



**Board of Minerals  
and Environment**

523 East Capitol Avenue  
Pierre, South Dakota 57501-3182  
(605)773-3151 Fax: (605)773-4068

AGENDA

Live audio of the meeting can be heard at <http://www.sd.net/mtc>

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. Central Time

10:00 a.m. Call to order and roll call

Approval of minutes from December 20, 2018, meeting

Consideration and enforcement of the Consent Agreement regarding Spyglass Cedar Creek LP

Next meeting

Public comment period in accordance with SDCL 1-25-1

Adjourn

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources by calling (605) 773-4216 at least 48 hours before the meeting if you have a disability for which special arrangements must be made.

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  
Matthew Environmental Education and Training Center  
523 East Capitol Avenue  
Pierre, South Dakota

December 20, 2018  
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, Bob Morris, Daryl Englund, John Scheetz, and Jessica Peterson.

BOARD MEMBERS ABSENT: None.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM NOVEMBER 15, 2018, MEETING: Motion by Morris, seconded by Blumhardt, to approve the minutes from the November 15, 2018, 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 recommendation for a transfer of liability (see attachment).

Tom Cline, DENR Minerals and Mining Program, was available to answer questions. There were no questions from the board.

Motion by Greenfield, seconded by Scheetz, to approve transfer of liability from Higman Sand & Gravel, Inc., Vermillion, SD, License No. 83-213 to James Gary Green, Golden, CO, Mine License No. 18-1043. A roll call vote was taken, and the motion carried unanimously.

EXCHANGE OF SURETY FOR WHARF RESOURCES (USA) INC.'S POST CLOSURE BONDS FOR PERMITS 356, 434, 435, 464, AND 476 AND PERMIT 450: Chairman Hagg turned the gavel over to Vice Chairman Glenn Blumhardt.

Participating via telephone conference call were Scott Sadowski and Ryan Field, Aspen American Insurance; Anne Gliedt, Lockton Companies; and Jay Gear, Coeur Mining Company. Matt Zietlow, Wharf Resources, was present at the meeting and also participated.

At a previous meeting, the board had concerns about Wharf Resources' request to utilize Aspen American Insurance Company for partial coverage of Wharf's required surety, and the board deferred the request until the December 20, 2018 meeting to allow more time for the department to look into the situation with Aspen American Insurance Company.

Eric Holm offered a PowerPoint presentation discussing DENR's routine surety bond evaluation process, DENR's review of Wharf's request for surety exchange including Aspen American credit ratings, Aspen American A.M. Best ratings since 2013, Wharf Resources' surety companies' long-term ratings, and long-term ratings of surety companies associated with other permitted mine operators. Mr. Holm also discussed the A.M. Best credit report for Aspen Insurance Holdings, Aspen American Company assets, the impending Apollo Global merger, and Apollo Global credit ratings.

Mr. Holm stated that following review and analysis of Aspen American Insurance Company, the department recommendation was to exchange Wells Fargo Bank Irrevocable Letter of Credit No. IS0274134U for Aspen American Insurance Company Bond No. SU53944 in the amount of \$1,767,077.00 for Permit No. 450, and to exchange Argonaut Insurance Company Bond No. SUR0032045 for Aspen American Insurance Company Bond No. SU53942 in the amount of \$26,800,000.00 for Permit Nos. 356, 434, 435, 464, and 476.

Mr. Morris stated that his major concern was that the A.M. Best rating outlook for Aspen American Insurance Company is stable with the expectation that key rating fundamentals will remain stable in the median term. S&P's global outlook was negative, indicating it could lower the rating by one notch if Aspen does not improve its underwriting performance over the next 18 to 24 months to a level broadly in line with that of its peers. He noted that having the information sent to the board prior to the meeting and the information presented by Mr. Holm has been very beneficial.

Mr. Morris asked the reason Wharf wants to exchange the surety bond with Argonaut Insurance Company for a surety bond with Aspen American Insurance Company.

