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

November 15, 2018  
10:00 a.m. CT

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 this meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Rex Hagg, Dennis Landguth, Daryl Englund, Gregg Greenfield, Glenn Blumhardt, Doyle Karpen, Jessica Peterson, and Bob Morris.

BOARD MEMBER ABSENT: John Scheetz.

OTHERS PRESENT: Dwight Gubbrud, attorney for Peter K. Roosevelt; Steve Blair, Assistant Attorney General; Mike Lees, Eric Holm, Lucy Dahl, Brett Graves, and Roberta Hudson, DENR.

APPROVAL OF MINUTES OF OCTOBER 18, 2018, MEETING: Chairman Hagg pointed out that on page 6, the words “joined” and “several” were incorrectly spelled in paragraphs 7 and 9.

Motion by Karpen, seconded by Blumhardt, to approve the minutes of the October 18, 2018, Board of Minerals and Environment meeting, as corrected. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

Chairman Hagg noted that at the October meeting, the board deferred the exchange of surety for Wharf Resources post closure bonds to November 15. He stated that the board would like to hear this matter during an in-person meeting rather than on a conference call.

Chairman Hagg requested a motion from the board to defer the exchange of surety for Wharf Resources post closure bonds to the December 20, 2018.

Motion by Blumhardt, seconded by Morris, to defer the exchange of surety for Wharf Resources post closure bonds to the December 20, 2018, meeting agenda. A roll call vote was taken, and the motion carried unanimously.

Consent Calendar: Prior to the meeting, the board received a table with the department's recommendation for release of surety, releases of liability and surety, and releases of liability (see attachment).

Brett Graves, DENR Minerals and Mining Program, was available to answer questions. There were no questions from the board or the audience.

Motion by Morris, seconded by Landguth, to accept the department recommendations for release of surety, releases of liability and surety, and releases of liability, as shown on the consent calendar. A roll call vote was taken, and the motion carried unanimously.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN THE MATTER OF THE APPLICATION OF PETER K. ROOSEVELT (OIL AND GAS CASE 5-2017) FOR APPROVAL OF A PERMIT TO INJECT PRODUCTION WATER IN THE EXISTING 2-33 ALKALI FEDERAL WELL AND TO INJECT PRODUCTION WATER IN THE UNCONSOLIDATED SAND OF THE MINNELUSA FORMATION FOR SALT WATER DISPOSAL: Hearing Chairman Greenfield stated that Max Main submitted Roosevelt's proposed Findings of Fact, Conclusions of Law, and Order.

No other proposed Findings of Fact, Conclusions of Law, and Order were received.

Hearing Chairman Greenfield stated that he reviewed Mr. Main's findings of fact and conclusions of law, and he made some revisions.

Hearing Chairman Greenfield sent the final Findings of Fact, Conclusions of Law and Order to the board members, Mr. Main, and Mr. Blair prior to the meeting. He deleted proposed Findings of Fact Nos. 8 and 9 and Conclusions of Law Nos. 4 and 5. He made other changes to renumbered Findings of Fact Nos. 7, 17, 26, and 28 (4) and (9), and Nos. 4 and 9 of the Order.

Hearing Chairman Greenfield stated that on the first page in the title, "Roosevelt's Proposed" would be deleted. He requested the board adopt the Findings of Fact, Conclusions of Law and Order, as revised.

Mr. Gubbrud objected to removing proposed Findings of Fact Nos. 8 and 9 and Conclusions of Law Nos. 4 and 5, which stated that by not appearing the petitioners are in default, and the petitioners waived and forfeited all due process rights they could have exercised at the hearing. He stated that Mr. Roosevelt submits that these should remain in the final Findings of Fact and Conclusions of Law. Mr. Gubbrud stated that the petitioners initiated this contested case, and none of them appeared or presented evidence at the time of the hearing. The approved minutes of the board's October 18 hearing show that at the start of the contested case, the department and Roosevelt both moved to hold the petitioners in default and to note that the petitioners had waived their due process rights. Mr. Gubbrud stated that Hearing Chairman Greenfield granted this motion, and the minutes confirm this, therefore Roosevelt requests that the board retain Findings of Fact No. 8 and Conclusions of Law No. 4 to make record that all of the petitioners were in default.

