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Minutes of the
Board of Minerals and Environment
Telephone Conference Call Meeting

April 16, 2020
10:00 a.m. Central Time

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, Glenn Blumhardt, Dennis Landguth, Doyle Karpen, Daryl Englund, Jessica Peterson, Bob Morris, and John Scheetz.

BOARD MEMBERS ABSENT: None.

OTHERS: DENR Secretary Hunter Roberts; Mike Lees, Eric Holm, Patty McQuay, Roberta Hudson, and Bret Graves, Minerals and Mining Program; Jim Wendte, Waste Management Program; Steve Blair and Charles McGuigan, Attorney General's Office; Gary Haag, US Forest Service; Stacy Titus and Carla Cushman, city of Rapid City; Ross and Fern Johnson, Rapid City.

APPROVAL OF MINUTES FROM FEBRUARY 20, 2020: Motion by Morris, seconded by Blumhardt, to approve the minutes from the February 20, 2020, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

UPDATE ON 2020 OIL AND GAS BILLS: Secretary Roberts introduced himself to the board and discussed HB 1025, An Act to revise certain provisions regarding plugging and performance bonds for oil and gas wells; HB 1026, An Act to revise certain provisions relating to use of security for cleanup and remediation of environmental problems; and SB 17, An Act to make an appropriation for the plugging and surface reclamation of natural gas wells and to declare an emergency.

HB 1025 revised the plugging and performance bond structure for oil and gas wells. It eliminated tiered bonding based on well depth and set single well bonds at \$50,000 or an amount sufficient to guarantee the costs of well site reclamation, or a \$100,000 blanket bond. The board may require additional bond if the circumstances require. The bill also provides the board and the department the authority to require an additional \$20,000 bond for idle wells, as necessary.

HB 1026 clarifies the acceptable use of forfeited oil and gas surety. If the surety for a well has been forfeited and is not required for site-specific reclamation activities, the state may use the funds for the environmental cleanup or remediation of any lands or resources regulated under chapter 45-9. The bill allows the use of funds such as those revoked for the Quartz Operations well near Wasta, SD, that are not required for reclamation, to be applied to reclamation activities such as plugging and reclaiming the Spyglass wells.

SB 17 appropriates \$727,700 from the Petroleum Release Compensation Fund for the purposes of plugging and reclaiming the surface sites of natural gas wells in Harding County.

In response to a question from Doyle Karpen regarding the plugging of the Quartz Operations well, Secretary Roberts stated that the department believes there is nothing technically feasible that could be done to remediate the well without spending a lot of money without much gain. Mike Lees stated that the case staff brought before the board for forfeiture of the Quartz Operations bond and permit revocation indicated that there wasn't any feasible monitoring that could be done. It would not do any good to install a monitoring well at that site. The well is permanently plugged. Mr. Lees said staff believes there is no way the well could be plugged any better than it is now, so there is no reclamation or monitoring work that can be done at that site with the \$130,000 forfeited bond.

Chairman Hagg asked if there is any way to check on potential migration of water if the board did not feel that the well was plugged correctly. Mr. Lees stated that the models presented to the board by the Geological Survey at the hearing indicated that ground water flow rate is so low that, over the course of 50 years, migrating fluids would travel somewhere in the range of 1,000 feet, so it is not feasible to install a monitoring well at the site. He noted that the closest wells that utilizes the Inyan Kara Aquifer, which is the aquifer that may have been affected by the Quartz well, is approximately five miles from the Quartz well, so it is a non-issue in terms of monitoring the water quality for that aquifer.

Mr. Karpen noted that the department is saying the Quartz well has been totally reclaimed, so that would put no burden on the Board of Minerals and Environment in the future if there were any issues with the well.

Daryl Englund asked how quickly the Spyglass wells will be plugged. Secretary Roberts stated that SB 17 was an emergency appropriation and it went into effect upon signing. The DENR Minerals and Mining Program is currently preparing a bid package to start the process of remediation.

