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

January 17, 2019
10:00 a.m. CST

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. The roll was called, and a quorum was present.

Chairman Hagg announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Rex Hagg, Gregg Greenfield, Doyle Karpen, Glenn Blumhardt, Dennis Landguth, Daryl Englund, John Scheetz, Jessica Peterson. Bob Morris participated via telephone.

BOARD MEMBERS ABSENT: None.

OTHERS PRESENT: See attached attendance sheet.

CONSIDERATION AND ENFORCEMENT OF THE CONSENT AGREEMENT

REGARDING SPYGLASS CEDAR CREEK, LP: A court reporter was present for this matter, and a transcript may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

Bob Morris recused himself from consideration of this matter due to a conflict of interest.

Rich Williams, Deputy Attorney General, had a prior engagement, so Steve Blair, Assistant Attorney General, was present representing the Department of Environment and Natural Resources.

Mr. Blair reported that as the consent agreement indicated, Spyglass was to submit a \$200,000 surety by January 15, 2019. Spyglass has not submitted the surety. Mr. Blair noted that Mr. Williams had informed him that he had communication with Spyglass's attorney, Lawrence Bender, earlier this week, and at that time, Mr. Bender requested routing information so Spyglass could wire the surety to the department. Mr. Williams was then informed that the routing information had been passed on to Spyglass by their attorney.

The Department of Environment and Natural Resources was not able to confirm any sort of wire transfer from Spyglass to the department. At this time, the department's position is that Spyglass is not in compliance with the consent agreement.

Mr. Blair presented the board with an Order Revoking Permits and Forfeiting Surety in the Matter of Spyglass Cedar Creek, LP's violations of SDCL Chapter 45-9 and ARSD Article 74:12. The Order revokes the 40 oil and gas permits held by Spyglass Cedar Creek, LP, orders forfeiture of CD No. 52113 issued by First State Bank of New Braunfels, Texas and later assumed by Prosperity Bank of New Braunfels, Texas in the amount of \$20,000, and orders forfeiture of the \$10,000 surface restoration bond recovered by the department from the State of Texas' Unclaimed Property Division plus any accrued interest. The Order also directs the department to carry out all activities necessary to transfer the proceeds of those bonds to the department.

Mr. Blair requested that the board enter the Order based on the consent agreement.

Responding to questions from Chairman Hagg regarding the \$20,000 CD, Mr. Blair stated that the bank had contacted Spyglass with regard to an unclaimed property issue. A representative of Spyglass then cashed the \$20,000 certificate of deposit without giving notice to the Department of Environment and Natural Resources and without the department's consent. Mr. Blair said the intent of the Attorney General's Office and the department is to investigate whether or not the \$20,000 can be recouped from Spyglass and attempt to recoup the \$20,000.

Mike Lees responded to questions from the board regarding the status of the wells and the possibility of another company taking over the Spyglass wells.

At the request of Chairman Hagg, Charlie McGuigan, Chief Deputy Attorney General, discussed SDCL 45-9-68, Violation of law, rule, regulation, or order--Civil penalty--Liability for damages to environment, SDCL 45-9-70, Shutting down and sealing property or equipment by secretary for violation--Cancellation of lease or bond forfeiture, and SDCL 34A-10, Remedies for protection of environment. He answered questions from the board regarding civil penalties and other possible penalty options.

Mr. Greenfield suggested changing the heading of the Order to "Order Revoking Permits, Forfeiting Surety, and Pursuing Other Remedies." He also suggested adding "attached hereto as Exhibit A." after the word "Agreement" at the end of the first sentence in the second paragraph and adding, "Among other provisions, Spyglass Cedar Creek, LP did not contest violations of SDCL ch. 45-9 or ARSD ch. 74:12", and "Further," at the beginning of the third paragraph. The final change proposed by Mr. Greenfield was adding No. 5 on the last page of the Order that states, "Subject to board approval, the Secretary of Department of Environment and Natural Resources and/or the Attorney General's Office is authorized to pursue any and all available remedies and enforcement actions allowed by law or equity for the violations set forth in the Agreement and the failure to post bond."

Chairman Hagg agreed with Mr. Greenfield's changes, and he proposed adding No. 6 on the last page of the Order that states, "The board reserves the right to take such further actions deemed just and equitable on the premises including but not limited to assessing civil penalties pursuant to SDCL 45-9-68."

