

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF NORTH DAKOTA

CASE NO. 28495  
(RECONSIDERATION)  
ORDER NO. 31071

IN THE MATTER OF A HEARING CALLED ON  
A MOTION OF THE COMMISSION TO  
CONSIDER THE CONFISCATION, UNDER  
NDCC §§ 38-08-04 AND 38-08-04.9, OF ALL  
PRODUCTION AND/OR INJECTION RELATED  
EQUIPMENT, AND SALABLE OIL AT CERTAIN  
ABANDONED WELLS, LOCATED IN  
BILLINGS, BOTTINEAU, BOWMAN, BURKE,  
DIVIDE, DUNN, GOLDEN VALLEY,  
MCHENRY, MCKENZIE, MOUNTRAIL,  
RENVILLE, SLOPE, STARK, WARD, AND  
WILLIAMS COUNTIES, ND.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 10th day of June, 2020.
- (2) This special hearing was called on a motion of the Commission to consider the confiscation, under North Dakota Century Code (NDCC) Sections 38-08-04 and 38-08-04.9, of all production and/or injection related equipment, and salable oil at certain abandoned wells, located in Billings, Bottineau, Bowman, Burke, Divide, Dunn, Golden Valley, McHenry, McKenzie, Mountrail, Renville, Slope, Stark, Ward, and Williams Counties, North Dakota.
- (3) North Dakota Administrative Code (NDAC) Section 43-02-03-55 states the removal of production equipment or the failure to produce oil or gas, or the removal of production equipment or the failure to produce water from a source well, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. An abandoned well must be plugged and its site must be reclaimed pursuant to NDAC Sections 43-02-03-34 and 43-02-03-34.1.
- (4) The United States Congress, through passage of the CARES Act, provided payments to state governments navigating the impact of the COVID-19 outbreak. The North Dakota Emergency Commission on May 12, 2020 approved an appropriation of \$33,175,000 in CARES Act funding for plugging abandoned wells in North Dakota. This appropriation was subsequently approved by the Budget Section of the Legislature on May 15, 2020.
- (5) NDCC Section 38-08-04.9 states when the Commission intends to exercise or has exercised its right to plug a well or reclaim a well site, the Commission, as compensation for its

costs, may confiscate any equipment and salable oil at the well site. The equipment subject to confiscation is limited to that owned by the operator, former operator, or working interest owner. A confiscation must be by an order of the Commission after notice and hearing. A confiscation order transfers title to the Commission.

(6) On June 19, 2020, the Commission issued Order No. 31026 confiscating twenty-three (23) wells operated by Scout Energy Management LLC (Scout) and authorizing the Director to confiscate one (1) additional well if not brought into compliance with Commission rules by September 1, 2020.

(7) Scout filed a timely Petition for Reconsideration in this matter on July 6, 2020. The Petition provides five grounds for reconsideration:

- (a) Scout argued the Commission failed to serve it and all working interest owners with a complaint at least forty-five days before the June 10, 2020 hearing in this case.

NDCC Section 38-08-04.9 states, “[a] confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.” NDCC Section 38-08-11(3) states, “[a]ny notice required by this chapter must be given at the election of the commission either in accordance with chapter 28-32 or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated.” Further, NDCC Section 38-08-11(3) states, “[i]n proceedings that do not involve a complaint and a specifically named respondent, including agency hearings on applications seeking some right or authorization from the commission, the notice of hearing must be given at least fifteen days before the hearing, except in cases of emergency.”

In accordance with NDCC Section 38-08-11(3), the Commission elected to publish notice of the June 10, 2020 hearing in the following newspapers:

Bismarck Tribune (state capital) on Wednesday, May 20, 2020;  
Williston Herald (Williams County) on Wednesday May 20, 2020;  
Minot Daily News (Ward County) on Wednesday, May 20, 2020;  
Dickinson Press (Stark County) on Wednesday, May 20, 2020;  
Renville County Farmer on Wednesday May 20, 2020;  
Mountrail County Promoter on Wednesday May 20, 2020;  
McKenzie County Farmer on Wednesday May 20, 2020;  
Mouse River Journal (McHenry County) on Wednesday May 20, 2020;  
Golden Valley News (Golden Valley County) on Thursday May 21, 2020;  
Beulah Beacon (Dunn County) on Thursday May 21, 2020;  
The Journal (Divide County) on Wednesday May 20, 2020;  
Burke County Tribune on Wednesday May 20, 2020;  
Bowman County Pioneer on Friday May 22, 2020;  
Bottineau Courant (Bottineau County) on Tuesday May 26, 2020; and  
Billings County Pioneer on Thursday May 21, 2020.