Responding to a question from Chairman Hagg, Mr. Lees stated that the Spyglass well plugging plans staff presented to the board in 2019 were brought to the board because at the time only partial funding was potentially available, namely, the \$130,000 Quartz bond and the small amount of surety the department holds from Spyglass. The plugging plans were presented as options for the board to consider and use to prioritize plugging and reclamation activities if only some of the wells could be addressed. Under SB 17 and HB 1026, the money is now in place to plug and reclaim all 40 well sites.

Secretary Roberts commented on the Spyglass situation, summarizing that dealing with the orphaned wells has been an expensive learning experience.

Chairman Hagg thanked Secretary Roberts and the DENR staff for their work on the three bills.

MINING ISSUES:

CONSENT CALENDAR: Prior to the meeting, the board received a table listing the department recommendation for transfer of liability from Lien Transportation Company to Harlan and Donald Young. (see attachment).

Bret Graves, Minerals and Mining Program, presented the consent calendar.

Chairman Hagg asked if staff saw any issues with the transfer.

Mr. Graves answered that he and Tom Cline had visited the site last summer. The site was not totally reclaimed, but the landowner agreed to take over liability for the site. The landowner has since applied for and received a mine license and has surety in place.

In response to a question from Mr. Morris, Mr. Graves stated that the \$20,000 bond for Lien Transportation is the maximum surety amount for a mine license. The \$20,000 bond covers as many sites and acres as that operator has licensed. The site Lien Transportation mined on the Harlan and Donald Young property is under eight acres, so the \$4,000 surety submitted by Harlan and Donald Young will cover that particular site.

Motion by Landguth, seconded by Englund, to transfer liability from Lien Transportation Company, Aberdeen, SD, Mine License 84-257, to Harlan and Donald Young, Aberdeen, SD, Mine License 19-1059.

Mr. Karpen stated that with today's economy, \$500 per acre does not reclaim an acre of land. He said perhaps in the future the board and the department should review the \$500 per acre surety requirement.

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

TRANSFER OF SMALL-SCALE MINE PERMIT 479 FROM STUART GOLDSMITH TO TIMMY R. HORN: Roberta Hudson reported that an application was received from Timmy R. Horn for transfer Small-Scale Mine Permit 479 from Stuart Goldsmith. The general location of the mining operation is three miles east of Rochford, SD. Under SDCL 45-6B-47, any mine permit can be transferred from one operator to another with the successor operator assuming all reclamation liability.

The transfer application and the \$100 transfer fee were submitted on February 20, 2020. The application was complete on March 24, 2020.

Ms. Hudson stated that due to unforeseen circumstances, there has been a delay associated with the replacement bond for this permit transfer. As a result of this delay, the department recommended that the Board postpone its decision on the permit transfer until the May 2020 board meeting. The department anticipates the issues associated with the replacement bond will be corrected by the May meeting, and that the board could then move forward with a decision on the transfer of the permit.

Motion by Englund, seconded by Karpen, to continue this matter until the May 21, 2020, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

SIMON CONTRACTORS OF SOUTH DAKOTA, INC. REQUEST FOR APPROVAL OF ITS SOCIOECONOMIC CONTRACTOR FOR A LARGE-SCALE LIMESTONE MINE PERMIT APPLICATION PURSUANT TO SDCL 45-6B-33.1:

Eric Holm reported that Simon Contractors has requested board approval of Dr. Michael Madden as its socioeconomic contractor. The company is applying for a large-scale mine permit application for the Loring limestone quarry located approximately 3.5 miles southwest of Pringle, SD. Simon Contractors currently mines limestone for construction aggregate at the quarry under Mine License 14-977. Due to changes in its operation, the company will be applying for a mine permit to cover other uses for the limestone.

Under the mining statutes, an applicant for a large scale mine permit is required to do a socioeconomic impact study to be included in its mine permit application. The law requires the applicant to get board approval for the contractor to conduct the study.

