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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 & 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

Witness

Date

JAN 22 2019

Division of Financial
& Technical Assistance

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF
SPYGLASS CEDAR CREEK, LP'S
VIOLATIONS OF
SDCL CHAPTER 45-9 AND
ARSD ARTICLE 74:12

**ORDER REVOKING PERMITS,
FORFEITING SURETY
AND
PURSUING OTHER REMEDIES**

On July 12, 2018, the South Dakota Department of Environment and Natural Resources ("Department") filed a Petition to Revoke Drilling Permits and Petition for Forfeiture of Surety initiating a contested case against Spyglass Cedar Creek, LP ("Spyglass"). An Amended Notice of Hearing was issued establishing the hearing date as December 20, 2018.

Prior to the hearing date, the Parties negotiated an agreement to settle the matter. On December 20, 2018, in settlement of the above-entitled matter, the Parties presented the Board of Minerals and Environment ("Board") with a Consent Agreement ("Agreement") attached hereto as Exhibit A. At the conclusion of the hearing on December 20, the Board entered its Order Adopting Consent Agreement. Notice of Entry of that Order was served the same day.

Among other provisions, Spyglass Cedar Creek, LP did not contest violations of SDCL ch. 46-9 or ARSD ch. 74:12. Further, paragraph 13 of the Agreement requires Spyglass to obtain and post "a good and sufficient surety with the Department, in the amount of \$200,000.00, by January 15, 2019." Paragraph 13 further provides, "Failure to post the surety by January 15, 2019 shall result in

immediate default of this Agreement and the NOV, and Spyglass consents to the entry of an order by the Board of Enforcement Relief, pursuant to its statutory authority without further hearing.” Paragraphs 7 and 14 of the Agreement additionally provide that if Spyglass fails to comply with the terms of the Agreement, the Board may, “at its sole discretion and without prior notice to Spyglass,” enter orders to foreclose on the surety and to revoke Spyglass’ permits to drill.

The Board has been given notice by the Department that Spyglass failed to post a surety with the Department in the amount of \$200,000.00 by January 15, 2019. The Board, therefore, finds Spyglass in violation of the Agreement and hereby makes the following ORDER;

1. The following oil and gas permits granted to Spyglass Cedar Creek, LP, shall be and are hereby revoked:

1780, 1778, 1781, 1789, 1793, 1814, 1825, 1826, 1827, 1828, 1829, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1876, 1877, 1885, 1886, 1887, 1888, 1890, 1948, 1949, 1950, 1960, 1961, 1964, 1965, 1966, 1967, 1968, 1969, 1971, 1975, 1978, and 1979;
2. The Certificate of Deposit 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 shall be and is hereby forfeited;
3. Any and all of the \$10,000.00 surface restoration bond recovered by the Department from the State of Texas’ Unclaimed Property Division plus any accrued interest shall be and is hereby forfeited;
4. Department staff shall carry out all activities necessary to transfer the proceeds from each surety to the Department.

5. Subject to Board Approval, the Secretary of the Department 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 or the failure to post bond.
6. The Board reserves the right to take such further actions deemed just and equitable in the premises including but not limited to assessing civil penalties pursuant to SDCL 45-9-68.

Dated this 18th day of January, 2019

SOUTH DAKOTA BOARD OF
MINERALS AND ENVIRONMENT



Rexford A. Hagg
Hearing Chairman

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF
SPYGLASS CEDAR CREEK, LP'S
VIOLATIONS OF
SDCL CHAPTER 45-9 AND
ARSD ARTICLE 74:12

CONSENT AGREEMENT

The South Dakota Department of Environment and Natural Resources (the "Department") through the Board of Minerals and Environment (the "Board"), together with Spyglass Cedar Creek, LP ("Spyglass") (collectively, the "Parties"), agree to settle this above-referenced matter on the following terms:

PRELIMINARY STATEMENT

1. The Department is the state agency, along with the Board, that regulates the production of oil and gas resources in the State of South Dakota (the "State"), pursuant to South Dakota Codified Law ("SDCL") Chapter 45-9. The Board has been granted authority by the South Dakota Legislature to administer and enforce the provisions of SDCL Chapter 45-9, and may delegate that authority to the Department, pursuant to SDCL 45-9-13 and 45-9-54.
2. Spyglass is a Texas limited partnership with its principal office located in San Antonio, Texas. Spyglass owns and operates forty (40) oil and gas wells located in South Dakota under the following Permit numbers: 1780, 1778, 1781, 1789, 1793, 1814, 1825, 1826, 1827, 1828, 1829, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1876, 1877, 1885, 1886, 1887, 1888, 1890, 1948, 1949, 1950, 1960, 1961, 1964, 1965, 1966, 1967, 1968, 1969, 1971, 1975, 1978, and 1979.
3. The Department issued a Notice of Violation ("NOV") dated July 10, 2018 and a Petition to Revoke Drilling Permits & Petition for Forfeiture of Surety ("Petition") dated July 12, 2018.
4. The Parties enter this Consent Agreement ("Agreement") to avoid waste and ensure prompt compliance with the State's oil and gas conservation laws. This Agreement is entered into to resolve the matters alleged in the NOV and Petition ("Covered Matters"). This Agreement is in the public interest, and is the most appropriate means of resolving this matter.