Service by publication in the state capital and all counties where the confiscated wells are situated was complete at least fifteen days before the June 10, 2020 hearing. Additionally, although not required by NDCC Section 38-08-11(3), the Commission also served a copy of the notice directly to Scout's registered agent via certified mail on May 28, 2020.

There is no requirement in NDCC Chapter 28-32 (Administrative Agencies Practice Act) or NDCC Chapter 38-08 (Control of Gas and Oil Resources) that the Commission file or serve a complaint on a specifically named respondent in order to confiscate all production and/or injection related equipment, and salable oil at abandoned wells pursuant to NDCC Sections 38-08-04 and 38-08-04.9. Thus, the forty-five day notice requirement in NDCC Section 28-32-21(1)(b) is inapplicable.

- (b) Scout seeks modification of Order No. 31026 to include the Kirby B 1-23 (File No. 2778), AO Erickson 8-14 (File No. 6389), and Newhouse A 9H (File No. 6720) wells in the Commission's confiscation since they have no plans to utilize the wells in the future.

The Commission notes the Kirby B 1-23 and Newhouse A 9H wells were dismissed from this motion since Scout had returned the wells to production, although not in paying quantities. The AO Erickson 8-14 well was dismissed from this motion since Scout had returned the well to injection, although only a miniscule amount was injected after an extended period of inactivity. Commission rules allow the confiscation of wells not producing in paying quantities or an injection well inactive for extended periods of time, therefore the Commission will confiscate the three aforementioned wells.

- (c) Scout seeks modification of Order No. 31026 to include the Wilms A 2R (File No. 5294), 9215 JV-P Snow 1 (File No. 11934), Bratcher-State 10-44 (File No. 9887), Erickson 1RH (File No. 15133), USA 11-4-76 (File No. 8992), SFTU 10-25 WSW (File No. 12693), Thompson "M" 1 (File No. 2851), Jensen C 1A (File No. 1929), Hoehn SWD 1 (File No. 545), Wollan 10-15 (File No. 8402), and Greengard 1 (File No. 10645) wells to be confiscated by the Commission, although notice of such confiscation was not given.

Wells cannot be confiscated by the Commission without proper notice and hearing, therefore such additional wells will not be considered for confiscation at this time.

- (d) Scout seeks modification of Order No. 31026 to address contractual rights of third-parties who acquired an option to takeover certain wells which were confiscated by the Commission. Scout indicated certain third-party owners of the confiscated wells have contractual rights to take over certain wells in the event that Scout elected to plug such well and are entitled to thirty (30) or more days' notice to make the well takeover election.

Pursuant to NDCC Section 38-08-04.9, a confiscation order transfers title to the Commission. The Commission is not obligated to honor contracts entered into by operators.

- (e) Scout seeks modification of Order No. 31026 to address bond confiscation, forfeiture, or suspension and lawsuits against operators and working interest owners.

While the Commission intends to first exhaust any funds available to it under the CARES Act, the Commission does not waive, and reserves all rights to pursue confiscation, forfeiture, or suspension of well bonds, civil action, and all other remedies available to the Commission under North Dakota law.

- (8) This petition for reconsideration should be granted in part in order to prevent waste and protect correlative rights.

**IT IS THEREFORE ORDERED:**

(1) The Fryburg Heath-Madison Unit G-808 (File No. 1789), Medora Heath-Madison Unit 18HR (File No. 3966), Dickinson-Heath-Sand Unit 21 (File No. 4266), Nelson 43 1 (File No. 11273), SFTU 10-30 (File No. 13634), and Medora Heath-Madison Unit 29 (File No. 13795) wells are hereby dismissed from this motion.

