

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

IN THE MATTER OF	§	
SPYGLASS CEDAR CREEK, LP	§	PETITION TO INTERVENE
ALLEGED VIOLATIONS OF	§	IN CONTESTED CASE HEARING
SDCL CHAPTER 45-9 AND	§	PURSUANT TO ARSD 74:09:01:04
ARSD ARTICLE 74:12	§	

TO ALL PARTIES OF RECORD:

Respondent, SPYGLASS CEDAR CREEK, LP (“Spyglass”) hereby petitions to Intervene in a Contested Case Hearing pursuant to the provisions of ARSD 74:09:01:04 in response to the Violation Notice issued by the Department of Environment and Natural Resources for the State of South Dakota concerning a hearing to be held on Thursday, October 18, 2018, at the Matthews Training Center, Joe Foss Building, 523 East Capital Avenue, Pierre, South Dakota 57501, at 10:15 a.m. CDT.

In support of this Petition, and in specific response to the charges initiated by the Department of Environmental and Natural Resources (“DENR”), Spyclass would show the Board the following in support of its position:

1. Spyclass is not at fault for the current status of the project. Spyclass spent a number of years in extensive litigation with New Frontier Energy, Inc. (NFEI), which was at the time a publicly traded company owned and controlled by Samyak Veera. NFEI assumed control of the wells and of the field, and then forcibly retained that control after breaching all of its agreements with Spyclass as to operations, accounting, data and maintenance.
2. NFEI was controlled by an international criminal and financier who used a shadowy network of offshore accounts and international trust arrangements to launder money, evade taxes, and forcibly take control of legitimate US companies to use as sham organizations for purposes of advancing his financial crimes.
3. Mr. Samyak Veera, the controlling shareholder and CEO of the Company during most of the relevant time period, remains under indictment by the US Attorney of the

Federal District of Southern Pennsylvania for over \$250 million in criminal tax evasion and money laundering charges. Mr. Veera is similarly charged with tax evasion by New York State, where he was at one point listed as the single largest tax evader by such State. Mr. Veera's co-conspirators, who assisted him in using offshore accounts and trusts and US companies to further his illegal scheme, were similarly charged and indicted, and a number of them have been convicted and sentenced.

4. NFEI took control of the wells and the assets in South Dakota and imposed its will both on Spyglass and the wells. Spyglass was not in a position to take any remedial action without the consent and backing of NFEI. Mr. Veera specifically intended to breach landowner agreements and lease arrangements.
5. Spyglass litigated for a number of years at tremendous expense to wrest the project back from NFEI. Even after reaching a positive settlement a few years ago, NFEI continued to breach the settlement arrangements by failing to assign the project/ leases and release control of the project, failing to turn over data, failing to give Spyglass information needed to file mandatory state reports, or even granting Spyglass access to the filing system. Spyglass was forced to file yet another lawsuit merely to enforce the original settlement agreement.
6. Neither Spyglass nor the manager of its LLC general partner, March Kimmel, are at fault for closing out certificate of deposit number 52113 held by Prosperity Bank (the "Bank") due to official request to do so by the Bank on or about October 5, 2015, under threat of escheat to the State of Texas. At the time the Bank insisted that the account(s) be closed; neither Mr. Kimmel nor Mr. Sellers had any personal recollection of the documentation to the effect that the certificate served as collateral for any obligations to the State. The Bank's correspondence did not indicate that it was being held for such purpose, nor did it indicate there was any requirement that DENR agree to termination of the account.
7. The documentation provided by the Attorney General's office indicating that this certificate was held as collateral for a bond with the State was dated 2008 and signed by Kevin Sellers as the Managing Member. Mr. March Kimmel, the current Managing Member of the General Partner LLC, did not execute the documents, did not have copies of those documents, and did not have any recollection of Spyglass having a CD account with that Bank or any accounts at any other banks that served as some sort of bonding and did not recall having any knowledge or or see any information at the time

of the closing of the certificate that it was held as a bond. Mr Kimmel also doesn't recall any communication from the bank that this account was a bond or that it would require additional authorization from the State of South Dakota/ DENR to close the account. Mr. Sellers has also indicated that he did not have any recollection that the account was held as a bond.

8. Spyglass has made multiple efforts to resolve disputes with the DENR and the Attorney General's Office. The DENR worked specifically with and met exclusively with the Chief Financial Officer and later Chief Executive Officer of NFEI, in effect treating NFEI as the operator of the wells that are the subject of this Board hearing. During much of this time period The DENR also communicated directly with NFEI, took and gave direction directly with NFEI as the operator in control of the project and did not include Spyglass in or inform Spyglass of the information from these communications.
9. It was communicated to the DENR, and understood and agreed by the DENR, that NFEI had taken possession of all data relating to the wells and, from that point forward, all logs and reports were to be filed by New Frontier's CFO (and later CEO after the indictment), Tristan Farel, for the wells. DENR representative Lucy Dahl communicated exclusively with Mr. Farel, met with Mr. Farel on site, and in a number of cases did not include Spyglass and Mr. Kimmel from that correspondence and discussions.
10. Spyglass was unable for an extensive period of time, covering years, to file reports or logs or even access the filing system due to NFEI's exclusive possession of the data and the ongoing litigation with NFEI.
11. Prior to NFEI becoming the operator of the wells and responsible for all field and well site maintenance, Spyglass was the largest producer of natural gas in the State of South Dakota, paid approximately \$800,000 in royalties to the state's Office of School and Public Lands.
12. Spyglass always tried to be involved in the community by providing jobs, whenever possible hiring local vendors, donating money to local charities and the 4H, and helped the landowners and community on multiple occasions with instances such as:
 - a. Drilled a water well for a landowner at Spyglass' expense.
 - b. When the historic snow storm blew in and knocked out power and shutdown roads, Spyglass used its heavy equipment and employees to clear roads allowing for citizens to get into and out of their homes, rescued and assisted several

people with health issues, and even helped ranchers free trapped animals from damaged or collapsed structures .

