had received the Request for public viewing and required a letter from the county to verify. This was also accomplished through email. All agency and county verifications of receipt are attached to this memo.

Also Mr. Hicks was required to obtain an address for a surface owner within 500 feet of the proposed boundary line. He provided that address in the email below.

From: David Hicks [mailto:lightningstrikesd@yahoo.com]
Sent: Monday, June 10, 2013 5:08 PM
To: Hudson, Roberta
Subject: Re: Fall River County Register of Deeds

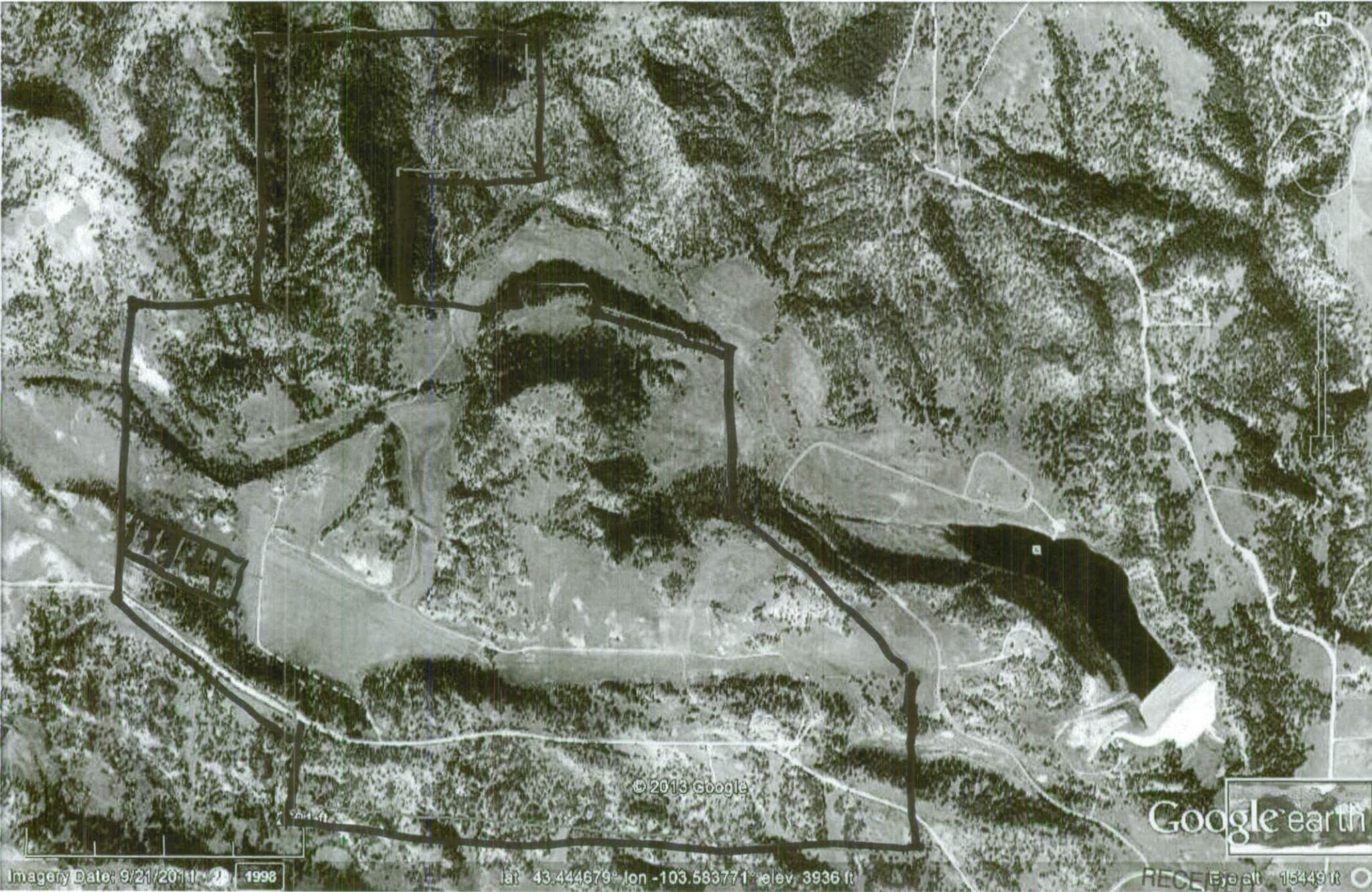
The address I found was: Tom R Miller, P.O. Box 151, Rozet, Wyoming 82727-0151. Ph. 1(307)-686-2314.



237 ft

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Imagery Date: 9/21/2011 lat 43.441175° lon -103.600179° elev 4029 ft eye alt 5193 ft



Imagery Date: 9/21/2011 1998

lat 43.444679° lon -103.583771° elev 3936 ft

Google earth

RECEIVED Eye alt 15449 ft

07-754E SEC.14 McBlure PROPERTY

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Google earth

Imagery Date: 9/21/2011 1998

lat 43.441433° lon -103.601370° elev 4064 ft

RECEIVED alt 5459 ft

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2ac

2ac

2ac

2ac

2ac

access
& start
point

DRILL
TEST
AREAS

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Google earth

155 ft

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lat 43.441117° lon -103.601801° elev 4077 ft

Eye all 4863 ft

Date: 9/21/2011 1998

