

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Minutes of the
Board of Minerals and Environment
Mineral Palace Hotel – Gem Theater Room
604 Main Street
Deadwood, South Dakota

September 18-19, 2019
10:00 a.m. MDT

SEPTEMBER 18, 2019

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

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Daryl Englund, Gregg Greenfield, Doyle Karpen, Jessica Peterson, and John Scheetz.

BOARD MEMBERS ABSENT: Dennis Landguth and Bob Morris.

OTHERS PRESENT: See attached attendance sheets.

APPROVAL OF MINUTES FROM AUGUST 15, 2019, MEETING: Motion by Karpen, seconded by Blumhardt, to approve the minutes from the August 15, 2019, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

Consent Calendar: Prior to the meeting, the board received a table listing the department recommendations for releases of liability and surety, transfers of liability, and releases of liability (see attachment).

Bret Graves answered questions from the board regarding the transfer of liability from Boyden Construction to Duane Strand and the release of liability for Myrl & Roy's Paving, Inc.

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

SPYGLASS CEDAR CREEK, LP – UPDATE ON LITIGATION AND CONTACT WITH LAND/MINERAL OWNERS: Steve Blair, Assistant Attorney General, reported that he would be taking over as counsel on this matter since Mr. Williams resigned from the Attorney General's Office.

The pleadings have been filed and everyone has been served. The state received a \$20,000 check from Spyglass Cedar Creek, LP to replace the bond Spyglass cashed out of a Texas Bank. The check has cleared the bank and is in the custody of the state.

Mr. Blair noted that an amended complaint will be filed. In serving Mr. Kimmel and Mr. Sellers, new information was learned about their status with the company, so an amendment to the pleadings is needed, which will be filed in the near future.

Mike Lees, Administrator of the Minerals and Mining Program, stated that the board previously asked the department to send a letter to property owners affected by Spyglass Cedar Creek's 40 orphaned wells in Harding County. The department sent the letter via certified mail to all known property owners on August 21, 2019. Property owners contacted included the Bureau of Land Management and South Dakota School and Public Lands. The letter informed property owners of the board's action pertaining to Spyglass Cedar Creek and solicited input from the property owners. Mr. Lees noted that a copy of the survey sent to the property owners was included in the board packet. The property owners were asked to complete the survey and return it to the department by September 30, 2019.

Lucy Blocker, geologist with the Minerals and Mining Program, is the department's main point of contact regarding Spyglass matters and communicating with affected property owners. Ms. Blocker reported that of the 10 letters sent to affected property owners on August 21 and September 10, 2019, five responses have been received. With one exception, all responding property owners indicated their greatest concerns were getting the wells plugged so they are not a potential environmental threat and cleaning up the well sites. The responses were received from both surface and mineral owners.

Mr. Lees noted that the survey asked which wells the property owner has an interest in and what is the nature of the interest. The survey was sent to all known surface and mineral interest owners, however, there are undoubtedly many unknown mineral owners who were not notified.

Ms. Blocker stated that in one case a follow-up letter was sent because a recipient informed DENR about an additional owner and asked the department to contact him.

Chairman Hagg asked who was buying the gas when the Spyglass operation was active. Mr. Lees answered that Montana Dakota Utilities (MDU) was buying the gas.

Chairman Hagg asked if anyone has checked with MDU or anyone through Spyglass to see if they have identified all the owners through a division order where they pay out based on their research of the mineral owners in their leases. He said they usually will send out a division order to sign to be paid for the gas taken. This would help the department identify some of those mineral owners.

Mr. Lees stated that Spyglass Cedar Creek leased the minerals from mineral interest owners, and paid owners under the terms of each lease.

Chairman Hagg asked if the department has ever received copies of division orders.

Ms. Blocker stated that the department does not regulate leasing activity and does not typically receive copies of division orders.

Chairman Hagg noted that maybe that information could be obtained through the litigation. Getting copies of the division orders would help the department's effort to contact those people.

Mr. Karpen asked how many of the 40 wells are located on State land. Mr. Lees answered that 40 percent of the wells are located on State surface.

Chairman Hagg asked if there are areas where the State owns the surface but not the minerals.

