

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

October 17, 2013  
10:00 a. m. CDT

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard C. Sweetman. Secretary Linda Hilde noted that a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Linda Hilde, Bob Morris, Glenn Blumhardt, Rex Hagg, and Pete Bullene.

BOARD MEMBERS ABSENT: Doyle Karpen and Dennis Landguth.

OTHERS PRESENT: See attached attendance sheets.

APPROVAL OF MINUTES FROM SEPTEMBER 23-27, 2013, MEETING: Motion by McCahren, seconded by Blumhardt, to approve the minutes from the September 23-27, 2013, Board of Minerals and Environment meeting. Motion carried.

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

Motion by Blumhardt, seconded by Monson, to accept the department recommendations for transfers of liability and releases of liability, as shown on the attached table. Motion carried.

OIL AND GAS CASE NO. 28-2013, LUFF EXPLORATION COMPANY, DENVER, CO: Chairman Sweetman had previously appointed Dennis Landguth as hearing chairman. Since Mr. Landguth was unable to attend the hearing, Chairman Sweetman appointed Bob Morris as hearing chair.

Mr. Morris opened the hearing at 10:10 a.m. CDT.

Case No. 28-2013 is the application of Luff Exploration Company, Denver, CO, for an order pooling all interests in a spacing unit for the South Medicine Pole Hills Field described as the E/2 of Section 33 and the W/2 of Section 34, T23N, R4E and the NW/4 of Section 3 and the NE/4 of Section 4, T22N, R4E, Harding County, SD, and to authorize the recovery of risk compensation in addition to the pro rata share of reasonable, actual costs from the interest of any lessee or unleased mineral owner who elects not to participate in the risk and cost of drilling and completing a well on said spacing unit.

Notice of the hearing was published in accordance with applicable rules and regulations. Roxanne Giedd, Deputy Attorney General, Pierre, SD, represented the Department of Environment and Natural Resources.

John Morrison, attorney from Bismarck, ND, and Brett Koenecke, attorney from Pierre, SD, represented Luff Exploration Company.

Scott Sumner, attorney from Rapid City, represented Linda Golden, who filed a petition to intervene in this matter.

Ms. Giedd provided the board with an overview of the case.

Exhibits offered and accepted into the record for the department:

DENR Exhibit 1 – Agency file

DENR Exhibit 2 – Copy of Certified Letter green card

Ms. Giedd stated that compulsory pooling and risk compensation is ultimately a matter that fits within the discretion of the board, therefore, the department did not take a position or make a recommendation concerning this matter. She noted that the department had no witnesses.

Mr. Sumner provided the board with copies of Intervenor Golden's hearing brief.

Mr. Morrison and Mr. Sumner offered opening statements.

In addition to the request for a pooling order, Luff Exploration Company requested that the board allow Luff to recover from Linda Golden's share of production from the spacing unit, exclusive of a one-eighth royalty, risk compensation equal to an additional 100 percent of the reasonable actual costs of drilling, reworking, side-tracking, deepening, plugging back, testing, completing and recompleting the well and the costs of newly acquired equipment in the well, including the wellhead connection. The risk compensation would be recovered only out of production from the spacing unit, exclusive of a one-eighth royalty.

Clayton Chessman, exploration manager, was administered the oath and testified on behalf of Luff Exploration Company.

Exhibits offered and admitted into the record for Luff Exploration Company:

Luff Exhibit 1 – 960-acre spacing unit with separately owned tracts shown

Luff Exhibit 2 – Ownership, 960-acre spacing unit

Luff Exhibit 3 – July 17, 2013 Certified Letter with several attachments to Linda Golden from Clayton Chessman regarding participating in the well

Luff Exhibit 4 – Emails sent by Clayton Chessman to Linda Golden regarding the lease proposal and Linda Golden's response

Luff Exhibit 5 – Pete's Creek Field showing Johnson I-9H well and Johnson B-16H well

Exhibit offered and admitted into the record for Intervenor Golden:

Golden Exhibit 1 – Application for a permit to drill with conditions (Permit 2040) signed by Richard George on July 2, 2013.

Mr. Sumner had no witnesses.

Mr. Sumner asked that the Board enter its order that includes the following provisions:

- That recognize the intervention of Petitioner Golden in this proceeding as an interested party;
- That determine that the interest owned by Petitioner Golden is not subject to a lease or other contract for development;
- That determine that the risk compensation percentages referenced in ARSD 74:12:10:02 and ARSD 74:12:10:03 are maximum risk compensation percentages to be allowed and not administratively mandated and fixed risk compensation percentages;
- That determine that an intervening interested party such as Petitioner Golden has the right and opportunity to object to the imposition of the risk compensation penalties under the existing circumstances and, further, and in the circumstances of this case, has the right and opportunity to object to the imposition of risk compensation penalties at all and, in the alternative, the right and opportunity to object to the imposition of risk compensation penalties on the terms proposed by Luff Exploration Company;
- That determine and provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation of a well may elect to surrender his or her leasehold interest to the participating owners on some reasonable basis for a reasonable consideration;
- That determine and provide for just and reasonable terms and conditions whereby an owner such as Petitioner Golden may elect to participate in the drilling and operation of the well on a limited or carried basis;
- That, without regard to whether risk compensation penalties are to be imposed or not, the costs of drilling, equipping, and operating a well may be recovered by the participating owners from a nonparticipating owner only out of the share of production from the spacing unit accruing to the interest of the nonparticipating owner, exclusive of a royalty not to exceed one-eighth of the production;
- That, if the evidence shows that Luff Exploration Company and others have drilled, equipped, and operated a well or paid the costs of drilling, equipping, and operating a well for the benefit of Linda Golden, as an interested owner, without the benefit of having first obtained either a voluntary pooling agreement from Linda Golden or a compulsory pooling order from the Board that is binding on Linda Golden, then and in that event, Luff Exploration Company and the other participating owners, if any, are