Mr. Gubbrud stated that in regard to proposed Findings of Fact No. 9 and Conclusions of Law No. 5, Roosevelt and the department both requested that the findings show that by not appearing at the hearing, the petitioners waived and forfeited all due process rights they could have exercised at the hearing. He stated that this proposed finding and conclusion is taken directly from statute. SDCL 1-26-17(6) requires notices of hearing to recite that a party has the right to a hearing, the right to be present, the right to be represented by a lawyer, and that these rights and all other due process rights will be forfeited if they are not exercised at the hearing. The notice of hearing in this matter included the required language of the statute. He stated that South Dakota law has long provided that a party must exhaust their administrative remedies before they can pursue judicial relief.

Mr. Gubbrud stated that the approved minutes of the hearing show that the department and Roosevelt's motion to hold the petitioners in default also included noting that the petitioners had waived their due process rights by failure to appear at the hearing, and Hearing Chairman Greenfield granted the motion.

Roosevelt requested the board retain proposed Findings of Fact No. 9 and Conclusions of Law No. 5 to make a complete record that petitioners have forfeited their due process rights by failing to appear at the hearing.

Mr. Blair joined in Mr. Gubbrud's request that proposed Findings of Fact Nos. 8 and 9 and Conclusions of Law Nos. 4 and 5 be retained in the final adopted Findings of Fact, Conclusions of Law and Order for the reasons stated by Mr. Gubbrud.

Board discussion took place.

Motion by Morris, seconded by Hagg, to adopt the Findings of Fact, Conclusions of Law and Order as revised by Hearing Chairman Greenfield, without deleting Conclusions of Law No. 4 and 5. A roll call vote was taken, and the motion carried unanimously.

NEXT MEETING: The next meeting is December 20, 2018, at the Matthew Training Center, Foss Building, Pierre.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: No one presented public comments.

ADJOURN: Motion by Morris, seconded by Karpen, to adjourn the meeting. A roll call vote was taken, and the motion carried unanimously.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

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

						November 15, 2018
License Holder	License No.	Site No.	Surety Amount	Surety No.	Surety Company or Bank	DENR Recommendation
<b>Release of Surety:</b>						
Atteberry Construction, Inc. Colome, SD	97-617		\$500	14484	First National Bank, Pierre	Release \$11,500.
			\$500	168439	First National Bank, Pierre	
			\$2,000	94848	First National Bank, Pierre	
			\$1,500	303483	First Fidelity Bank, Colome	
			\$1,000	303812	First Fidelity Bank, Colome	
			\$1,000	303791	First Fidelity Bank, Colome	
			\$500	303942	First Fidelity Bank, Colome	
			\$2,500	304152	First Fidelity Bank, Colome	
		\$2,000	304154	First Fidelity Bank, Colome		
<b>Releases of Liability and Surety:</b>						
Gary Elder Carter, SD	97-615		\$500	14427	First National Bank, Pierre	Release liability and \$1,000.
			\$500	57958	First National Bank, Pierre	
		615001	SW1/4 Section 27 & SE1/4 Section 28; T41N-R27W, Mellette County			
Donald F. Farnsworth, Jr. Keystone, SD	98-643		\$500	16405	First National Bank, Pierre	Release liability and \$1,000.
			\$500	6301319957	Wells Fargo Bank, Winner	
		643001	NE1/4 Section 24; T39N-R25W, Todd County			

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						<i>November 15, 2018</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>
<b><u>Releases of Liability:</u></b>						
TF Luke & Sons, Inc. Kimball, SD	83-11		\$20,000	929211763	Western Surety Company	Release liability.
		<b>11072</b>	SE1/4 Section 4; T105N-R69W, Brule County			
Bennett County Highway Department Martin, SD	93-485		Exempt	NA	NA	Release liability.
		<b>485005</b>	NW1/4 Section 35; T39N-R37W, Bennett County			