Mr. Lees stated that there are split-estate properties where the state owns either only the surface or only the minerals

In response to a question from Mr. Scheetz, Mr. Lees stated that the first step in addressing the wells is to get funding. Under the next agenda item, Mr. Lees said he will be discussing a bill the department is working on that would create a clear path in statute to use forfeited bond money to address the Spyglass wells.

Regarding contact with land/mineral owners, Ms. Blocker reported that the department received input from the Bureau of Land Management, who has a financial interest in some of the wells.

Chairman Hagg asked if the department got any sense that the Bureau of Land Management might be willing to contribute to plugging the wells.

Ms. Blocker stated that the BLM has indicated since none of the wells penetrate federal mineral property, the wells do not qualify for federal orphaned well funding.

Mr. Greenfield asked if the department has thought about making a request to the legislature for an appropriation to address the wells.

Mr. Lees said that request was made during the 2019 legislative session, but it wasn't the department that made the request. That bill was opposed by the Bureau of Finance and Management and the Governor's Office. A question underlying the 2019 opposition to the proposed bill was, whose responsibility is it to plug the wells? He said the department is not going to request an appropriation based on direction from the last legislative session. The department is drafting a bill designed to reconcile environmental surety spending authority under SDCL 34A-10 with the oil & gas bonding provisions under SDCL 45-9 to make a clear path for use of forfeited oil and gas bonds are not needed, like the Quartz bond, for situations this the Spyglass wells. The department does not plan to request an appropriation.

Chairman Hagg stated that if a realistic targeted amount can be determined and consensus from the landowners, that might bear more weight with the legislature. Whether it comes from the department, the Governor's Office, or even an individual legislator from that area, maybe an

appropriation would be appropriate then. It is all part of the process of why this information is being gathered and determining what the alternatives are because the board and the department are stymied without money to do much of anything else on the plugging side. Chairman Hagg said it is not uncommon to make a second request after more information is obtained and more of a specific solution is found; instead of asking for \$1,000,000 maybe it only takes \$300,000. He said he believes there is still hope that this can be done, but more information than what was presented last year is needed.

Mr. Blumhardt stated that there is still the possibility of a settlement with Mr. Kimmel and Mr. Sellers.

Mr. Karpen said it may be feasible to request funding from the legislature to plug the wells in two phases, that way not all of the funding would be required at the same time. He recommended someone move forward with legislation.

Chairman Hagg suggested that School and Public Lands should take the lead in requesting an appropriation to at least plug the wells on their land.

Chairman Hagg said he believes the board has done everything it can do.

DISCUSSION ON OIL AND GAS BOND CHANGE RECOMMENDATIONS: Mr. Lees reported that the department has been developing potential oil and gas bond changes that would preclude future situations like Spyglass. He discussed the following proposed changes to SDCL 45-9-15:

- Eliminate tiered bonding by depth.
- New bonding requirement based on original bond increase proposed in 2013 (Senate Bill 1):
 - \$50,000 per well, or total estimated plugging/reclamation cost if less, or;
 - \$100,000 statewide blanket bond.
- Additional bond requirement for idle wells (two proposed options conceptually based on Wyoming and Colorado requirements):
 - \$10/ft, or total estimated plugging/reclamation cost if less than \$10/ft.
 - \$20,000 per idle well.

Chairman Hagg said it doesn't make logical sense that a company could have 40 wells under one \$100,000 blanket bond. He questioned why each well wouldn't have an individual bond.

Mr. Lees stated that industry is accustomed to blanket bonds throughout the region.

Chairman Hagg said he doesn't think it is a problem when there are only five wells, but when there are 40 wells it should be more.

Mr. Lees said some states have a cap on the number of wells covered under a blanket bond.

Chairman Hagg suggested the department consider placing a cap on the number of wells covered under a blanket bond.

Mr. Karpen suggested that the board set the bond amounts for each well. Then, if a company believes the amount set by the board is too high, the company would have to provide information to the board proving why that large of a bond is not required.

Chairman Hagg noted that the board does have the authority to require a larger bond amount.

Mr. Scheetz stated that if Spyglass were required to post a \$100,000 blanket bond, that amount would not be enough to cover the cost of plugging all 40 of the wells.

Mr. Lees noted that the proposed bill also includes a \$20,000 bond for each idle well, which would have addressed the Spyglass situation.

