

**FILED**

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

OCT 04 2012

SECRETARY, BOARD OF  
OIL, GAS & MINING

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY FOR AN ORDER ESTABLISHING A 1,280 ACRE DRILLING UNIT FOR A HORIZONTAL WELL FOR PRODUCTION OF OIL AND GAS FROM THE LOWER GREEN RIVER AND WASATCH FORMATIONS AND MODIFYING UTAH ADMIN. CODE R649-3-2(5), IN SECTIONS 31 AND 32 IN TOWNSHIP 4 SOUTH, RANGE 5 WEST, USM, DUCHESNE COUNTY, UTAH.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

**Docket No. 2012-020**

**Cause No. 139-92**

This cause came on for hearing before the Utah Board of Oil, Gas, and Mining (the "Board") on Wednesday July 25, 2012, at approximately 11:00 a.m. in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The following Board members were present and participated in the hearing: James T. Jensen, Chairman; Ruland J. Gill, Jr.; Jake Y. Harouny; Kelly L. Payne; Carl F. Kendell; and Jean Semborski. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner, Berry Petroleum Company, was Dennis J. Gustafson, Senior Landman, Jeffrey Ehrenzeller, Senior Geologist, and Carole R. Edwards, Senior Reservoir Engineer. Mark L. Burghardt of Holland & Hart, LLP appeared as counsel for Petitioner.

Attending and participating on behalf of the Division of Oil, Gas and Mining (the “Division”) was Brad Hill, Oil and Gas Permitting Manager, and Dustin Doucet, Petroleum Engineer. The Division was represented by Steven F. Alder, Esq. Assistant Attorney General. The Division expressed its support for the Request for Agency Action (the “Request”).

The United States Bureau of Land Management representative attended the hearing and indicated its support for the Request.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause shown hereby enters the following findings of fact, conclusions of law, and order:

#### **FINDINGS OF FACT**

1. Petitioner is a Delaware corporation in good standing having its principal place of business in Denver, Colorado. Petitioner is qualified to do business in Utah and is fully and appropriately bonded with all Federal, Indian, and State of Utah agencies.

2. This Request covers the following lands:

Township 4 South, Range 5 West, USM

Section 31: All

Section 32: All

Duchesne County, Utah

(the “Subject Lands”).

3. The Subject Lands are within the area generally known as the Lake Canyon Field. The oil, gas, and associated hydrocarbons underlying the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 31, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32 are held in private (fee) ownership and are currently under lease. All other oil, gas and associated hydrocarbons underlying the Subject Lands are Indian lands. The Indian lands are subject to an Exploration and Development Agreement between the Ute Indian Tribe, Ute Distribution Corporation, Bill Barrett Corporation, and Berry Petroleum Company, and approved by the United States Bureau of Indian Affairs (the "E&D Agreement"). Once issued, Petitioner will own a minority of the working interest in the leases issued for these lands for the Lower Green River and Wasatch Formations under the E&D Agreement, but has been designated as operator for these sections.

4. The Lower Green River and Wasatch Formations underlying the captioned lands are defined as:

The equivalent stratigraphic section from the lower Green River TGR-3 Marker found at 3,423 feet MD to the top of the North Horn Formation found at 7,895 feet MD in the Gavilan Petroleum, Ute 14-9 Well located in the SE $\frac{1}{4}$  of Section 14, T5S, R5W, USM (API No. 43013305410000).

5. Upon approval of this Order, Petitioner plans to drill a single horizontal well traversing Sections 31 and 32 within the Lower Green River and Wasatch Formations.

6. No previous Board Order has provided for well spacing for the Subject Lands. To date, development of the Subject Lands has proceeded pursuant to the general statewide well siting rule set forth in Utah Admin. Code R649-3-2.

7. The geological and engineering evidence presented by Petitioner indicates that a horizontal well drilled on the captioned lands will be efficient and economical and will not result in waste. The evidence presented also indicates that no communication is expected between the horizontal interval and any current or future vertical wells located within 660 feet or more from the horizontal interval.

8. A copy of the Request, and amendments thereto, were sent via certified mail, with return receipt requested, to all affected interest owners in the Subject Lands, and to the Bureau of Indian Affairs and the State of Utah and Vernal Field Offices of the Bureau of Land Management.

9. Notice of the filing of the original Request and scheduled hearing was duly published in the Salt Lake Tribune and Deseret Morning News on May 6, 2012, and in the Uintah Basin Standard on May 1, 2012. Notice of the Second Amended Request and scheduled hearing was duly published in the Salt Lake Tribune and Deseret Morning News on July 1, 2012, and in the Uintah Basin Standard on July 3, 2012.

