

FILED

FEB 25 2002

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 MILLER DYER RESOURCES  
LLC FOR AN ORDER  
ESTABLISHING A 640-ACRE  
HORIZONTAL DRILLING AND  
SPACING UNIT FOR THE CANE  
CREEK FORMATION LOCATED  
IN SECTION 24, TOWNSHIP 29  
SOUTH, RANGE 23 EAST, S.L.M.,  
SAN JUAN COUNTY, UTAH

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

**Docket No. 2002-002**

**Cause No. 166-02**

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, January 23, 2002, at the hour of 10:00 a.m. The following Board members were present and participated in the hearing:

- Elise L. Erler, Chairman
- Allan Mashburn
- Stephanie Cartwright
- James Peacock
- Kent R. Petersen
- Robert J. Bayer; and
- Douglas E. Johnson

Attending and participating on behalf of the Division of Oil, Gas and Mining (the "Division") was John R. Baza, Associate Director – Oil and Gas. The Board and the Division were represented by Thomas A. Mitchell, Esq., and Kurt E. Seel, Esq., Assistant Attorneys General, respectively. Attending and participating on behalf of the Bureau of Land Management ("BLM") was Robert Henricks, Chief-Branch of Fluid Minerals, Utah State Office.

Testifying on behalf of Petitioner Miller Dyer Resources LLC ("MDR" or "Petitioner") were Kyle Miller – Managing Member and Land Supervisor, and John Dyer – Geologist and Operations Manager. A. John Davis, Esq., Pruitt, Gushee & Bachtell, appeared as attorney on behalf of MDR.

The Division and the BLM expressed their support of the Request for Agency Action. In addition, letters in support of the Petition from the BLM, and the following record title and working interest owners in the subject section were received into evidence: Gulf Exploration LLC, Aviara Energy Corporation, and Equity Oil Company. No statements were made at the hearing in opposition of the Request for Agency Action and no other parties appeared or participated at the hearing.

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

## FINDINGS OF FACT

1. MDR is seeking to establish a 640-acre spacing unit consisting of the following described lands in San Juan County (hereinafter referred to as the "Subject Section"):

Township 29 South, Range 23 East, SLM

Section 24:

(containing 640 acres, more or less)

2. MDR is a Colorado limited liability company in good standing and is authorized to do business in the State of Utah. MDR owns record title or working interests in all of the Subject Section. It intends to drill, complete and operate a horizontal well from the Cane Creek Formation underlying the Subject Section.

3. The interval sought to be spaced, the Cane Creek formation, is defined for purposes of this cause as follows:

the stratigraphic equivalent of clastic zone number 22, the interval from 8,442 feet to 8,498 feet as shown on the Gamma Ray Sonic Log of the Chevron Federal #1 well located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, Township 29 South, Range 23 East, SLM.

(hereinafter the "Spaced Interval")

The proposed horizontal well will effectively and economically drain the Subject Section in that Spaced Interval.

4. MDR will re-enter the existing vertical well in the Subject Section, the Chevron Federal #1. Utilizing that wellbore, MDR will drill a horizontal lateral in the Spaced Interval for a distance of approximately 2,500 feet in a westerly direction to intercept fractures in the Spaced Interval.

5. The establishment of an approximately 640-acre drilling and spacing unit for the Spaced Interval underlying the Subject Section will allow for orderly development, prevent waste by avoiding the drilling of unnecessary wells, adequately protect the correlative rights of all affected parties, result in the greatest recovery of hydrocarbon substances, and is just and reasonable under the circumstances.

6. The horizontal lateral for the drilling unit will be located no closer than 660 feet from the outer boundary of said unit and no closer than 1,320 feet from any other well completed and producing from the Cane Creek formation.

7. MDR agreed to drill the subject horizontal well within one year from the date of this order and if not so drilled within one year or if drilled and determined by MDR not to be capable of producing hydrocarbons in paying quantities, MDR agrees that this order will expire without further action of the Board.

8. MDR withdrew the request in its Petition for an exception to Utah Admin. Rule R649-3-2.3 as it has acquired 100% working interest in the uncommitted federal lease in the Subject Section and that lease is now committed to the drilling of the horizontal well.

9. A copy of the Request for Agency Action was timely mailed to the last known address of all royalty, overriding royalty, working interest and other production interest owners, and operators within the subject Section 24 and within a ¼ mile radius of said Section as disclosed by the appropriate Federal, State and San Juan County real property records.

10. Notice was duly published as required by Utah Admin. Code Rule R641-106-100.

11. The vote of the Board members present in the hearing and in this cause was unanimous in favor of granting the Request for Agency Action, subject, however, to the conditions set forth in this Order.

### CONCLUSIONS OF LAW

1. Due and regular notice of the time, place, and purpose of the hearing was properly given to all interested parties in the form and manner as required by law and the rules and regulations of the Board and Division.

2. The Board has jurisdiction over all matters covered by the Request for Agency Action and all interested parties therein, and has the power and authority to render the order herein set forth pursuant to Utah Code Ann. §§ 40-6-5(3)(b) and 40-6-6.

3. The Request for Agency Action satisfies all statutory and regulatory requirements for the relief sought therein and should be granted.

## ORDER

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

1. The Request for Agency Action in this cause is granted.
2. A 640-acre horizontal drilling and spacing unit is hereby established for the Subject Section 24 for the production of oil and gas from the Cane Creek formation (as defined herein).
3. The horizontal lateral for the permitted well shall be located no closer than 660 feet from the outer boundary of the drilling and spacing unit and no closer than 1,320 feet from any other vertical well completed and producing from the Cane Creek formation (as defined herein) unless otherwise permitted by administrative action approved by the Division in compliance with Utah Admin. Code Rule R649-3-3 (rule governing "Exception to Location and Siting of Wells").
4. This order shall expire without further action of the Board upon the occurrence of the earlier of:
  - a) Petitioner's failure to drill the subject horizontal well within one (1) year of the date of this order, or
  - b) Petitioner plugs and abandons the well as a dry hole.

5. In the event the proposed horizontal well is completed as a producing well, following the initial six (6) months of production, Petitioner shall submit to the Division technical data establishing the area being drained by the well. If such data reflects that the well is draining an area larger or smaller than the spacing unit established herein, Petitioner shall request an amendment of this order to increase or decrease the size of the drilling unit ordered herein.

6. Pursuant to Utah Admin. Code Rule R641 and Utah Code Ann. § 63-46b-6 to -10, the Board has considered and decided this matter as a formal adjudication.

7. This Findings of Fact, Conclusion of Law and Order (“Order”) is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board’s decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and Utah Administrative Code Rule R641-109.

8. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10(e) to -10(g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah Code Ann. § 63-46b-14(3) and -16. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby

notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63-46b-13, entitled, “Agency review – Reconsideration,” states:

(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 Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, “Rehearing and Modification of Existing Orders,” states:

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 10<sup>th</sup> 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 15<sup>th</sup> day of the month.

*Id.* See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63-46b-13 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that 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 party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

9. The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

10. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

ISSUED this 25th day of February, 2002.

**STATE OF UTAH  
BOARD OF OIL, GAS & MINING**

By: Elise Erler  
Elise L. Erler, Chairman

**CERTIFICATE OF MAILING**

I hereby certify that I caused a true and correct copy of the foregoing "Findings of Fact, Conclusions of Law and Order" in Docket No. 2002-002, Cause No. 166-02 to be mailed with postage prepaid, this 26 day of February, 2002, to the following:

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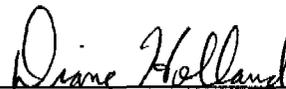
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