

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 64279 / April 8, 2011**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3266 / April 8, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14335**

**In the Matter of**

**TODD D. CHISHOLM, CPA,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS PURSUANT  
TO SECTIONS 4C AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Todd D. Chisholm, CPA (“Respondent”) pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>3</sup> that:

### A. SUMMARY

1. From year-end 2004 through the first quarter of 2008, Powder River Petroleum International, Inc. (“Powder River” or “the company”) improperly accounted for over \$43 million in proceeds from conveyances of fractional working interests in oil-and-gas leases to investors in Asia. In particular, Powder River immediately recognized revenue from the conveyances, despite the fact that it had promised the Asian working interest investors a guaranteed return until they recouped their initial investment. In addition, Powder River also improperly recorded assets it did not own or that were stated in excess of net realizable value. As a result, Powder River’s financial statements did not present fairly, in all material respects, the company’s financial position, operating results, and cash flows in conformity with generally accepted accounting principles. Powder River materially overstated its revenues by 7% to 2,417%, its pre-tax income by 18% to 441%, and its assets by 7% to 48% in its Commission filings during the applicable period.

2. From year-end 2004 through the third quarter of 2007, Respondent was the engagement partner on Powder River’s audits and reviews. He failed to conduct these engagements in accordance with Public Company Accounting Oversight Board (“PCAOB”) Standards. Respondent also caused Chisholm, Bierwolf, Nilson and Morrill, LLC’s failure to have procedures in place to detect fraud and his failures as an auditor were a cause of Powder River’s filing of false and misleading Forms 10-QSB and 10-KSB. Accordingly, Respondent engaged in improper professional conduct, violated Section 10A(a)(1) of the Exchange Act, and was a cause of Powder River’s violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder.

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<sup>3</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **B. RESPONDENT**

3. **Todd D. Chisholm** is a certified public accountant licensed in the state of Utah. He became an audit partner at a predecessor of Chisholm, Bierwolf, Nilson and Morrill, LLC (“Chisholm Bierwolf”) in 1995, and he served as the firm’s managing partner from 2004 to 2010. Chisholm was the engagement partner on the audits and quarterly reviews of Powder River from 2004 through the third quarter of 2007, and supervised Chisholm Bierwolf’s engagements to audit and review Powder River’s financial statements throughout that period.

## **C. RELEVANT ENTITIES**

4. **Powder River Petroleum International, Inc.** is an Oklahoma corporation headquartered in Calgary, Canada. The company’s common stock is registered with the Commission pursuant to Exchange Act Section 12(g). Powder River’s shares are currently quoted on Pink OTC Markets, Inc. In July 2008, an Oklahoma district court granted a temporary restraining order and appointed a receiver for Powder River in connection with a complaint filed by certain Asian investors.<sup>4</sup> In December 2008, Powder River filed for bankruptcy.<sup>5</sup> It has not restated its financial statements, other than a restatement of its 2007 quarterly financial statements included in its year-end 2007 financial statements, nor has it filed any reports with the Commission since September 17, 2008.

5. **Chisholm, Bierwolf, Nilson & Morrill, LLC**, a PCAOB-registered audit firm with offices in Bountiful and Layton, Utah, and its predecessors, have been Powder River’s auditor since 2001.

## **D. FACTS**

### **Oil-and-Gas Working Interest Conveyances**

6. From year-end 2004 through the first quarter of 2008, Powder River offered and sold working interests in its oil-and-gas leases through an independent sales agent to investors in Singapore, Malaysia and Indonesia. Powder River’s contracts with Asian investors provided that they would receive guaranteed payments yielding an annual minimum of 9%, and in some cases more, beginning approximately six months after the date of investment until investors reached the “break-even” point, i.e. when their principal had been repaid (the “guaranteed payments”). Thereafter, investors received lease production payments based on their respective working interests. By the second quarter of 2007, Powder River’s guaranteed payments exceeded not only the investors’ share of oil-and-gas production revenues, but also Powder River’s total production

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<sup>4</sup> See *Chang v. Powder River Petroleum Int’l, Inc.* (Okla. Dist. Ct. July 14, 2008) (No. CJ-2008-4855).