Mr. Lees stated that the department sent letters to all oil and gas companies operating in SD, explaining proposed changes to the bond requirement under SDCL 45-9-15. In addition to explaining the proposed changes, the letter requested input from operators. Fourteen industry contact letters were sent via certified mail, and the department requested responses by August 30. Responses were submitted by Peter K. Roosevelt, Citation Oil & Gas, and Continental Resources.

Citation Oil & Gas and Continental Resources both responded in support of the proposed changes, however, both companies want the board and the department to have discretion in requiring additional idle well surety on a case-by-case basis.

Mr. Lees read the following comment that was submitted by Peter K. Roosevelt, who operates approximately 15 shallow oil wells in Fall River County.

“Raising the bonding requirements will punish the good operators as well as the bad operators. It is akin to throwing the baby out with the bathwater. It will certainly discourage future exploration in Fall River County where cost of operations needs to be kept low to match the risk of exploration... Proposed changes to SD’s oil and gas bonding stature are not wise.”

Mr. Greenfield said wildcat developers may not be the best operations to encourage with the blanket bond requirement. He said the problem he has with the allocation of risk with Mr. Roosevelt is that we “shouldn’t throw the baby out with the bathwater” but when the wildcat developer actually hits oil, the state does not get a bigger share. When something goes wrong, the state gets all of it, which is wrong. Mr. Greenfield said he is not in favor of requiring a blanket bond.

Mr. Blumhardt stated that the board must work within the guidelines that the legislature sets.

Chairman Hagg asked when the draft legislation will be ready. Mr. Lees stated that the proposed legislation is still being drafted.

Board of Minerals and Environment
September 18-19, 2019, Meeting Minutes

The board discussed the idea of contacting local legislators and testifying during the legislative session regarding the legislation. Chairman Hagg stated that he will ask Charlie McGuigan, Chief Deputy Attorney General, for direction regarding the board members testifying during the legislative session.

Mr. Lees stated that the department is also developing a second draft bill that involves changing SDCL 34A-10 to provide the board the authority to spend certain forfeited oil and gas bonds for reclamation of any activity or resources regulated under SDCL 45-9, Oil and Gas Conservation.

PUBLIC COMMENT PERIOD: No public comments.

NEXT MEETING: The next meeting is October 17, 2019, in Pierre.

Chairman Hagg called a recess. He departed the meeting to attend to a prior commitment.

At 1:00 p.m. the board members, DENR staff, and several members of the public met at the Homestake Office in Central City and proceeded to tour the Grizzly Gulch Tailings Impoundment and the Gilt Edge Mine.

Vice Chairman Glenn Blumhardt declared a recess following the tour of the Gilt Edge Mine.

SEPTEMBER 19, 2019

Vice Chairman Blumhardt called the meeting back to order at 8:30 a.m. A quorum was present.

BOARD MEMBERS PRESENT: Glenn Blumhardt, Daryl Englund, Gregg Greenfield, Doyle Karpen, Bob Morris, Jessica Peterson, and John Scheetz.

BOARD MEMBERS ABSENT: Dennis Landguth and Rex Hagg.

OTHERS PRESENT: See attached attendance sheets.

The board, DENR staff, and several members of the public toured the Wharf Resources Mine, the Golden Reward mine, and the VMC project area.

ADJOURN: At the end of the tour, a motion was made by Karpen and seconded by Morris, to adjourn the meeting. The motion carried unanimously.


Secretary _____
Date 10/17/19


Witness _____
Date 10/17/19

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT
 SEPTEMBER 18-19, 2019 TOUR

18

NAME (PLEASE PRINT)	ADDRESS	REPRESENTING
Julie Santella	Rapid City, SD	myself
TALLI MAUMAN	talli.mauan@qmcuif.com	myself
Jeremy	Rapid City SD	myself
John Nelson	Rapid City SD	self
Aoam McLean	PIEDMONT SD	SELF
Elvyn D. Bissonette	Pine Ridge SD	Cyala Sioux Tribe
Livsey McHEAN	Piedmont, SD	self
Thomas L. Briggs	Pine Ridge, SD	Dakota Sioux Tribe
Carol Hauyse	Nemo, SD	self
M. Teller	Reno, NV	self
Daryl England	Brookings	DENV - BME E
Erin Greenfield	South Falls, SD	BME
Dave Kaper	Jefferson, SD	BME
Jessica Peterson	Aberdeen, SD	BME
Steve Blair	ZCSID	ATG
MARK KENNISON	BT RENO	DENV