STIPULATIONS AND VIOLATIONS

5. Spyglass admits that it operates forty (40) gas wells located in Harding County, South Dakota, as identified in the Department's NOV dated July 10, 2018.
6. Spyglass does not dispute the findings in the NOV. Spyglass does not dispute the violations of Administrative Rules of South Dakota ("ARSD") 74:12 or the violations of the conditions of its Applications for Permit to Drill, specifically as follows:
 - a. Spyglass does not dispute that nine (9) wells (Permit Nos. 1979, 1780, 1781, 1778, 1789, 1869, 1885, 1886, and 1948) were drilled between 2006 and 2010, but have never produced gas and remain unplugged.
 - b. Spyglass does not dispute that one (1) well (Permit No. 1826) has regularly produced gas, but has not been productive since 2010.
 - c. Spyglass does not dispute that ten (10) wells (Permit Nos. 1865, 1887, 1949, 1950, 1964, 1966, 1968, 1975, 1978, and 1828) have regularly produced gas, but have not been productive since 2011 and remain unplugged.
 - d. Spyglass does not dispute that twenty (20) wells (Permit Nos. 1888, 1793, 1814, 1825, 1827, 1829, 1863, 1864, 1867, 1868, 1866, 1876, 1877, 1890, 1960, 1961, 1965, 1967, 1969, and 1971) have regularly produced gas, but have not been productive since 2012 and remain unplugged.
 - e. Spyglass does not dispute that nine (9) wells have no sign or a sign that is not legible, in violation of ARSD 74:12:02:09.
 - f. Spyglass does not dispute that it has not submitted a completion report for the Gilbert 1-34 well in violation of ARSD 74:12:02:17.
 - g. Spyglass has provided electronic copies of the requested logs, but does not dispute that it has not submitted all of the twenty-two (22) requested cement bond logs for its wells in violation of ARSD 74:12:02:12.
 - h. Spyglass does not dispute that it has not installed and/or maintained sufficient gauges on thirty (30) of its wells in violation of ARSD 74:12:02:16.
 - i. Spyglass does not dispute that fourteen (14) of its wells have pits that are not properly reclaimed, have erosion issues, have unused equipment or debris on site, or have pit liner material at the surface in violation of ARSD 74:12:03:07.
 - j. Spyglass does not dispute that it has not maintained an adequate bond as required by SDCL 45-9-15.

7. Paragraphs 6(a)-(j) and 17, the violations of ARSD 74:12 and conditions of Spyglass's Applications for Permit to Drill, are hereby deemed admitted for purposes of this Agreement and for any subsequent proceeding if necessary. As a result, in the event that Spyglass fails to comply with this Agreement or any agreed-upon amendment(s) pursuant to Paragraph 15 of this Agreement, the Board may, at its sole discretion and without prior notice to Spyglass, enter an appropriate order(s) to foreclose on the cash or surety described in Paragraph 13 of this Agreement; require wells be shut in; confiscate drilling equipment left at the well sites; order the revocation of Spyglass's Permits to Drill; and/or take any other appropriate action the Department or Board deems proper, pursuant to SDCL 45-9 or other applicable enforcement statutes.

SETTLEMENT TERMS

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions in this Agreement, and desiring to be legally bound, the Parties agree as follows:

8. Spyglass will engage a crew to bring the field back into compliance and agrees to make all wells in compliance with ARSD 74:12 regarding adhering with appropriate signage, submitting completion reports and cement bond logs, installing and/or maintaining sufficient valves and gauges, and conducting proper interim reclamation on or before July 1, 2019.
9. Spyglass agrees to return ten (10) wells to production on or before July 1, 2019.
10. Spyglass agrees to return ten (10) additional wells to production on or before September 1, 2019.
11. Spyglass agrees to submit for approval plans for recompletion or plugging of five (5) wells, including Permit Nos. 1780, 1778, 1979, 1781, and 1789 on or before July 1, 2019, and the remaining four (4) wells, Permit Nos. 1869, 1885, 1886, and 1948, by September 1, 2019.
12. Spyglass agrees to perform a mechanical integrity test and submit a Sundry Request for temporary abandonment for any remaining wells that have not been returned to production or have not been plugged by September 1, 2019.
13. Spyglass agrees to use its best efforts, undertaken diligently and in good faith, in obtaining and posting a good and sufficient surety with the Department, in the amount of \$200,000.00, by January 15, 2019. The surety may be in the form of cash (to be held by the Department) or surety bond. Any surety bond must be secured through a company licensed to transact surety business in South Dakota. Failure to post the surety by January 15, 2019 shall result in immediate default of this Agreement and the NOV, and Spyglass consents to the entry of an order by the Board of Enforcement Relief, pursuant to its statutory authority without further hearing.