10. The vote of the Board members at the July 25, 2012 hearing in this cause was unanimous in favor of granting the Request.

#### **CONCLUSIONS OF LAW**

1. Due and regular notice of the time, place, and purpose of the hearing was properly given in the form and manner as required by law and the rules and regulations of the Board and Division to all parties whose legally protected interests are affected by the Request.

2. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. § 40-6-1. *et seq.*

3. The Lower Green River and Wasatch Formations, as defined above, constitutes a “common source of supply” as defined in Utah Code Ann. § 40-6-2(18).

4. Utah Admin. Code Rule R649-3-2(6) establishes a “temporary six hundred and forty (640) acre spacing unit” for a horizontal well. The horizontal well to be drilled pursuant to this Request will traverse two sections, and thus requires an order establishing a 1,280 acre drilling unit. Additionally, because the ownership in the Subject Lands is not uniform, and contains both Indian and fee lands, a communitization agreement is required in order to pool these interests. The Bureau of Land Management, acting as technical advisor to the Bureau of Indian Affairs, requires a spacing order from the Board as a prerequisite to issuing a communitization agreement. Therefore, for the foregoing reasons, an order of the Board creating a 1,280 acre drilling unit is required.

5. Entry of an order providing for 1,280 acre spacing of the Subject Lands for a single horizontal well for production from the Lower Green River and Wasatch Formations will be in furtherance of the public policies of this State to promote greater

recovery of said resources without waste and with protection of the correlative rights of all affected owners, will allow for the orderly development of the Subject Lands, and is just and reasonable under the circumstances.

6. Modification of Utah Admin. Code R649-3-2(5) to allow a 660 foot inter-well setback requirements between horizontal and vertical wells producing within the Lower Green River and Wasatch Formations is just and reasonable under the circumstances.

7. The geological and engineering evidence presented by Petitioner indicates that a single horizontal well traversing the Subject Lands is efficient and economical and will not result in waste.

8. Future vertical wells located on the Subject Lands in the Lower Green River and Wasatch Formations will continue to be located under DOGM's general well location and siting rules as allowed under Utah Admin Code. R649-3-2(5) except as modified herein to allow vertical wells to be located no closer than 660 feet from the horizontal interval of the horizontal well drilled pursuant to this Order.

9. The relief granted will result in consistent and orderly development and the greatest recovery of oil, gas and associated hydrocarbons from the Lower Green River and Wasatch Formations underlying the Subject Lands, prevent waste, and adequately protect the correlative rights of all affected parties.

10. Berry has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the Request.

### ORDER

Based upon the Request, testimony and other evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Request in this Cause is granted.
2. A 1,280 acre drilling unit covering the Subject Lands is established for a single horizontal well in the Lower Green River and Wasatch Formations.
3. This drilling unit is limited to a single horizontal well. The current vertical well and future vertical wells located on the Subject Lands are not covered by this Order, but will continue to be located in conformance with Utah Admin. Code R649-3-2 and other applicable rules, provided that Utah Admin. Code R649-3-2(5) is modified to allow the location of vertical wells within 660 feet of the horizontal interval of horizontal well drilled pursuant to this order within the Lower Green River and Wasatch Formations. In the event Petitioner determines that there is communication between a vertical well and the horizontal well drilled pursuant to this Order, Berry shall notify the Division and take such remedial action as may be necessary.
4. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204

through 208, and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

5. This Order is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

6. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. § 63-G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63G-4-401(3)(a) and 403.

7. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63G-4-302. The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied. *Id.*

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month. Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

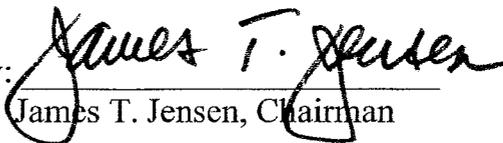
8. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board

retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

9. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

DATED this 27<sup>th</sup> day of September, 2012.

STATE OF UTAH  
BOARD OF OIL, GAS, AND MINING

By:   
James T. Jensen, Chairman

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order for Docket No. 2012-020, Cause No. 139-92 to be mailed with postage prepaid, this 4th day of October, 2012, to the following:

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Arden V. Robbins, Joan Robbins, and Kirk  
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Jacqueline Call  
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Handwritten signature of Julie Ann Carter in cursive script, written over a horizontal line.