Matt Zietlow, Wharf Resources, stated that one of the reasons is simple economics, and the other reason is that Wharf is still working its way through the corporate transition from Gold Corp to Coeur Mining, which is part of the reason there are multiple bond entities.

Jay Gear, Coeur Mining, stated that as a whole Coeur Mining works with a diverse and positively rated group of surety markets, and Coeur maintains multiple sureties in its mining portfolio. Coeur periodically reviews changes in the market place and adjusts the surety bond providers based on competitive terms and pricing. This is a routine practice the company employs, which reflects some of the proposed changes in surety providers. He noted that Argonaut still remains a strategic partner with Coeur Mining. Mr. Gear stated that using

multiple sureties provides the company with the diversification needed to provide for financial assurance and maintain responsible business practices.

John Scheetz asked when selecting a surety provider, what factors the company looks at, besides price, to ensure that in the event of a default the bonds can be paid.

Jay Gear stated that Coeur does an internal review of the surety company and works closely with Lockton Companies, Coeur's broker. Lockton Companies provides professional input based on their industry expertise. He stated that Coeur listens to Lockton's recommendations on the provider in the market place and they do periodic reviews on sureties to ensure that Coeur has the appropriate backing from a regulatory standpoint and a financial assurance standpoint.

Scott Sadowski, Aspen American Insurance Company, stated that the company's A.M. Best rating is A, which is in the range of other companies from whom surety bonds are typically accepted. It is the same as Argonaut's rating. Aspen's S&P rating is stronger than Argonaut's and Aspen is a larger company. Aspen operates in a heavily regulated environment. Insurance is one of the most heavily regulated businesses and any capital movement would need to be approved by the states that oversee Aspen and its subsidiaries as well as the U.S. Treasury and the rating agencies. Mr. Sadowski asked that Aspen's current ratings and financial strength be considered by the board.

Mr. Scheetz asked if the ratings drop from an A to a BBB+, what would potentially change in the surety in the future.

Mr. Holm stated that after the department performs the initial review, the ratings are checked annually. If a downgrade or change in outlook is noted, the ratings would be checked again in six months or quarterly if necessary. The department will also contact the mining company to determine the cause. The department would ask the company to change surety companies if the rating is close to or downgraded into a vulnerable category.

Responding to a question from Mr. Morris, Mr. Holm stated that Aspen American Insurance Company is licensed in South Dakota.

Motion by Morris, seconded by Hagg, to approve exchange of Wells Fargo Bank Irrevocable Letter of Credit No. IS0274134U for Aspen American Insurance Company Bond No. SU53944, in the amount of \$1,767,077.00, for Wharf Resources (USA) Inc. Permit No. 450; and to approve exchange of Argonaut Insurance Company Bond No. SUR0032045 for Aspen American Insurance Company Bond No. SU53942, in the amount of \$26,800,000.00, for Wharf Resources (USA) Inc. Permit Nos. 356, 434, 435, 464, and 476 with the condition that if Aspen American Insurance Company Inc.'s A rating with the S&P Global Rating or A.M. Best is downgraded, that the board reserves the right to evaluate the appropriateness of the surety with Aspen American Insurance Company and to take such action the board deems necessary to ensure an appropriate surety exists. A roll call vote was taken, and the motion carried unanimously.

CONTESTED CASE ENFORCEMENT HEARING IN THE MATTER OF SPYGLASS  
CEDAR CREEK, LLP'S VIOLATIONS OF SDCL 45-9 AND ARSD 74:12: A court reporter

was present for the hearing 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.

Chairman Hagg, hearing chairman, opened the hearing at 10:40 a.m.

Rich Williams, Assistant Attorney General, was present representing the Department of Environment and Natural Resources.

Lawrence Bender, attorney from North Dakota licensed to practice in South Dakota, represented Spyglass but was not present at the hearing.