<sup>5</sup> See *In re Powder River Petroleum Int’l, Inc.* (Bankr. W.D. Okla. Dec. 12, 2008) (No. 08-15613).

revenues. After that date, Powder River used proceeds from working interest conveyances to new investors to fund guaranteed payments to earlier investors.

**7.** From year-end 2004 through the first quarter of 2008, Powder River improperly recognized as revenue over \$33.5 million in proceeds from conveyances of the working interests to investors. These conveyances were in substance and should have been reported by Powder River as borrowings, not revenue (*see* Financial Accounting Standards No. 19, *Financial Accounting and Reporting by Oil and Gas Producing Companies*, paragraph 43). The investors' contractual right to receive guaranteed payments until their "break-even point" represented, in substance, a loan of capital to Powder River at a guaranteed 9% minimum rate of return. As a result of Powder River's improper accounting, the company materially overstated its revenues in its Forms 10-QSB, 10-Q, 10-KSB and 10-K for the year ended December 31, 2004 through the quarter ended March 31, 2008 by 7% to 2,417% and its net pre-tax income by 18% to 441%.

**8.** Respondent supervised Powder River's audits and quarterly reviews from year-end 2004 through the third quarter of 2007. During Respondent's 2004 and 2005 audits, and his quarterly reviews during 2005 and 2006, Respondent failed to examine the documents underlying the working interest conveyances or to question Powder River's improper revenue recognition of conveyance proceeds. Instead Respondent relied, without further inquiry, on the Powder River CEO's characterization of the working interest conveyances as "sales." As a result, Powder River: a) failed to disclose and account properly for the guaranteed payments; and b) improperly reported the working interest conveyance proceeds as revenue in financial statements included in its 2004 and 2005 Forms 10-KSB and its Forms 10-QSB from the first quarter of 2005 through the third quarter of 2006.

**9.** During Powder River's 2006 audit, Respondent became aware of Powder River's 9% payments to the working interest investors, but failed to inquire further about them or consider how those payments might affect Powder River's revenue recognition or whether the company should disclose its payment obligation in its 2006 financial statements. As a result, Powder River continued to record the working interest conveyance proceeds as revenue, failed to disclose the guaranteed payments, and improperly offset the guaranteed payments against the company's oil-and-gas production receipts.

**10.** In the second quarter of 2007, when the guaranteed payments exceeded Powder River's entire oil-and-gas receipts, the company began recording the guaranteed payments on its balance sheet as an asset labeled "pre-paid production payments." Respondent was aware of these facts. Yet, during his 2007 quarterly reviews, Respondent again failed to consider the impact of the guaranteed payments on Powder River's revenue recognition or to inquire further whether Powder River's accounting for those payments was correct. He also failed to consider whether Powder River should disclose its guaranteed payment obligation. As a result of the foregoing, Powder River continued to record the working interest conveyance proceeds as revenue, failed to disclose the guaranteed payments, and mischaracterized those payments as an asset in its financial statements included in its second and third quarter 2007 Forms 10-QSB.

### **Inflated Assets**

**11.** Powder River reported assets that it did not own or that did not exist in financial statements included in its 2005 and 2006 Forms 10-KSB and its Forms 10-QSB for the first, second and third quarters of 2005 and 2006. During the company's 2005 and 2006 audits, Respondent failed to conduct sufficient audit procedures to support the recorded oil-and-gas assets; otherwise he would have discovered information that indicated a significant amount of such assets should be removed from Powder River's financial statements. As a result, the company overstated its assets by 7% to 40%.

**12.** In particular, Powder River improperly included as assets in its financial statements two oil-and-gas leases it had agreed, but failed, to acquire. Specifically, in 2005, Powder River made \$500,000 in nonrefundable payments as a part of an agreement to acquire a New Mexico oil-and-gas lease for \$5 million, but by August 2005 it had defaulted on the terms of the agreement and lost its rights to the lease. Nonetheless, Powder River continued to report the lease as an asset on its balance sheet from the third quarter of 2005 through the first quarter of 2008, which was its last quarterly report. Similarly, Powder River made nonrefundable payments totaling \$1.5 million in late 2006 and early 2007 as part of an agreement to acquire a Texas oil-and-gas lease for \$6.5 million. The company reported the lease, along with an associated note payable, as assets on its balance sheet from year-end 2006 onward. In reality, the agreement was never consummated, no note agreement was ever executed, and Powder River ultimately forfeited its payments.