- c. Donated gravel to help landowner build personal road/ driveway from lease road to landowner's home.

13. Spyglass has been damaged by outside parties attempting to thwart its efforts to move forward and try to capture the project from themselves. In a recent article published by the Rapid City Journal, Steve Harmon is mentioned and quoted trying to paint a positive picture of himself and a misrepresentation of Spyglass' situation. Mr. Harmon was the landlord at of an office rented by a land consultant that Spyglass utilized to try and reestablish state filing and reporting and get back in compliance on back reporting that was not done since relinquishing control to NFEI. Unbeknownst to Spyglass, Mr. Harmon listened in on confidential calls and illegally captured confidential documents and confidential communications between Spyglass and its land consultant. He used this ill-gotten information to subvert Spyglass' efforts in dealing with State and Local issues in an obvious attempt to undermine Spyglass and obtain the project. Since learning of the Spyglass SD holdings, Mr. Harmon has had multiple contacts with State and local officials discussing Spyglass' business and promoting against them in order to block Spyglass' effort to rectify issues with all State and local agencies.
14. Spyglass has received correspondence from the State discussing what actions could be taken against the company. Spyglass has participated in calls with the State discussing compliance and has attempted to comply in all areas possible but could not move forward or commit to a definite plan and specific time-frame to complete work and/or to remediate the well/ field issues given the lack of capital and the inability to bring in partners with the threat of a "death sentence" from the State. Essentially Spyglass cannot give any potential equity partners the assurance they need with out assistance and assurance of cooperation or a stay of action against the project from the State.
15. Spyglass has recently been able to get current and keep up with State and BLM production reporting. Spyglass has also made a concerted effort to find and send all available wells logs and technical data for previously drilled wells. Out of all of the technical data, well files, accounting records that were transferred to NFEI, only a portion has been returned resulting in countless hours trying to track down the some of the original data sources and complete the transfer of the requested information to the State.

- 16. Twice, in the past when notified of urgent issues with wells (even during litigation and at the time when NFEI was responsible for field operations), Spyglass leveraged personal contacts to go to the field to correct problem in the field**
- 17. Spyglass is currently working with at least two sets of partner-investors who have expressed interest in providing the funding that would be necessary to and potentially working with Spyglass to rehabilitate the field, fix problems with the wells, and bring the project back on line. This obviously will not be possible if the Department simply shuts down Spyglass and forces plugging of the wells. Spyglass has and continues to respectfully requests additional time to work with investors to arrange for equity financing to bring the project into full compliance and assistance from the state in demonstrating to these potential partners that the state will work with us and that there is a path forward and not just a “death sentence” This is beneficial to the wells, the landowners, the State, the local community and its citizens.**
- 18. In further support of this Petition, Spyglass hereby moves, or expresses its intent to file subsequent motions to request the following:**
 - a. That Spyglass be permitted to participate in the proceedings, including the final hearing, by way of telephonic appearance.**
 - b. That the hearing officer and the Board permit attorney James E McCutcheon, licensed as an attorney and counselor at law by the Supreme Court of the State of Texas, to represent Spyglass in the hearing. Mr. McCutcheon is not licensed in South Dakota. Spyglass does not have the resources at this stage to engage local counsel.**
 - c. Mr. McCutcheon’s licensing and contact information is as follows:**

State Bar of Texas No. 00791221
Tuggey | McCutcheon LLP
500 Sandau, Suite 100
San Antonio, Texas 78216
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jmccutcheon@icloud.com

d. That Spyglass be permitted to submit exhibits and documentary evidence to the Board via email or courier.

Respectfully Submitted,



March Kimmel, Manager of Xanthus LLC
General Partner of Spyglass Cedar Creek LP,
Respondent

APPEARING PRO SE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served upon Petitioners Department of Environmental and Natural Resources of the State of South Dakota by and through its attorney of record, Richard Williams, of the State Attorney General's Office. Such service was accomplished, by prior written agreement with the Attorney General's Office, by email to Departmental Representative, Brenda Binegar, with copies to her colleague Lucy Dahl and a copy to Michael Lees and Richard Williams, also via email. Service has also been made upon Prosperity Bank of New Braunfels, TX by Federal Express overnight courier, at the following addresses on this 31st day of August 2018:

VIA EMAIL TO: Brenda.Binegar@state.sd.us
Rich.Williams@state.sd.us
Michael.Lees@state.sd.us
Lucy.Dahl@state.sd.us

VIA OVERNIGHT MAIL TO:

PROSPERITY BANK
1911 Highway 46 West
New Braunfels, TX 78132
ATTN: ___ Tim Grainger ___



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ACTING PRO SE