The Department of Environment and Natural Resources issued Spyglass Cedar Creek LP (Spyglass) the following permits to drill located in Harding County, South Dakota: Permit Nos. 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.

On July 12, 2018, the Department of Environment and Natural Resources filed a Petition to Revoke Drilling Permit and Petition for Forfeiture of Surety concerning the above listed drilling permits. The department's petition was based upon the Notice of Violation issued to Spyglass by the department on July 10, 2018. The contested enforcement hearing was scheduled for December 20, 2018.

Mr. Williams stated that prior to the hearing date, the department and Spyglass negotiated a consent agreement to settle the matter. He distributed copies of the consent agreement and discussed each section of the consent agreement. The consent agreement is attached to these minutes as Exhibit A.

In the consent agreement, Spyglass does not dispute the findings in the Notice of Violation and the Petition, and Spyglass agrees to certain remedies to cure each of those violations. Spyglass also agrees that if the conditions of this agreement are not met, the Board of Minerals and Environment will automatically and without further notice to Spyglass issue an order revoking those permits and forfeiting any bond they may have and take any other appropriate action the department of board deems proper, pursuant to SDCL 45-9 or other applicable enforcement statutes.

The settlement terms of the consent agreement are all based on the admissions to the findings in the Notice of Violation. Dates are set for curing each of the violations found by the department during their inspections over the years.

The consent agreement states that Spyglass agrees to undertake a diligent and in good faith effort to obtain a \$200,000 bond by January 15, 2019. Failure to post the surety by January 15, 2019, will result in immediate default of the consent agreement and the Notice of Violation.

Chairman Hagg asked Mr. Williams to provide information regarding the current surety bond situation.

Mr. Williams stated that Spyglass was originally required by statute to have a \$20,000 blanket bond for plugging and performance and an additional \$10,000 for surface reclamation. The \$10,000 reclamation bond was held by a bank in Texas. The bank turned the bond over to Unclaimed Property in 2012. The department recovered the \$10,000 bond, less the 1.5 percent administrative fee charged by the Texas Unclaimed Property Division.

Mr. Williams stated that as part of the applications for the permits to drill, Spyglass submitted a \$20,000 statewide plugging and performance bond. The bond was submitted as a certificate of deposit issued by the First State Bank of New Braunfels, Texas. Over the years, the bank was sold and purchased twice, and at one point, the bank contacted Spyglass with regard to an unclaimed property issue. Spyglass cashed that \$20,000 certificate of deposit without giving notice to the Department of Environment and Natural Resources and without the department's consent. Spyglass did not re-post that \$20,000 bond. At this time, the department holds a little under \$10,000 for the surface reclamation bond received from the Texas Unclaimed Property Division.

Responding to questions from Chairman Hagg, Mr. Williams stated that when Spyglass submitted the applications for permits to drill in June 2008, the statutes required a \$10,000 bond for surface reclamation and a \$20,000 statewide bond for the plugging and performance of the wells.

Responding to a question from Mr. Landguth, Mr. Williams stated that in July 2018, the department became aware that the \$20,000 bond had been cashed out.

Mr. Williams said Spyglass became involved with New Frontier Energy, Inc. (NFEI). At some point Spyglass and NFEI had a disagreement about ownership and control of Spyglass, including the 40 wells in Harding County, South Dakota. The matter was resolved through litigation. Spyglass again has control of the assets in Harding County, including these wells.

Mr. Landguth asked if the \$200,000 bond would cover all of the reclamation of the wells. Mr. Williams answered that it would not cover the plugging and reclamation for all 40 wells. The department estimates that if the board were to order a bond that would cover reclamation and plugging and performance of all 40 wells, the amount would need be close to \$900,000.

Mr. Williams stated that the \$200,000 bond, pursuant to paragraph 13 of the consent agreement, would have to be posted by January 15, 2019. If the bond is not posted, the Board of Minerals and Environment would hold a hearing on January 17, 2019. Under the terms of the consent agreement, the board can enter an order forfeiting the surety the department currently holds and revoking all of the permits. Mr. Williams said it is his understanding that much of the \$200,000 will be paid by investors that Spyglass is working with. Without those investors, Spyglass would be unlikely to post any additional bond in this matter.