Mr. Holm noted that as part of its decision-making process on a mine permit application, the board can consider the socioeconomic impacts of a mining operation. The board can deny a mine permit application if it finds the adverse socioeconomic impacts of the proposed mining operation outweigh the benefits of the operation.

A copy of the February 6, 2020, letter from Simon Contractors requesting board approval of Dr. Madden as socioeconomic contractor and Dr. Madden's resume were sent to the board prior to the meeting.

Motion by Karpen, seconded by Peterson, to approve Dr. Michael Madden as socioeconomic contractor for Simon Contractors of SD, Inc. for a large-scale limestone mine permit application pursuant to SDCL 45-6B-33.1. A roll call vote was taken, and the motion carried unanimously.

FORFEITURE OF IRREVOCABLE LETTER OF CREDIT NO. 21804-01, TRUESTAR FEDERAL CREDIT UNION, BEMIDJI, MN, FOR EXPLORATION NOTICE OF INTENT, EXNI-408, FOR B4TIME, LLC:

Mr. Holm reported that on July 6, 2010, DENR issued a restriction letter for B4Time, LLC's EXNI-408 to conduct an exploration operation for gold in the SW1/4 Section 7; T1N-R4E, Pennington County, approximately eight miles northwest of Hill City, SD. B4Time posted a \$1,000 reclamation bond at that time.

The US Forest Service is the surface owner of the exploration area covered under EXNI-408. The US Forest Service issued B4Time an operating plan after B4Time posted a \$1,700 reclamation bond with the US Forest Service. With the \$1,000 state reclamation bond, the total reclamation bond for the exploration area is \$2,700.

SDCL 45-6C-52 states that for each exploration notice of intent held by an operator, an annual report of activities conducted under the notice shall be submitted to the department by January 1 of each year. Copies of previously submitted annual reports were sent to the board before the meeting.

DENR sent annual report forms to B4Time on October 31, 2018, and November 8, 2019, which were required to be submitted on January 1, 2018, and 2019, respectively. B4Time failed to submit both of those annual reports.

SDCL 45-6C-33 states that the operator shall restore each drill site and other affected land as nearly as possible to its original condition.

Mr. Holm stated that the October 20, 2018, Memorandum of Understanding between DENR and the US Forest Service states that the US Forest Service and the department will be jointly responsible for administration of the reclamation. The US Forest Service will notify the department of any failure by the operator to meet US Forest Service standards. If an operator fails to or refuses to perform the required reclamation, the US Forest Service and the department will ensure reclamation of the site is completed and will collect the costs, therefore, from the financial assurance.

In December 2017, B4Time submitted a letter to the US Forest Service stating that reclamation of the exploration area would begin in the fall of 2018.

After an October 2018 inspection, the US Forest Service notified DENR the site was not reclaimed, and it sent B4Time a letter requiring that reclamation of the site must be started no later than the spring of 2019. The letter also stated if reclamation is not started in 2019, the US Forest Service would use the reclamation bonds held by the US Forest Service and the state of South Dakota to complete reclamation.

On July 17, 2019, DENR and the US Forest Service inspected the area affected under EXNI-408 and determined B4Time had not completed the required reclamation. The exploration trench, which is approximately 25 feet deep by 15 feet wide by 80 feet long, and the holding pond need to be backfilled and recontoured, the access road needs to be removed, pipe and lumber need to be removed, and noxious weeds such as spotted knapweed and canada thistle need to be sprayed. Mr. Holm noted that a map of the exploration site was included in the meeting packet the board received prior to the meeting.

On September 16, 2019, the US Forest Service emailed DENR a copy of a letter received from Sandra Tepley, President of B4Time, LLC. She stated that since her husband experienced two

strokes and they had limited funds, they were unable to complete reclamation of the area affected under EXNI-408.

On October 22, 2019, the US Forest Service notified DENR by email of a phone conversation they had with Mrs. Tepley. The US Forest Service told Mrs. Tepley that they could use the bonds held by the state and the US Forest Service to do the reclamation work. Mrs. Tepley agreed to the US Forest Service proposal and was willing to sign any associated paperwork to arrange the work.