(2) All production and injection-related equipment owned by the operator, former operator, or working interest owner and salable oil associated with the following wells currently operated by Scout Energy Management LLC is hereby confiscated by the Commission for the purpose of compensating the Commission for plugging and reclamation costs:

File No.	Well Name and No.	Field	County	Well Type	Last Reported Prod/Inj
1819	King G 1A	South Westhope	Bottineau	OG	5/2016
2577	Fryburg Heath-Madison Unit P-813	Fryburg	Billings	OG	7/2016
2778	Kirby B 1-23	Wiley	Bottineau	OG	4/2020
2868	Houmann C 5	South Westhope	Bottineau	OG	1/2015
4230	NE Foothills Unit Chrest 1	Northeast Foothills	Burke	OG	12/2015
4244	NE Foothills U Gullickson, GE A-1	Northeast Foothills	Burke	OG	12/2015
4276	NE Foothills Unit Doe 2	Northeast Foothills	Burke	OG	2/2014
4281	Spiese 1	Northeast Foothills	Burke	OG	10/2014
4350	Sabine 1	Northeast Foothills	Burke	OG	4/2016
4358	Obrien 1	Northeast Foothills	Burke	OG	4/2016
4374	Ingerson, F 1	Northeast Foothills	Burke	OG	4/2011
5889	NE Foothills Unit Chrest 2 WIW	Northeast Foothills	Burke	WI	10/2013
6350	NE Foothills Unit Doe 3	Northeast Foothills	Burke	OG	3/2013
6389	AO Erickson 8-14	Wiley	Bottineau	WI	4/2020
6390	AO Erickson 7-13	Wiley	Bottineau	WS	Unknown
6517	AO Erickson 3R	Wiley	Bottineau	OG	9/2014
6720	Newhouse A 9H	Wiley	Bottineau	OG	4/2020

File No.	Well Name and No.	Field	County	Well Type	Last Reported Prod/Inj
6836	Stratton C 14	Wiley	Bottineau	WS	Unknown
7040	Myrtle Grorud 1-R	Wiley	Bottineau	OG	4/2020
12179	SFTU 16-19	Fryburg	Billings	WI	7/2007
12476	South Fryburg 14-19T	Fryburg	Billings	OG	4/2017
12833	8902 JV-P LKNMU 3B	Little Knife	Dunn	OG	11/2017
12996	8902 JV-P LKNMU 6 WI	Little Knife	Dunn	WI	9/2017
13311	SFTU 4-35	Fryburg	Billings	WI	8/2018
13973	State Addition 5 1	Subdivision	Stark	DFP	7/2016
14693	SFTU 11-24	Fryburg	Billings	OG	12/2018

(3) Pursuant to North Dakota Century Code Section 38-08-04.9, this confiscation order transfers title to the Commission. Any person who removes any equipment or fluids from a well or well site confiscated herein without permission from the Director is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this order could be guilty of a Class C Felony.

(4) If the following well has not been brought into compliance with Commission rules by September 1, 2020, the Director is hereby authorized to issue an administrative order confiscating all production related equipment owned by the operator, former operator, or working interest owner and salable oil associated with the following well, for the purpose of compensating the Commission for plugging and reclamation costs, when in the Director's opinion: (a) the well is currently abandoned, (b) the operator is not prudently attempting to bring the well into compliance with Commission rules, and (c) plugging the well will protect the environment in a manner that is protective of correlative rights:

File No.	Well Name and No.	Field	County	Well Type	Last Reported Prod
7387	Romanyshyn 1	Little Knife	Billings	OG	8/2018

(5) Pursuant to North Dakota Century Code Section 38-08-04.9, the administrative order will transfer title to the Commission. Any person who removes any equipment or fluids from the well or well site confiscated without permission from the Director is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates an order could be guilty of a Class C Felony.

(6) This order shall remain in full force and effect until further order of the Commission.

Dated this 29th day of July, 2020.

INDUSTRIAL COMMISSION  
STATE OF NORTH DAKOTA

/s/ Doug Burgum, Governor

/s/ Wayne Stenehjem, Attorney General

/s/ Doug Goehring, Agriculture Commissioner