entitled to receive only the share of production from the spacing unit accruing to the interest of Linda Golden, exclusive of a royalty not to exceed one-eighth of the production, until the market value of Linda Golden's share of the production, exclusive of the royalty, equals the sums for the cost to drill, equip, and operate the well that are payable by or charged to the proportionate interest of Linda Golden, without the imposition of any risk compensation on top of the actual cost to drill, equip, and operate the well; and

- That, once the Board has made its decision on the issues presented with respect to risk compensation and with respect to such other just and equitable alternatives that are to be provided for and with respect to the just and equitable terms as are to be included in the Board's order, then and in that event Linda Golden shall have a reasonable time period and opportunity within which to make an election as to whether she wishes to participate in the risk and cost of drilling, equipping, and operating the subject well, or not, under the terms therefore which will have been established by the Board in its order.

Following testimony, cross-examination, questions from the board, and board discussion, Hearing Chairman Morris requested board action.

Motion by McCahren, seconded by Bullene, to approve Case No. 28-2013, Luff Exploration Company and to impose compulsory pooling and assess 100 percent risk compensation. Motion carried. Hagg cast the only dissenting vote.

The proposed Findings of Fact, Conclusions of Law and Order are due on October 23, 2013. Mr. Sumner is to submit his objections no later than October 30, 2013. The board will consider the proposals on November 11, 2013 at the Ramkota in Rapid City.

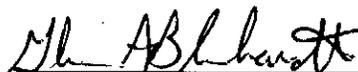
Mr. Morris declared the hearing closed.

NEXT MEETING: The board will meet in Rapid City November 11-15, 2013, for continuation of the Powertech contested case hearing.

ADJOURN: Motion by, Blumhardt, seconded by Hagg, that the meeting adjourn. Motion carried.

A court reporter was present for Oil and Gas Case No. 28-2013 and a transcript of the proceedings may be obtained by contacting Cheri Wittler, Precision Reporting, PO Box 232, Onida, SD 57564; telephone number 605-258-2678.

The meeting was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886. The recording is also available on the DENR website at <http://denr.sd.gov/boards/schedule.aspx>.

 11-21-13  
Secretary Date

 11/21/13  
Witness Date

# South Dakota Board of Minerals & Environment

October 17, 2013

<u>License/Permit Holder</u>	<u>License/ Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
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**Transfers of Liability:**

Fisher Sand & Gravel Company Dickinson, ND	83-54	54084	\$20,000 NE1/4 Section 9; T99N-R53W, Turner County	190-002-030	Liberty Mutual insurance Company	Transfer liability.
Transfer to: Rechnagel Construction, Inc. Hurley, SD	83-135		\$20,000	55-122632	United Fire & Casualty Company	
Miller Construction Isabel, SD	03-767	767004	\$20,000 SE1/4 NE1/4 & NE1/4 Section 25; T15N-R19E, Ziebach County	929293822	Western Surety Company	Transfer liability.

Transfer to:

Ziebach County Highway  
Department  
Dupree, SD

**Releases of Liability:**

Jensen Rock & Sand Inc. Mobridge, SD	83-112	112015	\$20,000 SE1/4 Section 4; T127N-R76W, Campbell County	41-16-48	New Hampshire Insurance Company	Release liability.
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October 17, 2013

**License/Permit Holder    License/ Permit    Site No.    Surety Amt.    Surety No.    Surety Company/Bank    DENR Recommendation**

**Releases of Liability:**

Albert Yager Madison, SD	92-459	459010	\$20,000	41010002201	Great Western Bank, Madison	Release liability.
				SW1/4 Section 6; T105N-R50W, Moody County		
DOT - Mitchell Region Mitchell, SD	83-10	10246	EXEMPT	NA	NA	Release liability.
				NW1/4 Section 32; T101N-R65W, Aurora County		
Dewey County Highway Department Timber Lake, SD	83-25	25004	EXEMPT	NA	NA	Release liability.
				E1/2 Section 12; T14N-R24E, Dewey County		
		25006			Section 24; T13N-R25E, Dewey County	
		25008			SE1/4 SW1/4, N1/2 SW1/4, S1/2 N1/2 Section 3; T14N-R21E, Ziebach County	
Hand County Highway Department Miller, SD	83-148	148017	EXEMPT	NA	NA	Release liability.
					NW1/4 Section 20; T110N-R66W, Hand County	