

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 1:14-cv-00134-PAB-KMT

SPRING CREEK EXPLORATION &
PRODUCTION COMPANY, LLC,

Plaintiff,

v.

HESS BAKKEN INVESTMENTS II, LLC,
f/k/a TRZ ENERGY LLC; STATOIL OIL
& GAS, LP f/k/a BRIGHAM OIL & GAS, LP;
and STATOIL US HOLDINGS, INC.

Defendants.

JOINT AND STIPULATED PROTECTIVE ORDER

Upon motion of all the parties for a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that:

1. All Confidential Discovery Material produced or exchanged in the course of this litigation shall be used solely for the prosecution, defense, and/or settlement of this litigation and for no other purpose whatsoever and shall not be disclosed to any person except in accordance with the terms of this Protective Order.

2. A producing party may designate as “Confidential” any document or information that it has determined in good faith consists of or relates to the following: (a) trade secrets, including but not limited to, employer lists, client lists, prospective client lists, provider lists, provider information, records, forms, computer printouts, systems information, computer software, manuals, other business records and information, methods for the operation of the

businesses; (b) financial, tax and accounting information, confidential or proprietary business-related information, business plans or projections, acquisition offers or expressions of interest, proposed strategic transactions or other business combinations, and competitive analyses; and (c) confidential personal information.

3. A producing party may designate as “Attorneys’ Eyes Only” a document or other information if, and only if, the document or other information contains particularly sensitive confidential information that the producing party believes in good faith cannot be disclosed without threat of competitive injury due to the proprietary or commercial sensitivity of such information. The “Attorneys’ Eyes Only” designation shall be used as sparingly as possible. Any document, material, or information designated by a party as “Attorneys’ Eyes Only” must be reviewed by an attorney. The designation of any document, material, or information as “Attorneys’ Eyes Only” shall constitute a certification by the attorney reviewing the material and making such designation that he or she in good faith believes the material deserves this heightened level of protection and shall be used sparingly.

4. “Confidential Discovery Material,” as used herein, means any information of any type, kind or character which is designated as “Confidential” or “Attorneys’ Eyes Only” by any of the supplying or producing parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as “Confidential” or “Attorneys’ Eyes Only,” a party or third party will make such designation only as to the information that it in good faith believes contains confidential information and which that party has treated as confidential, proprietary, or trade secret information prior to the commencement of this litigation.

5. “Qualified Persons,” as used herein, means:
 - a. This Court and relevant Court personnel;
 - b. Counsel for a party (including in-house counsel), employees or independent contractors of such attorneys, and employees or independent contractors of a party who are supervised by in-house counsel, to whom it is necessary that the material be shown for purposes of this litigation;
 - c. Any expert, consultant, jury consultant, or other person (and his or her direct staff and/or mock jurors) who is retained by counsel for the purpose of consulting and/or testifying in this litigation, provided that each such expert or consultant shall have previously signed the Acknowledgement of Protective Order, as provided in Exhibit A;
 - d. Persons shown on the face of the document that have authored or received the document;
 - e. Court reporters and videographers retained to transcribe or record testimony;
 - f. The parties, including any officer, director, agent, or employee of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this matter, provided that each such person shall have previously signed the Acknowledgement of Protective Order, as provided in Exhibit A. Each party is responsible for securing Acknowledgements from their officers, directors, agents and employees.
 - g. Deponents, witnesses, or potential witnesses to the extent counsel has a reasonable and good faith belief that such persons will be witnesses in this case and that the witnesses’ examination with respect to the Confidential Discovery Material is necessary in

connection with such testimony, provided that each such person shall have previously signed the Acknowledgement of Protective Order, as provided in Exhibit A, or is giving testimony in this lawsuit and is therefore under the jurisdiction of this Court and shall be given actual notice of the Protective Order during the testimony;

h. Third-party vendors retained by the parties or their counsel for the purpose of copying, scanning, microfilming, reorganizing, filing, coding, converting, storing, or retrieving documents or related data;

i. Other persons upon written agreement of the parties; and

j. If this Court so elects, any other person may be designated as a Qualified Person by order of this Court after notice and hearing to all parties.

6. Documents produced in this action may be designated by any party or third party as “Confidential” or “Attorneys’ Eyes Only” by marking each page of the document(s) so designated with a stamp stating “Confidential” or “Attorneys’ Eyes Only.” Any duplication of Confidential Discovery Material authorized by this Protective Order shall include the same designation on the copy as exists on the original. Documents produced in native format shall be designated by including “Confidential” or “Attorneys’ Eyes Only” (or a reasonable abbreviation) in the name of each file that the party wishes to designate or, if that is impractical, in another way that will provide the receiving party with reasonable notice of the designation. Documents produced in .tif or .pdf format shall be designated by including “Confidential” or “Attorneys’ Eyes Only” on each page and the file name need not include the designation. Any storage media containing materials designated as Confidential Discovery Materials shall be marked as containing “Confidential” or “Attorneys’ Eyes Only” information.

7. Any party may designate deposition testimony as “Confidential” or “Attorneys’ Eyes Only” by notifying all of the parties in writing within thirty (30) days of receipt of the transcript of the specific pages and lines of the certified transcript which should be treated as “Confidential” or “Attorneys’ Eyes Only” thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts shall be treated as “Confidential” for a period of thirty (30) days after the receipt of the certified transcript.

8. a. Confidential Discovery Material shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as “Attorneys’ Eyes Only” shall be restricted in circulation to Qualified Persons described in paragraphs 5(a), (b), (c), (d) (e), (h), (i), and (j) above.

b. Copies of Confidential Discovery Material may be made, or exhibits prepared, by independent copy services, printers or illustrators for the purpose of this litigation.

c. Each party’s outside counsel shall maintain a log of all copies of “Attorneys’ Eyes Only” documents which are delivered to any one or more Qualified Persons of paragraph 5(c) above.

9. Documents previously produced shall be retroactively designated by notice in writing to all parties of the designated class of each document by Bates number within thirty (30) days of the entry of this order. Documents unintentionally produced without designation as “Confidential” or “Attorneys’ Eyes Only” may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party. A receiving party shall make a reasonable, good faith effort to promptly

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