

**MEETING OF THE COMPULSORY POOLING STUDY GROUP
NORTH CAROLINA MINING AND ENERGY COMMISSION
JANUARY 11, 2013
MCSWAIN AGRICULTURAL CENTER
2420 TRAMWAY ROAD
SANFORD, NORTH CAROLINA**

1. PRELIMINARY MATTERS

Chairman Ray Covington called the meeting of the Compulsory Pooling Study Group of the Mining and Energy Commission (MEC) to order at 9:10 am and read the ethics statement into the record. Dr. Covington explained that the meeting was being held in Sanford to allow more local stakeholders the opportunity to provide input to the Compulsory Pooling Study Group. He encouraged landowners and other members of the public to contribute questions and comments as opportunities were provided to do so during the meeting. He also noted that the presentations made during the meeting would be available on DENR's website if the presenters provided them to DENR's staff. Dr. Covington welcomed all in attendance and explained that the purpose of this meeting was to gather facts on issues related to compulsory pooling. Panel members introduced themselves and explained their backgrounds and roles in compulsory pooling. Dr. Covington noted that Commissioner Charlotte Mitchell was absent due to a scheduling conflict.

The following persons were in attendance for all or part of the meeting:

MEC STUDY GROUP MEMBERS

Dr. Ray Covington
Mr. James Womack
Mr. Charles E. Holbrook
Mr. Ward Lenz in place of the Assistant Secretary of Energy

STUDY GROUP RESOURCE MEMBERS

Ms. Lynne Weaver, the Attorney General's Office
Mr. Don Kovasckitz, Lee County Government
Mr. James Robinson, Rural Advancement Foundation International (RAFI)
Mr. John G. Humphrey, the Humphrey Law Firm
Mr. Theodore Feitshans, North Carolina State University

DENR STAFF MEMBERS

Ms. Trina Ozer
Ms. Layla Cummings

NORTH CAROLINA STATE UNIVERSITY

Ms. Allison Saito

OTHERS IN ATTENDANCE

See attached sign-in sheets.

2. POOLING AND UNITIZATION LAWS BY STATE

Mr. Theodore Feitshans, a professor at North Carolina State University, introduced his undergraduate thesis student Ms. Allison Saito, who gave a presentation on pooling and unitization laws by state (see attached presentation). Ms. Saito presented various policy rationales both in favor and in opposition to compulsory pooling. She cited legal precedent giving the states authority to compel private landowners into drilling units and described the pooling process in other states. Ms. Saito also explained the terms of pooling orders in other states, including the allocation of production and division of costs, the length of an order, and landowner protections.

Ms. Saito allowed time for questions from the audience and various members of the panel were involved in answering those questions. The first question described a hypothetical scenario in which an operator declared bankruptcy after the issuance of a pooling order. Mr. Feitshans answered that any bankruptcy disposition would be within the discretion of a federal bankruptcy judge. It was asked whether conservation land could be pooled. Mr. Feitshans responded that the answer depended on whether the land was purchased or funded by public or private entities.

The following questions were asked about the consequences of a compulsory pooling order:

- (1) What happens if the terms of the landowner's mortgage prohibit the disposition of the mineral interests?
- (2) How does an order affect insurance rates, USDA loans, and taxes?
- (3) Does an operator have the right to access and use the surface water?

Dr. Covington responded that these questions would be the basis of topics of future study and discussion. There was also a question about takings law in North Carolina. Mr. Feitshans explained that the state must, at a minimum, have a public purpose and provide just compensation to take private property for public use. Ms. Saito's presentation will be available on DENR's website.

3. LIFECYCLE OF A MINERAL RIGHTS LEASE

Mr. James Robinson of RAFI presented a chart outlining the stages of a mineral rights lease. The chart displayed the various options landowners have in forming a drilling unit or pool and an overview of the potential terms of a mineral rights lease. The chart will be available on DENR's website.

Mr. John Humphrey of The Humphrey Law Firm gave a presentation on compulsory pooling and landowner protections. Mr. Humphrey reviewed common scenarios landowners may face in leasing mineral rights or if subject to a pooling order. Mr. Humphrey discussed the lease terms landowners can negotiate and how the state can protect landowners in the pooling process. Mr. Humphrey's presentation will be available on DENR's website.

4. TIMELINE OF THE COMPULSORY POOLING STUDY GROUP, DISCUSSION, AND NEXT STEPS

The ultimate goal of the Compulsory Pooling Study Group is to develop recommendations to be reported to the General Assembly. Dr. Covington proposed a timeline (see attached handout) for future meetings and steps to be taken including forming a draft of recommendations, allowing for public comment, and presenting draft recommendations to the MEC. Dr. Covington encouraged members of the public to contact him with any questions or comments about the meeting or the Compulsory Pooling Study and provided his phone number (336) 312-3320 and email address RayCovington@triad.rr.com for doing so.

5. CLOSING COMMENTS

Since there was not time to address all questions and concerns during the meeting, Dr. Covington invited those attending to speak with him and others on the panel after the meeting.

The meeting was adjourned at approximately 12:00 pm.

DEMLR Staff Contact for this Study Group: Walt Haven, Energy Program Supervisor, Land Quality Section.