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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 J. M. HUBER )  
CORPORATION FOR AN ORDER )  
MODIFYING AND EXTENDING THE )  
BOARD'S ORDER ENTERED IN CAUSE )  
NO. 220-2 TO INCLUDE ADDITIONAL )  
LANDS IN SECTIONS 1-13 AND 16-24, )  
TOWNSHIP 12 SOUTH, RANGE 10 )  
EAST, SLM, CARBON COUNTY, UTAH, )  
AND THE PRODUCTION OF GAS )  
(INCLUDING BUT NOT LIMITED TO )  
COALBED METHANE) FROM THE )  
LOWER MESAVERDE GROUP )

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

Docket No. 2002-007

Cause No. 220-04

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, March 27, 2002, at the hour of 10:00 a.m. The following Board members were present and participated at the hearing: Chairperson Elise L. Erler, J. James Peacock, W. Allan Mashburn, Robert J. Bayer, and Kent R. Petersen. Board members Stephanie Cartwright and Douglas E. Johnson were unable to attend. Attending and participating on behalf of the Division of Oil, Gas and Mining (the "Division") was John Baza, Associate Director - Oil and Gas. The Board and the Division were represented by Thomas A. Mitchell, Esq., and Kurt 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, and Jimmy Raffoul, Petroleum Engineer, Utah State Office. Attending and participating on behalf of the Utah School and Institutional Trust Lands Administration ("SITLA") was LaVonne J. Garrison, Assistant Director - Oil and Gas.

Testifying on behalf of Petitioner J. M. Huber Corporation ("Huber") were Mark J. Choury - Consulting Landman, George L. Hampton III - Consulting Geologist and Gary J. Johnson - Consulting Engineer. Angela L. Franklin, Esq., Pruitt, Gushee & Bachtell, appeared as attorney on behalf of Huber.

At the commencement of Huber's presentation, Huber amended its Request for Agency Action ("Request") to: (1) exclude the NW $\frac{1}{4}$  of Section 18, Township 12 South, Range 10 East, SLM, due to Huber's inadvertent failure to properly notify the interested party in Lot 2 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  [S $\frac{1}{2}$ NW $\frac{1}{4}$ ] of said Section 18; and (2) limit the requested spaced interval to the Blackhawk formation only, which is contained within the Lower Mesaverde group referred to in the Request; said Blackhawk formation is defined as follows:

the stratigraphic equivalent of 4,020 feet below the surface of the earth down to 5,300 feet as measured in the Cockrell Oil 1210-0806 #1 (a/k/a Anadarko Federal 6-8) well located

in the SE¼NW¼ of Section 8, Township 12 South,  
Range 10 East, SLM, Carbon County, Utah.

The Division, BLM and SITLA all expressed their support of the Request for Agency Action as amended at the hearing. One letter of protest was received by the Division from Cockrell Oil Corporation; however, the concerns expressed in that letter were alleviated by Huber's amendment of its Request to cover the Blackhawk formation only. No other statements were made at the hearing in opposition of the Request as amended 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. Huber is a New Jersey corporation in good standing and is authorized to conduct business in the State of Utah.
2. By Order entered July 9, 1993 in Cause No. 220-2 (the "220-2 Order"), the Board established 160-acre drilling units for the production of methane gas from the Cretaceous Mesaverde/Blackhawk formation, defined therein as follows:

the stratigraphic equivalent of 3,582 feet below the surface of the earth down to 4,500 feet as measured in the Shimmin Trust #4 Well located in the

SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, Township 12 South, Range  
10 East, SLM,

for the following Carbon County lands:

Township 12 South, Range 10 East, SLM

Section 9: E $\frac{1}{2}$   
Section 10: S $\frac{1}{2}$ , NW $\frac{1}{4}$   
Section 11: S $\frac{1}{2}$   
Section 12: SW $\frac{1}{4}$   
Section 13: W $\frac{1}{2}$   
Section 14: All  
Section 15: All  
Section 16: E $\frac{1}{2}$

(hereinafter the "Existing Lands").

3. Without expressly stating but nevertheless resulting by operation of law, the Board, in the 220-2 Order, ruled that only one well could produce from the spaced formation on the Existing Lands except as to the following units on which two producing wells already existed:

Township 12 South, Range 10 East, SLM

Section 10: SE $\frac{1}{4}$   
Section 11: SW $\frac{1}{4}$ , SE $\frac{1}{4}$   
Section 12: SW $\frac{1}{4}$   
Section 14: NE $\frac{1}{4}$ .

4. By Order entered on October 26, 2000 in Cause No. 220-3 (the "220-3 Order"), the Board modified the 220-2 Order and authorized the re-entry of the Huber-Jensen 11-10 well and the concurrent production of that well from the spaced formation

with the Huber-Jensen 1-10 well within the SW¼ of Section 10, Township 12 South, Range 10 East, SLM.