Chairman Hagg noted that Spyglass had offered to post a \$125,000 bond, and Chairman Hagg told Spyglass they needed to post a bond that would cover reclamation of at least half of the wells. A condition was placed on Spyglass that failure to post the \$200,000 bond by January 15, 2019, will result in immediate default of the consent agreement and the Notice of Violation, and the entry of an order by the board of Enforcement Relief without further hearing. Spyglass agreed with the condition.

Mr. Williams stated that the department has agreed to the consent agreement, and Secretary Pirner will sign the agreement.

Paragraph 15 of the agreement states that Spyglass may propose and submit an amendment to the agreement in writing to the department if, despite its good faith efforts, Spyglass is delayed or prevented from performing its obligations under the agreement as a result of war, rebellion, riots, acts of God, governmental law, order or regulation, or other explained good cause. Any amendment to the agreement is subject to final approval by the board.

Mr. Landguth stated that he did not agree with paragraph 15.

Paragraph 16 states that upon signing of the consent agreement by the parties and posting of the bond, the parties will submit to the Board of Minerals and Environment a Joint Motion to Dismiss the pending enforcement action. Mr. Williams stated that this does not prevent the department or the state of South Dakota from initiating the appropriate action against Spyglass for failure to comply with the terms and conditions of the consent agreement.

Mr. Williams discussed additional terms. He requested that the board adopt the settlement agreement, as proposed.

Mr. Williams and staff from the Minerals and Mining Program answered several questions from the board regarding Spyglass and the consent agreement.

Chairman Hagg asked if anyone in the audience wished to comment on this matter. No comments were offered.

Discussion took place among the board members.

Chairman Hagg requested board action.

Motion by Greenfield, seconded by Englund, to approve the consent agreement between the Department of Environment and Natural Resources through the Board of Minerals and Environment and Spyglass Cedar Creek LLP. A roll call vote was taken, and the motion carried with Blumhardt, Englund, Greenfield, Karpen, Landguth, Peterson, Scheetz, and Hagg voting aye.

Motion by Greenfield, seconded by Blumhardt, to authorize the board chairman to execute the Order Adopting the Consent Agreement in the matter of Spyglass Cedar Creek, LP's violations of SDCL Chapter 45-9 and ARSD Article 74:12. A roll call vote was taken, and the motion



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

*December 20, 2018*

<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>Transfer of Liability:</u></b>						
Higman Sand & Gravel, Inc. Vermillion, SD	83-213		\$20,000	975 7820	Fidelity & Deposit Company of Maryland	Transfer liability.
		<b>213007</b>	Section 29; T93N-R51W, Clay County			
Transfer to:						
James Gary Green Golden, CO	18-1043		\$1,500	5584347	Dacotah Bank, Sioux Falls	

*South Dakota Board of Minerals & Environment*

*December 20, 2018*

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<b><u>Exchange of Surety for Wharf Resources (USA) Inc.'s Post Closure Bonds:</u></b>					
Wharf Resources (USA) Inc. Lead, SD	450	\$1,767,077.00	ILOC No. IS0274134U	Wells Fargo Bank, Winston-Salem, NC	Exchange Wells Fargo Bank, Irrevocable Letter of Credit No. IS0274134U, for Aspen American Insurance Company, Bond No. SU53944, in the amount of \$1,767,077.00
Wharf Resources (USA) Inc. Lead, SD	356, 434, 435, 464, & 476	\$26,800,000.00	SUR0032045	Argonaut Insurance Company	Exchange Argonaut Insurance Company, Bond No. SUR0032045, for Aspen American Insurance Company, Bond No. SU53942, in the amount of \$26,800,000.00.



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

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

**CONSENT AGREEMENT**

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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.
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## 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