Discussion took place among the board members regarding imposing penalties.

Mr. Lees answered questions regarding the wells.

Chairman Hagg said based on the report from the Assistant Attorney General Steve Blair, he will find that Spyglass Cedar Creek, LP is in default of the consent agreement and the terms and conditions of the Notice of Violation and Order, so any and all enforcement action by the board will be taken according to the consent agreement without further notice to Spyglass Cedar Creek, LP; and based on the Order the permits set forth in the Notice of Violation and in the proposed Order are revoked, that the sureties set forth in the Notice of Violation and Order are forfeited, and in accordance with the Notice of Violation and Order, Spyglass was given notice at that time that the board may take further legal action in accordance with SDCL 34A-10 and SDCL 45-9-68 for civil penalties.

Chairman Hagg asked the staff to use \$500 per day when calculating the amount of the civil penalty for each well.

Mr. Blair stated that there could be multiple violations at each well that could fall under SDCL 45-9-68. He suggested that the department perform the calculations for violations at each well and present this information to the board at the next meeting. He also suggested that at the next meeting the Attorney General's Office present possible enforcement options and a plan moving forward for those wells.

Chairman Hagg adopted Mr. Greenfield's changes to the Order. He also urged the department and Secretary Pirner to take control of the wells pursuant to SDCL 45-9-70, at least to some extent so that the public, Spyglass, and anyone else knows that the wells are essentially being put under seal.

In response to discussion by Chairman Hagg, Mr. Lees stated that there are infrastructure components that preclude production of the wells at this time, so the department is not concerned about anyone starting production without authorization under a new drilling permit. The field requires a compressor station, which was removed, and in order to bring the wells back into production, a new tie-in point at the commercial pipeline would be required. Mr. Lees said some of the mineral leases state that if Spyglass defaulted on the lease, then the mineral property owner can take ownership of the well and equipment.

Chairman Hagg adopted the Order, including the changes proposed by Mr. Greenfield and himself. He stated that the board has the authority to accept or reject it.

Motion by Karpen, seconded by Blumhardt, to accept the Findings and Order of Hearing Chairman Hagg in the matter of Spyglass Cedar Creek, LP's violations of SDCL 45-9 and ARSD 74:12. A roll call vote was taken, and the motion carried with Englund, Karpen, Scheetz, Greenfield, Landguth, Peterson, Blumhardt, and Hagg voting aye.

A copy of the Order is attached to these minutes.

At the next board meeting, DENR staff and the Attorney General's Office will present the following information to the board:

- A well-by-well list of status (viable vs. nonviable) and property ownership (state, federal, private).
- A calculation of the maximum civil penalty authorized by statute.
- A proposal regarding how DENR intends to notify affected property owners of the permit revocations.
- A report on the possibility of seeking the \$20,000 certificate of deposit (plugging and performance bond) illegally released to Spyglass by the Texas bank.
- A legal review of Spyglass's business partners and/or anyone else against whom penalties may be assessed.
- An Attorney General's Office overview of additional potential enforcement options (civil penalties, receivership).
- A summary of oil and gas surety issues and the recent legislative history of oil and gas sureties.

The board asked that this information be provided to the board prior to its next meeting so there is time to review the information.

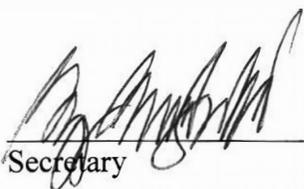
NEXT MEETING: The next meeting is March 21, 2019.

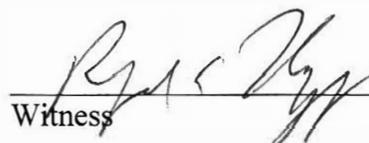
APPROVAL OF MINUTES FROM DECEMBER 20, 2018, MEETING: Chairman Hagg pointed out that the second paragraph on page 6 of the minutes should read, "Mr. Williams stated that the department has agreed to the consent agreement, and Secretary Pirner has signed the agreement." In the first sentence of paragraph 11 on page 6, "LLP" should be changed to "LP."

Motion by Greenfield, seconded by Peterson, to approve the minutes from the December 20, 2018, Board of Minerals and Environment meeting, with the corrections made by Chairman Hagg. A roll call vote was taken, and the motion carried unanimously.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

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


Secretary _____
Date 3/21/19


Witness _____
Date 3/21/19

