

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF THE PETITION OF )  
LUFF EXPLORATION COMPANY, DENVER, ) Case No. 28-2013  
COLORADO, FOR AN ORDER POOLING )  
ALL INTERESTS IN A SPACING UNIT FOR )  
THE SOUTH MEDICINE POLE HILLS FIELD )  
DESCRIBED AS THE E/2 OF SECTION 33 )  
AND THE W/2 OF SECTION 34, TOWNSHIP )  
23 NORTH, RANGE 4 EAST AND THE NW/4 )  
OF SECTION 3 AND THE NE/4 OF SECTION )  
4, TOWNSHIP 22 NORTH, RANGE 4 EAST, )  
HARDING COUNTY, SOUTH DAKOTA, )  
AND TO AUTHORIZE THE RECOVERY OF )  
RISK COMPENSATION IN ADDITION TO )  
THE PRO RATA SHARE OF REASONABLE, )  
ACTUAL COSTS FROM THE INTEREST OF )  
ANY LESSEE OR UNLEASED MINERAL )  
OWNER WHO ELECTS NOT TO )  
PARTICIPATE IN THE RISK AND COST OF )  
DRILLING AND COMPLETING A WELL ON )  
SAID SPACING UNIT; AND FOR OTHER )  
RELIEF AS THE BOARD DEEMS )  
APPROPRIATE. )

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**AMENDED POOLING ORDER**

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The above matter was appealed to the South Dakota Supreme Court and the Supreme Court issued an opinion on May 6, 2015, *In re Luff Exploration Co.*, 2015 S.D. 27, 864 N.W.2d 4 (2015), remanding the matter back to the 6<sup>th</sup> Judicial Circuit Court. On September 17, 2015 the Circuit Court issued an Amended Order remanding the matter to the Board of Minerals and Environment.

The Supreme Court remanded “to the [Board of Minerals and Environment] for entry of a pooling order that affords [Ms.] Golden a time and manner of electing to participate by paying her proportionate share of the cost of drilling, equipping and operating the well.” *In re Luff Exploration Co.*, 2015 S.D. 27, ¶18, 864 N.W.2d 4, 10 (2015).

A hearing was held October 15, 2015 at 10:15 a.m. CDT, in Pierre, South Dakota. Counsel of record appeared on behalf of the parties. After considering the matter, upon recommendations of the Hearing Chair, and unanimous vote of approval by the Board of the Hearing Chair’s recommendations, the following Amended Pooling Order is entered as follows:

1. That the Petition of Luff as set forth above is granted and approved.
2. That all interests in a spacing unit for the South Medicine Pole Hills Field described as the E/2 of Section 33, the W/2 of Section 34, Township 23 North, Range 4 East, the NW/4 of Section 3 and the NE/4 of Section 4, Township 22 North, Range 4 East, Harding County, South Dakota, including the interests of Golden, are pooled for purposes of the drilling and operation of, and production from, the Well in accordance with Order No. 16-2013.
3. That Luff is hereby designated the operator and is authorized to drill and operate said Well on the Spacing Unit.
4. That all expenses incurred in drilling, equipping and operating said wells on the Spacing Unit, and all production from such wells, shall be allocated to the various tracts within the Spacing Unit on the basis of the ratio the number of acres contained in each separately owned tract bears to the number of acres in the Spacing Unit.
5. That operations incident to the drilling of said wells on any portion of the Spacing Unit shall be deemed for all purposes the conduct of such operations upon each separately

owned tract in the spacing unit, and production allocated to each tract shall, when produced, be deemed for all purposes to have been produced from each tract by a well drilled thereon.