14. Spyglass agrees that in the event that it fails to comply with this Agreement, as it may be modified pursuant to Paragraph 15 of this Agreement, the Board may, at its sole discretion and without prior notice to Spyglass, enter an appropriate order(s) to foreclose on the aforementioned cash or surety bond; confiscate drilling equipment left at the well sites; require wells be shut in; and/or order the revocation of Spyglass's Permits to Drill.
15. Spyglass may propose and submit an amendment(s) to this Agreement in writing to the Department if, despite its good faith efforts, Spyglass is delayed and/or prevented from performing its obligations under this Agreement as a result of war; rebellion; riots; acts of God; governmental law, order, or regulation; or other explained good cause. The Department shall, within fifteen (15) days, review the proposed amendment and respond in writing, approving the proposed amendment upon a finding of the above or good cause for delay and/or prevention of Spyglass's obligations under this Agreement. A conference may be held between the parties or their representatives to resolve any disputes regarding the proposed amendment. Any proposed amendment the parties are unable to resolve shall be subject to final approval of the Board.
16. Upon the signing of this Agreement by the Parties and posting of the bond, the Parties will submit a Joint Motion to Dismiss based upon this Agreement, which shall be attached thereto. The Joint Motion to Dismiss shall be submitted to the Board and shall request that the Board approve this Agreement and dismiss the pending action. It is specifically agreed by the Parties that the Board shall retain jurisdiction over the matter to enforce the terms and conditions of this Agreement. The submission of the Joint Motion to Dismiss shall not in any way limit or restrict the authority of the State of South Dakota or its agencies, including the Department, to initiate appropriate action against Spyglass for failure to comply with the terms and conditions of this Agreement.

ADDITIONAL TERMS

17. Spyglass agrees that it was properly notified of the violations listed herein.
18. This Agreement does not, except as specifically provided herein, modify, amend, or alter the conditions and requirements of Spyglass' Drilling Permits or South Dakota Rule or Law.
19. Nothing in this Agreement shall in any way limit or restrict the authority of the State of South Dakota or its agencies, including the Department, to initiate appropriate action against Spyglass for failure to comply with its environmental permits, including any state statute or regulation, which do not arise from and are not related to the Covered Matters at issue under this Agreement; and claims based on criminal liability.
20. The terms of this Agreement may be modified only by a subsequent written agreement signed by the Parties.

21. This Agreement constitutes the entire understanding of the Parties with respect to the Covered Matters.
22. Each party shall bear its own costs incurred in this action, including attorney fees.
23. The Parties agree that they have had adequate time to consult with legal counsel regarding the terms of this agreement. The Parties further agree that they have been apprised by their respective legal counsel as to their rights and obligations under this agreement and the potential penalties for failure to carry out the terms of this agreement. The Parties agree that they knowingly, intelligently, and voluntarily enter into this agreement.
24. This Agreement becomes effective upon approval by the Board.
25. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into this Agreement and each of the terms and conditions hereof, and to execute and legally bind such Party to it.
26. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original, but all of such counterparts combined shall constitute one agreement. Any signature hereto may be delivered by facsimile or other electronic transmission and be deemed an original.
27. Notifications given under this Agreement shall be submitted to the below addresses. The Parties further agree to notify the other if the below contact information should change.

For the Department:

South Dakota Department of Environment and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501

For Spyglass:

March Kimmel
Spyglass Cedar Creek LP
its General Partner
Xanthus Capital LLC
Spyglass Cedar Creek LP
Petroleum Center
9002 N.E. Loop 410
Building D, Suite D211
San Antonio TX 78209

With a copy to:

Lawrence Bender
Fredrikson & Byron, P.A.
1133 College Drive, Suite 1000
Bismarck, ND 58501

ACKNOWLEDGEMENT

In making this Agreement, it is understood that each of the Parties to this Agreement does hereby rely wholly upon their own judgment, belief, and knowledge and that each of the Parties enters into this Agreement without reliance upon any statement or representation by another. The Parties acknowledge that they have been represented by counsel and that they have consulted their respective attorneys regarding the terms of this Agreement. The Parties acknowledge and agree that they have read and understood the terms of this Agreement and that they are voluntarily entering into this Agreement with full knowledge of its implications. The Parties intend to be bound by this Agreement.

DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES



By: Steven M. Pirner, Secretary

Date: 12/20/18

STATE: South Dakota)
) ss.
COUNTY: Hughes)

The foregoing instrument was acknowledged before me on this 20 day of December, 2018.



Notary Public
My Commission Expires: 09/06/2022



My Commission Expires
09-06-2022

