

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 12023
(CONTINUED)
ORDER NO. 14254

IN THE MATTER OF A HEARING CALLED ON
A MOTION OF THE COMMISSION TO
CONSIDER THE APPLICATION OF
CONTINENTAL RESOURCES, INC. FOR AN
ORDER PURSUANT TO NDAC § 43-02-03-88.1
POOLING ALL INTERESTS IN A SPACING
UNIT DESCRIBED AS SECTIONS 14 AND 23,
T.161N., R.95W., SADLER-BAKKEN POOL,
DIVIDE COUNTY, ND; AUTHORIZING THE
RECOVERY FROM EACH
NONPARTICIPATING OWNER A RISK
PENALTY AS PROVIDED BY NDCC § 38-08-08
AND SUCH OTHER RELIEF AS IS
APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 14th day of January, 2010.
- (2) Pursuant to North Dakota Administrative Code (NDAC) Section 43-02-03-88.1, the Director is authorized to sign, on behalf of the Commission, orders relating to, inter alia, pooling under North Dakota Century Code (NDCC) Section 38-08-08.
- (3) The applicant is the owner of an interest in an oil and gas leasehold estate in a spacing unit for the Sadler-Bakken Pool described as all of Sections 14 and 23, Township 161 North, Range 95 West, Divide County, North Dakota.
- (4) Said spacing unit is created in accordance with an order of the Commission and there are separately owned tracts and/or separately owned interests in the spacing unit, and some of the owners thereof have not voluntarily pooled their interests for the development and operation of said spacing unit.
- (5) The Commission makes no findings with regard to the specific acreage or percentage attributed to separately owned tracts or interests.

(6) Counsel for applicant requests an order of the Commission pooling all interests in the spacing unit.

(7) The Commission is in receipt of a document titled "Objection to Application of Continental Resources, Inc. and To Imposition of Risk Penalty" dated December 28, 2009 from J. Lanham Higginbotham III, an unleased mineral owner of approximately two net mineral acres under the spacing unit. Mr. Higginbotham objects to the risk penalty being applied to his minerals.

Mr. Higginbotham cites NDCC Section 38-08-08 which requires provides that the owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover from the nonparticipating owner a risk penalty for the risk involved in drilling and completing the well only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease.

A paying owner may impose a risk penalty against a nonparticipating owner without authorization from the Commission or may file a petition seeking authorization for the risk penalty. Absent a petition, a nonparticipating owner may, at any time, request a hearing before the Commission in order to object.

This application is not a petition for a risk penalty, therefore the Commission makes no findings with regard to whether any particular owner with an interest in the spacing unit at issue in this application may impose a risk penalty against any other owner.

(8) NDCC Section 38-08-08 requires the Commission to enter a pooling order upon application when two or more separately owned tracts are embraced within a spacing unit, or there are separately owned interests in all or a part of a spacing unit, in the absence of voluntary pooling. The section further provides that working interest owners in the spacing unit shall pay their share of the reasonable actual cost of drilling and operating the well plus a reasonable charge for supervision. In addition to such costs and charges, nonparticipating lessees may be required to pay a risk penalty of 200 percent and unleased mineral interest owners may be required to pay a risk penalty of 50% of their share of the reasonable actual cost of drilling and completing the well. The requirements for imposition of a risk penalty are set forth in NDCC Section 38-08-08 and NDAC Section 43-02-03-16.3.

(9) This application should be granted in order to prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED:

(1) All oil and gas interests in a spacing unit for the Sadler-Bakken Pool described as all of Sections 14 and 23, Township 161 North, Range 95 West, Divide County, North Dakota, are hereby pooled for the development and operation of the spacing unit.

(2) This pooling shall not determine or establish the specific acreage to be attributed to separately owned tracts, or specific interests attributed to separately owned interests.

(3) The operator of the well for the spacing unit shall conduct operations in a manner so as to protect correlative rights of all interested parties.

(4) All owners of interests shall recover or receive, without unnecessary expense, their just and equitable share of production from the spacing unit in the proportion as their interests may appear in the spacing unit.

(5) The working interest owners shall reimburse the operator for their proportionate share of the reasonable actual cost of drilling and operating said well, plus a reasonable charge for supervision.

(6) In the event of any dispute as to such costs the Commission shall determine the proper cost.

(7) In the event the size of the spacing unit pooled herein is modified by the Commission, this order shall terminate as of the date of such order.

(8) This order shall be effective from the date of first operations within the spacing unit, and shall remain in full force and effect until further order of the Commission.

Dated this 19th day of August, 2010.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director