Mr. Holm stated that during exploration activities, B4Time disturbed a total of about one acre, and about one-half acre is currently not reclaimed.

DENR issued a Notice of Violation to B4Time on January 28, 2020. B4Time was found to be in violation of SDCL 45-6C-33 and 52 for failure to submit annual reports and complete site reclamation.

Sandra Tepley signed a stipulation/waiver on February 8, 2020, requesting EXNI-408 be closed and the state's \$1,000 reclamation bond be voluntarily forfeited to complete reclamation. She also waived the necessity of a hearing before the board.

Mr. Holm stated that a copy of the stipulation/waiver and the reclamation plan proposed by the US Forest Service were included in the board packet. Mr. Holm provided an overview of the proposed reclamation plan.

Mr. Holm stated that the department recommends the board declare Irrevocable Letter of Credit No. 21804-01, TrueStar Federal Credit Union, forfeited, and transfer the proceeds to the Department of Environment and Natural Resources so it can transfer the proceeds to the US Forest Service for use in reclaiming the area affected under EXNI-408.

Responding to a question from Mr. Karpen regarding the cost to reclaim the area, Gary Haag, US Forest Service, stated that the Forest Service plans to use its in-house construction and maintenance crew to complete the reclamation, but he has not had a chance to visit with the crew supervisor regarding a cost estimate.

Chairman Hagg asked if part of the stipulation/waiver agreement is that B4Time remains liable until such time as liability is released by the Board of Minerals and Environment. Chairman Hagg stated that SDCL 45-6C-24 talks about the liability of an operation continuing until released by the board.

Mr. Blair stated that his understanding when talking to DENR staff was that once the surety was forfeited, that would be an appropriate time to release the original operator. Mr. Blair said he believes that is why in her statement Mrs. Tepley requested release. The draft Order that was submitted includes release language. Mr. Blair said his recollection is that once the board has moved against a surety, generally, the department has looked at that as the appropriate time to release liability.

Responding to a question from Chairman Hagg, Mr. Holm stated that when staff looked at the site last July it determined that there is no potential of any water being contaminated, the site should be easy to revegetate, and there should not be any long-term issues with the site.

Chairman Hagg asked if any exploration holes were drilled on this site. Mr. Holm answered that no exploration holes were drilled, it was just the one trench. The exploration notice of intent was for a bulk sample and no drill holes were allowed under the notice.

In response to a question from Ms. Peterson regarding reclamation, Mr. Haag stated that the Forest Service plans to complete the reclamation this summer.

Mr. Scheetz asked how much the reclamation would cost if the department were to reclaim this site using the state's equipment. Mr. Holm answered that it would cost approximately \$5,000 for the one-half acre to be reclaimed.

Mr. Scheetz suggested that the exploration bonding requirements need to be reviewed.

Chairman Hagg stated in looking at the statutes, it appears that according to SDCL 45-6C 19, the department actually sets the level of the surety in these instances based on the five criteria listed in SDCL 45-6C-20. The board evaluates the status of the surety, and part of that is the financial status of the people that are applying for the exploration notice of intent along with some other factors. Chairman Hagg said he did have the thought that the \$1,000 surety for the protections reflected in that statute does not seem to be a lot. He noted that the statute does not appear to limit the surety amount, other than the \$20,000 statewide bond.

Mr. Holm stated that the department looks at everything up to the \$20,000 maximum. Mr. Holm noted that he has been going through other mineral exploration bonds to make sure the amount is enough to reclaim affected areas.

Mr. Scheetz commented that there are some controversial exploration permits on the horizon and people want to be assured that the board and the department are protecting the environment and, in particular, some of their wells or water sources that are close by. He stated that surface reclamation is not cheap, and it needs to be evaluated and the areas to be explored need to be bonded for whatever the real cost is to reclaim those areas.