6. That Ms. Linda Golden, as an unleased mineral owner who owns a mineral interest in the Subject 960 Acre Spacing Unit is entitled to have, and is hereby declared to have, the right and opportunity to elect whether to fully participate in the well drilling, equipping, and operation by paying her proportionate share of the costs of drilling, completing, equipping, and operating the well drilled or to be drilled on the Subject 960 Acre Spacing Unit.
7. That Ms. Golden shall exercise her right to make such election to fully participate in the well on the Subject 960 Acre Spacing Unit by paying to Luff Exploration her proportionate share of the costs and expenses of drilling, completing, equipping and operating the well that Luff has drilled on the Subject 960 Spacing Unit, which payment shall be made by Ms. Golden, if she so elects, within no less than thirty (30) days from and after the date of service of Notice of Entry of the Board's Amended Pooling Order. If Ms. Golden elects to participate, she shall thereafter be responsible for payment of her proportionate share of the reasonable actual cost of operating the well plus a reasonable charge for supervision and interest.
8. That, in the alternative to electing to participate in the well on the Subject 960 Acre Spacing Unit as provided for above, Ms. Golden shall also have the right to elect to surrender her leasehold interest in the Subject 960 Acre Spacing Unit to Luff and the other participating owners by executing an Oil and Gas Lease on some reasonable basis and for reasonable consideration, which if not agreed upon, shall be determined by the

Board, and such election shall be made, within no less than thirty (30) days from and after the date of service of Notice of Entry of the Board's Amended Pooling Order. Counsel for the parties stipulated on the record that the terms contained in that certain Oil and Gas Lease found in Exhibit 3 of the record (pages 0244 – 0245 of the settled record) as expressed in Luff's July 17, 2103 letter, Exhibit 3 of the record (pages 0239 – 0240 of the settled record) - \$200 per net mineral acre bonus consideration, three year primary term, with a 1/6 royalty rate – is deemed to be based upon a reasonable basis and for reasonable consideration.

9. That, if Ms. Golden declines to elect to fully participate in the well on the 960 Acre Spacing Unit as provided for above or in the alternative declines to elect to surrender her leasehold interest in the Subject 960 Acre Spacing Unit as provided for above, Ms. Golden shall be deemed to have elected to participate in the drilling and operation of the Stearns Brothers B-33H well on a limited or carried basis and Luff, on behalf of the other working interest owners within the Spacing Unit who did share in the risk and cost of drilling and completing the Well, may recover from Ms. Golden's share of production from the Spacing Unit, exclusive of a one-eighth royalty, Ms. Golden's proportionate share of the reasonable actual costs of drilling, equipping and operating the Well until the market value of that production, exclusive of a one-eighth royalty, equals the sums paid by or charged to Ms. Golden's interest.
10. That if Ms. Golden is deemed to participate on a limited or carried basis, Luff, on behalf of other working interest owners within the Spacing Unit who did share in the risk and cost of drilling and completing the Well, may recover from Ms. Golden's share of production from the Spacing Unit, exclusive of a one-eighth royalty, risk compensation

equal to an additional 100% of the reasonable actual costs of drilling, reworking, sidetracking, deepening, plugging back, testing, completing and recompleting the Well and the costs of newly acquired equipment in the Well including the wellhead connection. Such risk compensation may be recovered only out of production from the Spacing Unit, exclusive of a one-eighth royalty.

11. Pursuant to request of Ms. Golden's counsel and agreement by Luff's counsel, this executed Amended Pooling Order and the Notice of Entry of Amended Pooling Order shall be sent by Luff to Ms. Golden by certified mail, return receipt requested, to her at 1700 Shattuck Avenue, Berkeley, California, 94709.
12. In the event of a dispute as to the costs of drilling, equipping, or operating the Well, the South Dakota Board of Minerals and Environment shall determine the costs in accordance with SDCL 45-9-35.
13. Further, the South Dakota Board of Minerals and Environment shall retain jurisdiction of this matter to address any disputes that arise between the parties, so long as such disputes are within the jurisdiction of the Board.

Dated at Belle Fourche, South Dakota, this 1<sup>st</sup> day of November, 2015.

SOUTH DAKOTA BOARD OF  
MINERALS AND ENVIRONMENT

By \_\_\_\_\_

  
Robert L. Morris  
Its Hearing Chairman