**13.** During Powder River's 2005 and 2006 audits, Respondent failed to review the oil-and-gas lease purchase documents for the New Mexico and Texas leases and to obtain adequate documentation for the \$2 million paid to third-parties in the failed lease purchases. During the 2006 audit, Respondent also failed to perform adequate alternate procedures even though: a) documents provided by Powder River to Chisholm Bierwolf indicated the Texas lease purchase agreement terms expired in December 2006; and b) Chisholm Bierwolf received an irregular confirmation of the purported \$5 million promissory note.

### **Failure to Assess the Work of a Professional**

**14.** At year-end 2005 and 2006, oil-and-gas properties represented 62% and 67%, respectively, of Powder River's total assets. In auditing Powder River's 2005 and 2006 financial statements, Respondent obtained and relied upon brief excerpts from oil-and-gas reserve reports. Respondent did little, if anything, to: a) evaluate the qualifications of the petroleum engineer who prepared the oil-and-gas reserve reports; b) understand the nature of the work performed in preparing the oil-and-gas reserve reports; and c) evaluate the petroleum engineer's relationship to Powder River. Prior to the completion of the 2005 audit, Respondent learned that the Commission's Division of Corporation Finance staff had issued comments, some of which addressed Powder River's oil-and-gas reserves, on its 2004 Form 10-KSB, and participated in at least one telephone call regarding the company's response to those comments. Respondent knew or should have known that the staff's comments and Powder River's responses thereto raised questions as to: a) the qualifications of the engineer who prepared the reserve reports; b) the adequacy of the

reserve reports to support disclosures made in the financial statements; and c) conformity of the reserve reports with Rule 4-10 of Regulation S-X. Accordingly, Respondent failed to adhere to the guidance contained in AU 336, *Using the Work of a Specialist*, and failed to obtain sufficient competent evidential matter to support Chisholm Bierwolf's report on Powder River's 2005 and 2006 financial statements.

**15.** Powder River's year-end 2005 and 2006 financial statements disclosed supplementary, unaudited footnote information required under Statement of Financial Accounting Standards No. 69, *Disclosures about Oil and Gas Producing Activities*. Despite the questions raised by the staff's comments on Powder River's 2004 Form 10-KSB, Respondent failed to comply with the provisions of AU §9558, *Required Supplementary Information; Auditing Interpretation of Section 558*, while supervising Powder River's 2005 and 2006 audits. AU §9558 states that if an auditor believes that information may not be presented within the applicable guidelines he ordinarily should make additional inquiries. Respondent had reason to believe that Powder River's footnote information may not have been presented within applicable guidelines. Therefore, he ordinarily should have made additional inquiries, but failed to do so.

#### **Creation of Audit Documents**

**16.** Prior to a PCAOB inspection in 2007, Respondent created and back-dated or directed Chisholm Bierwolf's staff to create and back-date audit planning and other documents more than 45 days after the documentation completion dates for the 2006 audit of Powder River's financial statements. Respondent and his firm's staff failed to document in the workpapers the dates that these changes were made, the names of the persons who made them, and the reasons for adding information. They also failed to notify the PCAOB inspection team that changes had been made to the audit files without appropriately documenting the date of those changes. As a result, Respondent failed to comply with PCAOB Auditing Standard No. 3, *Audit Documentation*, in addition to violating PCAOB rules. Respondent produced those documents to SEC staff during its investigation, without disclosing that they had been back-dated or created after document completion deadlines.