Chairman Hagg said SDCL 45-6C-23 requires that at least 30 days prior to release of the surety, the department shall notify the board of county commissioners of the affected county and the surface owner or lessee of the affected land, if other than the mineral owner, of the proposed surety release. He asked if the department has contacted the county commission.

Mr. Holm stated the department does notify the county commissioners of any permit closings prior to scheduling the release of liability and release of surety before the board.

Responding to a question from Chairman Hagg Mr. Blair stated that forfeiture is not the same as release. Release of the surety back to the operator would not occur in this case because the surety is being forfeited. He stated that SDCL 45-6C-23 talks about release of the surety back to the operator, and not necessarily release of the site from state oversight or release of reclamation liability. Mr. Blair said there is nothing wrong with asking the department to give the board a presentation when reclamation is completed. He stated that release of surety in a forfeiture situation does not occur because the surety has been forfeited, and that may be different from release of reclamation liability and release of the site overall.

Chairman Hagg requested that once the site is reclaimed by the Forest Service, he would like the department to update the board on the reclamation as well as having pictures of the reclaimed area before it is brought to the board for the release of liability.

Motion by Greenfield, seconded by Morris, to declare Irrevocable Letter of Credit No. 21804-01, TrueStar Federal Credit Union, Bemidji, MN, for Exploration Notice of Intent, EXNI-408, for B4Time, LLC, forfeited and release the proceeds of the forfeited surety to the Department of Environment and Natural Resources, to be transferred to the US Forest Service for reclamation of the site, and that the board reserves release of the operator from liability until after reclamation is complete. A roll call vote was taken, and the motion carried unanimously.

PETITION TO REVERSE OR MODIFY RAPID CITY MUNICIPAL SOLID WASTE FACILITY PERMIT NUMBER 20-01 AND PETITION FOR EQUITABLE RELIEF:

Chairman Hagg stated that he had set deadlines for comment and response from the state and the city of Rapid City. The board was planning to hear that today, this is a matter that deserves an in-person hearing or if that can't be done, based on the current state of affairs with the Covid19 virus, the board will do its best to hold some of kind of alternate hearing mechanism that would include audio as well as visual.

Chairman Hagg said he set timelines for briefs and responses because this matter would have to be moved to at least the May board meeting to see what happens with the Covid19 situation. Yesterday, based on the submittals, Chairman Hagg appointed Bob Morris as the hearing chairman for this matter. Chairman Hagg stated that his intent for today, based on the circumstances, was to continue the matter to the May 21 meeting and the briefing deadlines were changed.

Hearing Chairman Morris requested appearances.

Steve Blair, Attorney General's Office, represented the Department of Environment of Natural Resources.

Ross and Fern Johnson, petitioners, were present on their own behalf.

Carla Cushman, city of Rapid City attorney.

Hearing Chairman Morris stated that to date he is in receipt of this information from Chairman Hagg:

- The Petition and index of exhibits filed by Ross and Fern Johnson regarding a solid waste permit issued by DENR to the city of Rapid City, Permit No. 20-01.
- A copy of the letter from Chairman Hagg dated March 10, 2020, raising the issue of whether the board has jurisdiction, which essentially is an issue of whether the petition was timely filed for purposes of becoming a contested case.
- On March 10, 2020, Chairman Hagg invited comment on that observation and requested submissions by April 13, 2020.
- On April 8, 2020, the Chair advised counsel/Johnsons that City and DENR had until April 21, 2020 to respond.
- The city, through Ms. Cushman, responded to Chairman Hagg's letter on April 13, 2020.
- On April 8, 2020, the Chair advised counsel/Johnsons that the Johnsons had until May 9, 2020 to reply to the city and DENR.

Hearing Chairman Morris asked Ms. Cushman if the city planned any additional submission from the response, aside from any reply that she may submit based upon the Johnson's response. Ms. Cushman stated that the city does not intend to submit anything additional, unless the hearing chairman requests the city to do so.

Hearing Chairman Morris if it is Mr. Blair's intention, on behalf of DENR, to respond to the petition filed by the Johnsons by April 21, 2020. Mr. Blair answered that is correct.