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT
 SEPTEMBER 18-19, 2019 TOUR

NAME (PLEASE PRINT)	ADDRESS	REPRESENTING
Mike Lees	Pierre, SD	SD DENR
Seth Tupper	Rapid City	RC Journal
Doyle Karper	Jefferson SD	BME
Jessica Peterson	Aberdeen, SD	BME
Gregg Greenfield	Sioux Falls, SD	BME
Steve Bliss	RCSD	ATG
Bob Morris	Bellevue, SD	BME
Daryl England	Brookings	BME
Julie Santella	Rapid City	-
Jeremy	Rapid city	N/A
John Scheetz	Lead SD	BME
Adam Ford	Rapid City, SD	RC Journal
MORIK KEENIHAN	RC	DENR
Glenn Plunhard	Bowdle	BME
Don Valentine	Starbuck Energy Co	VMC
Amber Vogt	Deadwood SD	VMC

Consent Calendar
South Dakota Board of Minerals & Environment

September 18, 2019

<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>Releases of Liability & Surety:</u>					
Schenkel Demolition LLC Tyndall, SD	09-867		\$5,000	Security State Bank, Tyndall	Release liability and \$5,000.
		867001	E1/2 SE1/4 Section 1; T94N-R61W, Bon Homme County		
Gary Van Zee Franklin, TN	18-1045		\$1,500	BankWest, Armour	Release liability and \$1,500.
		1045001	W1/2 Section 12; T100N-R65W, Douglas County		
<u>Transfers of Liability:</u>					
Boyden Construction Platte, SD	85-313		\$20,000	Bank of the West, Platte	Transfer liability.
		313002	SE1/4 Section 34; T101N-R66W, Aurora County		
Transfer to:					
Duane Strand Platte, SD	18-1037		\$1,000	First Fidelity Bank, Platte	

Consent Calendar
South Dakota Board of Minerals & Environment

September 18, 2019

<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>Transfers of Liability:</u>					
Jackson County Highway Department Kadoka, SD	83-79		EXEMPT	NA	Transfer liability.
		79043	Section 30; T44N-R33W, Jackson County		
Transfer to:					
Western Construction Inc. Rapid City, SD	09-880		\$20,000	Travelers Casualty & Surety Company of America	
Meade County Highway Department Sturgis, SD	83-113		EXEMPT	NA	Transfer liability.
		113061	NW1/4 Section 21; T13N-R10E, Perkins County		
Transfer to:					
Perkins County Highway Department Bison, SD	83-91		EXEMPT	NA	
<u>Releases of Liability:</u>					
Myrl & Roy's Paving, Inc. Sioux Falls, SD	83-95		\$20,000	Great American Insurance Company	Release liability.
		95025	W1/2 N1/2 Section 30 & SE1/4 SE1/4 SW1/4 Section 19; T102N-R50W, Minnehaha County		

Consent Calendar
South Dakota Board of Minerals & Environment

September 18, 2019

<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>Releases of Liability:</u>					
Rogers Construction, Inc. Sturgis, SD	15-988	988006	\$20,000	United Fire & Casualty Company	Release liability.
			S1/2 Section 1; T3N-R3E, Lawrence County		
Dina Shefner Plankinton, SD	89-392	392003	\$3,000	American Bank & Trust, Alpena	Release liability.
			Section 24; T105N-R64W, Aurora County		
DOT – Aberdeen Region Aberdeen, SD	83-10	10072	EXEMPT	NA	Release liability.
			SW1/4 Section 26; T116N-R70W, Hand County		
Hyde County Highway Department Highmore, SD	83-88	88008	EXEMPT	NA	Release liability.
			NE1/4 Section 30; T111N-R73W, Hyde County		
		88015	SW1/4 Section 23; T116N-R72W, Hyde County		

Consent Calendar
South Dakota Board of Minerals & Environment

September 18, 2019

<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>Releases of Liability:</u>					
Moody County Highway Department Flandreau, SD	83-182		EXEMPT	NA	Release liability.
		182013	NW1/4 Section 21; T107N-R47W, Moody County		