#### **Failure to Conduct Audits in Accordance with PCAOB Standards**

**17.** As the foregoing conduct demonstrates, Respondent failed to conduct Powder River's 2004, 2005, and 2006 audits in accordance with PCAOB Standards and Rules. Specifically, Respondent failed to:

**a.** Adequately plan audits and properly supervise assistants, under AU 311, ¶8, *Planning & Supervision*;

**b.** Gather sufficient competent evidential matter, under AU 326, ¶13, *Audit Evidence*, to support the characterization of Powder River's revenue and his conclusions on company assets;

c. Exercise due professional care and skepticism, under AU 230, ¶¶9, 25, *Due Professional Care in the Performance of Work*, as illustrated by repeated failures to review underlying documentation, undue reliance on management, and failure to respond appropriately to “red flags;”

d. Consider whether, under AU 336, ¶¶8, 9, *Using the Work of a Specialist*, Powder River’s petroleum engineers possessed the necessary qualifications for their work to be used as audit evidence;

e. Make additional inquiries under AU §9558, *Required Supplementary Information; Auditing Interpretation of Section 558*, although Respondent had reason to believe that Powder River’s oil-and-gas reserves footnote information may not have been presented within applicable guidelines; and

f. Properly prepare audit documentation, under PCAOB Auditing Standard No. 3, ¶15, *Audit Documentation*, as demonstrated by after-the-fact creation and back-dating of audit planning documents and checklists at Respondent’s direction.

18. Furthermore, Respondent did not have procedures in place designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on Powder River’s financial statement amounts, as required by Section 10A(a)(1) of the Exchange Act. This was demonstrated by Respondent’s failure to recognize Powder River’s improper revenue recognition, his failure to identify assets improperly included on its balance sheet, and his reliance on non-SEC compliant reserve reports that failed to support Powder River’s reported reserves.

## **E. VIOLATIONS**

19. Exchange Act Section 10A(a)(1) requires each audit to include procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts. No showing of *scienter* is necessary to establish a violation of Section 10A. *See SEC v. Solucorp Indus., Ltd.*, 197 F. Supp. 2d 4 (S.D.N.Y. 2002).

20. As discussed above, Respondent violated Section 10A(a)(1) by failing to have adequate procedures in place during Powder River’s 2004, 2005 and 2006 audit to reasonably assure detection of illegal acts, such as Powder River’s material overstatement of its revenues, its undisclosed guaranteed payments, its inclusion of improperly recorded assets on its balance sheet, and its materially overstated oil-and-gas reserves, which materially affected the determination of financial statement amounts.

21. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder, require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports as the Commission

may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979).

**22.** As discussed above, from year-end 2004 through the third quarter of 2007, Respondent's failures were a cause of Powder River's filing of false and misleading quarterly and annual reports with the Commission. Accordingly, Respondent was a cause of Powder River's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder.

**23.** Rule 102(e)(1)(ii) of the Commission's Rules of Practice and Section 4C of the Exchange Act authorize the Commission to censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to accountants who are found to have engaged in improper professional conduct. Under Rule 102(e)(1)(iv), the term "improper professional conduct" means, in part, "repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." Respondent's actions were unreasonable and failed to conform to applicable professional standards. Accordingly, his conduct supports an action under Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the Rules of Practice.

## **F. FINDINGS**

**24.** Based on the foregoing, the Commission finds that Respondent violated Section 10A(a)(1) of the Exchange Act, and was a cause of Powder River's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 promulgated thereunder.

**25.** Based on the foregoing, the Commission finds that Respondent engaged in improper professional conduct pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the Commission's Rules of Practice.

## **G. UNDERTAKING**

**26. Cooperation.** Respondent undertakes to cooperate fully with the Commission with respect to any matter relating to the Commission's investigation of Powder River or its current or former officers, directors, employees, or auditors, including but not limited to any litigation or other proceeding related to or resulting from that investigation. Such cooperation shall include, but is not limited to, upon reasonable notice and without subpoena:

**a.** Producing any document, record, or other tangible evidence reasonably requested by Commission staff in connection with the Commission's investigation, litigation or other proceedings;

**b.** Providing all information reasonably requested by Commission staff in connection with the Commission's investigation; and



c. Attending and providing truthful statements at any meeting, interview, testimony, deposition, trial, or other legal proceeding reasonably requested by the Commission staff.

27. In determining whether to accept the Offer, the Commission has considered these undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 10A(a)(1) of the Exchange Act.

B. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 promulgated thereunder.

C. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After five years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. A preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. An independent accountant. Such an application must satisfy the Commission that:

a. Respondent, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

b. Respondent, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in Respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

**c.** Respondent has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

**d.** Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

**E.** The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy  
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
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