Hearing Chairman Morris stated that based upon the above information, the intention is that today, he would ask the board to continue this matter to the May 21, 2020, meeting. In the meantime, the parties will have submitted their arguments to briefs on the timing issues for filing the petition, then on May 21, 2020, Hearing Chairman Morris will convene a hearing and entertain oral arguments from the parties as to whether the petition was timely filed. Following the May 21 hearing, Hearing Chairman Morris will issue a proposed decision. At the June meeting, the board could adopt, amend, or otherwise make its decision as to how to proceed with Hearing Chairman Morris' Order.

Mr. Scheetz requested that the board be provided with a copy of the Johnson petition and other correspondence from all of the parties before the May 21 meeting.

Hearing Chairman Morris asked Mr. McGuigan if it is appropriate to provide these documents to the board members prior to the hearing on his proposed decision.

Mr. McGuigan answered that because the board has decided to take the route of the hearing chairman making a proposed decision and it will be voted on by the entire board, it is appropriate to provide these documents to the board members.

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Chairman Morris noted that at this time the petition has not been accepted as a contested case. It will only be accepted as a contested case if a determination is made by the board that the petitioners have timely filed according to the applicable law.

The documents will be made available on DENR's website prior to the May 21 meeting.

Hearing Chairman Morris asked if the parties had any objections to continuing the matter to May 21, 2020. The parties had no objections. He then turned the gavel over to Chairman Hagg.

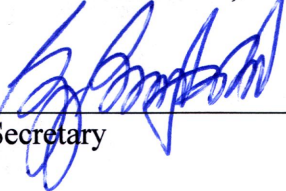
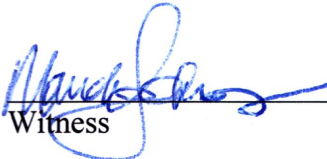
Motion by Morris, seconded by Blumhardt, to continue this matter to May 21, 2020. A roll call vote was taken, and the motion carried unanimously.

PUBLIC COMMENT PERIOD: There were no public comments.

NEXT MEETING: The next meeting is scheduled for May 21, 2020.

Mr. Karpen requested an update on the status of Spyglass litigation at the next meeting.

ADJOURN: Motion by Karpen, seconded by Peterson, that the meeting be adjourned. A Roll call vote was taken, and the motion carried unanimously.

	<u>3/19/20</u>		<u>5/19/20</u>
Secretary	Date	Witness	Date

Consent Calendar
South Dakota Board of Minerals & Environment

April 16, 2020

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Liability:</u>					
Lien Transportation Company Aberdeen, SD	84-257		\$20,000	Western Surety Company	Transfer liability.
		257013	S1/2 SE1/4 Section 26; T123N-R64W, Brown County		
Transfer to:					
Harlan & Donald Young Aberdeen, SD	19-1059		\$4,000	Plains Commerce Bank, Aberdeen	

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<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Small Scale Mine Permit 479:</u>				
Stuart Goldsmith Gillette, WY	479	\$2,500	First Interstate Bank, Gillette, WY	Transfer Permit 479 from Stuart Goldsmith to Timmy R. Horn and release CD No. 300017857, First Interstate Bank, in the amount of \$2,500. Accept CD No. 220146644, First Interstate Bank, in the amount of \$2,500.
E1/2 SE1/4 NW1/4 Section 28; T2N-R4E, Pennington County				
Transfer to:				
Timmy R. Horn Centennial, CO		\$2,500	First Interstate Bank, Gillette, WY	
<u>Forfeiture of Reclamation Surety:</u>				
B4Time, LLC Bemidji, MN	EXNI-408	\$1,000	TrueStar Federal Credit Union, Bemidji, MN	Declare Irrevocable Letter of Credit No. 21804-01, TrueStar Federal Credit Union, forfeited and transfer proceeds to the Department of Environment & Natural Resources.
SW1/4 Section 7; T1N-R4E, Pennington County				