

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

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 4 AND 5 IN TOWNSHIP 5 SOUTH, RANGE 6 WEST, USM, DUCHESNE COUNTY, UTAH.

Docket No. 2012-037
Cause 139-97

INDEX OF ORDERS

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	10/25/2012	Order Granting Leave to File Amended Request for Agency Action
2.	11/05/2012	Findings of Fact, Conclusion of Law, and Order

FILED

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

NOV 05 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 UTELAND BUTTE MEMBER OF THE LOWER GREEN RIVER FORMATION IN SECTIONS 4 AND 5 IN TOWNSHIP 5 SOUTH, RANGE 6 WEST, USM, DUCHESNE COUNTY, UTAH.

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

Docket No. 2012-037

Cause No. 139-97

This cause was heard before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday October 24, 2012 in the Colorado Room at the Red Cliffs Lodge, Mile Post 14 Highway 128, Moab, Utah. The following Board members were present and participated in the hearing: James T. Jensen, Chairman, Ruland J. Gill, Jr., Kelly L. Payne, Chris D. Hansen, and Carl F. Kendell. Assistant Attorney General, Michael S. Johnson represented the Board.

Testifying on behalf of Petitioner, Berry Petroleum Company ("Berry"), 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 Berry.

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. Assistant Attorney General, Steven F. Alder, represented the Division.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, enters the following:

FINDINGS OF FACT

1. Berry is a Delaware corporation in good standing with its principal place of business in Denver, Colorado. Berry 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 for Agency Action, as amended, (the "Request") covers Sections 4 and 5, Township 5 South, 6 West, USM, in Duchesne County, Utah (the "Subject Lands").

3. The Subject Lands are located within the area generally known as the Lake Canyon Field. The oil, gas and associated hydrocarbons underlying the Subject Lands are owned by the Ute Indian Tribe and are subject to an Exploration and Development Agreement between the Ute Indian Tribe, Ute Distribution Corporation, Bill Barrett Corporation, and Berry (the "EDA"). The EDA has been duly approved by the United States Bureau of Indian Affairs. Pursuant to the EDA, Berry has been issued, or will be issued upon drilling the proposed horizontal well, a majority interest in leases covering the Subject Lands. Leases issued under the EDA cover the Uteland Butte Member of the Lower Green River Formation, among other depths.

4. The Uteland Butte Member of the Lower Green River Formation underlying the Subject Lands is defined as:

The stratigraphic interval from the top of the Uteland Butte Member at 4,596 feet to the base of the Uteland Butte Member at 4,810 feet as measured in the Berry Petroleum Company LC Tribal 3-5-56 Well located in the NE¼NW¼ of Section 5, Township 5 South, Range 6 West, USM.

5. The proposed horizontal well has been identified as the 5HH-5-56 Well. The productive interval of the horizontal lateral for this well will traverse the S½N½ of both Sections 4 and 5.

6. Currently, there are three producing vertical wells located on the Subject Lands. Of these wells, only the 2-5D-56 Well is producing from the Uteland Butte Member of the Lower Green River Formation.

7. No previous Board order has spaced the Subject Lands. To date, the existing vertical wells have been drilled under the general statewide well siting and location rules for vertical wells contained in Utah Admin. Code R649-3-2.

8. The geological and engineering evidence presented by Berry indicates that the proposed horizontal well will be economical and will not result in waste.

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

10. Notice of the filing of the Request and scheduled hearing was duly published in the Salt Lake Tribune and Deseret Morning News on October 7, 2012, and in the Uintah Basin Standard on October 2, 2012.

11. The vote of the Board members at the October 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 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 Uteland Butte Member of the Lower Green River Formation constitutes a “common source of supply” as defined in Utah Code Ann. § 40-6-2(18).

4. The default rules for statewide spacing of horizontal wells establish a “temporary six hundred and forty (640) acre spacing unit” for a horizontal well consisting of a single governmental section. Utah Admin. Code Rule R649-3-2(6). The proposed horizontal well will traverse two governmental sections, covering 1,280 acres. Therefore, to enable the drilling of this horizontal well across two sections and create a permanent drilling unit covering 1,280 acres, an order of the Board is required.

5. The horizontal well drilled pursuant to this Request may not be located closer than 660 feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

6. Future vertical wells on the Subject Lands may continue to be located according to DOGM's general well location and siting rules for vertical wells. Any existing or future vertical well located on the Subject Lands, which is completed to and producing from the Uteland Butte Member of the Lower Green River Formation, may not be located closer than 1,320 feet to the producing interval of the horizontal lateral.

7. This Order mandates the sharing of Uteland Butte Member production from horizontal wells on a 1,280 acre basis without mandating any corresponding sharing of Uteland Butte Member production from vertical wells on the same basis. This practice, depending upon the location of wells and ownership patterns within the lands involved, has the potential to create correlative rights conflicts. In this particular case, these factors do not create any inequities that outweigh the benefits of the requested relief in light of the statutory goals discussed in paragraph 8, below, and no party has objected to the request.

8. The relief granted will be in furtherance of the public interest of this State by: providing for the development and operation of the oil and gas resource to maximize

ultimate recovery; protecting the correlative rights of all affected owners; and preventing waste. This relief is just and reasonable under the circumstances.

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

ORDER

Based upon the foregoing findings of fact and conclusions of law and other evidence of record, the Board orders that:

1. The Request is granted.
2. A 1,280 drilling unit is established for a single horizontal well covering all of the Subject Lands within the Uteland Butte Member of the Lower Green River Formation.
3. Current 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. In the event Berry determines that there is communication between the horizontal well drilled pursuant to this Order and existing and future vertical wells, 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.

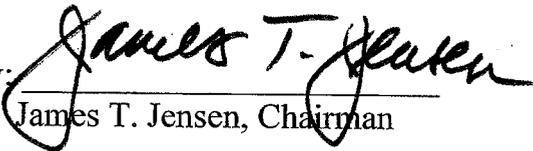
8. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board

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 5th day of ~~October~~ **NOVEMBER**, 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. 2012-037, Cause No. 139-97 to be mailed via email and first class mail, with postage prepaid, this 6th day of November, 2012, to the following:

A. John Davis
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[Via Email]

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FILED

OCT 25 2012

SECRETARY, BOARD OF
OIL, GAS & MINING

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

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 UTELAND BUTTE MEMBER OF THE LOWER GREEN RIVER FORMATION IN SECTIONS 4 AND 5 IN TOWNSHIP 5 SOUTH, RANGE 6 WEST, USM, DUCHESNE COUNTY, UTAH.

**ORDER GRANTING LEAVE TO
FILE AMENDED REQUEST FOR
AGENCY ACTION**

Docket No. 2012-037

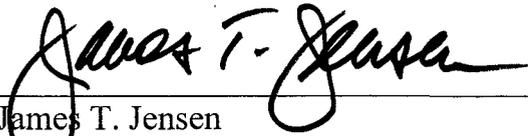
Cause No. 139-97

Based on the foregoing Motion to Grant Leave to File Amended Request for Agency Action, and good cause appearing therefore, IT IS HEREBY ORDERED:

That the Berry Petroleum Company granted leave to file its Amended Request for Agency Action in this matter.

ISSUED this 25th day of October, 2012.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



James T. Jensen
Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing ORDER GRANTING LEAVE TO FILE AMENDED REQUEST FOR AGENCY ACTION for Docket No. 2012-037, Cause No. 139-97 to be mailed via email and first class mail, with postage prepaid, this 30th day of October, 2012, to the following:

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