5. The following Carbon County lands were, as of the date of the hearing, not subject to any spacing order and are located adjacent to the Existing Lands described above:

Township 12 South, Range 10 East, SLM

- Section 1: Lots 1 (0.57), 2 (0.60), 3 (0.62) and 4 (0.65), S½ [All]
- Section 2: Lots 1 (0.58), 2 (0.41), 3 (0.25) and 4 (0.08), S½ [All]
- Section 3: Lots 1 (0.03), 2 (0.08), 3 (0.14) and 4 (0.19), S½ [All]
- Section 4: Lots 1 (0.25), 2 (0.29), 3 (0.35) and 4 (0.39), S½ [All]
- Section 5: Lots 1 (0.42), 2 (0.42), 3 (0.42) and 4 (0.42), S½ [All]
- Section 6: Lots 1 (0.34), 2 (0.34), 3 (0.28), 4 (0.20), 5 (35.00) and 6 (35.00), E½SW¼, SE¼ [All]
- Section 7: Lots 1 (34.97), 2 (34.92), 3 (34.86) and 4 (34.81), E½W½, E½ [All]
- Section 8: All
- Section 9: W½
- Section 10: NE¼
- Section 11: N½
- Section 12: N½, SE¼
- Section 13: E½
- Section 16: W½
- Section 17: All

Section 18: Lots 3 (34.79) and 4 (34.80),  
[W $\frac{1}{2}$ SW $\frac{1}{4}$ ], E $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$   
Section 19: Lots 1 (34.78), 2 (34.73), 3 (34.69)  
and 4 (34.64), E $\frac{1}{2}$ W $\frac{1}{2}$ , E $\frac{1}{2}$  [All]  
Section 20: All  
Section 21: All  
Section 22: All  
Section 23: All  
Section 24: All

(hereinafter the "Additional Lands").

6. Huber has drilled and operates numerous wells on the Existing and Additional Lands which produce gas from the Blackhawk formation. The Blackhawk formation is defined for purposes of this cause as follows:

the stratigraphic equivalent of 4,020 feet below the surface of the earth down to 5,300 feet as measured in the Cockrell Oil 1210-0806 #1 (a/k/a Anadarko Federal 6-8) well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, Township 12 South, Range 10 East, SLM, Carbon County, Utah.

7. The Blackhawk formation is uniform throughout the Existing Lands and Additional Lands and constitutes one pool of gas (including but not limited to coalbed methane). One well will effectively and economically drain approximately 160 acres (or substantial equivalent) in that pool.

8. The establishment of 160 acre (or substantial equivalent) drilling and spacing units for the production of gas (including coalbed methane gas) from the

Blackhawk formation covering the Additional Lands and the modification of the 220-2 Order to cover the Blackhawk formation as defined in Paragraph 7 above rather than the Cretaceous Mesaverde/Blackhawk formation as defined in the 220-2 Order and in Paragraph 2 above, will allow for orderly development, prevent waste by drilling 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.

9. Each such unit should be comprised of a governmental quarter section, *e.g.* NE $\frac{1}{4}$ , or lots and quarter-quarter sections substantially comprising the same. However, with respect to Sections 1 through 6, special units should be created to account for the unique surveyed status of these lands. As to Sections 1 through 5, the special units should be comprised of Lots 1 and 2 and the SE $\frac{1}{4}$  in the first instance, and Lots 3 and 4 and the SW $\frac{1}{4}$  in the second instance. As to Section 6, the special units will be comprised of Lots 1 and 2 and the SE $\frac{1}{4}$  in the first instance, and Lots 3 through 6 and the E $\frac{1}{2}$ SW $\frac{1}{4}$  in the second instance.

10. The permitted well for each such unit should be located no closer than 660 feet from the outer boundary of said units and no closer than 1,320 feet from other wells completed and producing from the Blackhawk formation, except as may otherwise

be permitted by administrative action for topographical or geologic reasons in accordance with Utah Admin. Code Rule R649-3-3. However, the exceptions authorized under the 220-2 and 220-3 Orders shall remain in effect.

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

12. 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 as amended at hearing.

### **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 as amended at hearing 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 as amended at the hearing satisfies all statutory and regulatory requirements for the relief sought therein and should be granted.

### **ORDER**

Based upon the Request for Agency Action as amended at the hearing, 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 as amended at the hearing in this cause is granted.

2. The 220-2 Order covering the Existing Lands (as defined herein) is hereby modified to define the spaced interval as the Blackhawk formation as defined herein, rather than the Cretaceous Mesaverde/Blackhawk formation as defined in said Order.

3. 160 acre (or substantial equivalent) drilling and spacing units are hereby established for the production of gas (including coalbed methane gas) from the Blackhawk formation covering the Additional Lands (as defined herein).

4. Each such unit shall be comprised of a governmental quarter section, *e.g.* NE<sup>1</sup>/<sub>4</sub>, or lots and quarter-quarter section substantially comprising the same. However,

with respect to Sections 1 through 6, special units are hereby established to account for the unique survey status of those lands. As to Sections 1 through 5, the special units will be comprised of Lots 1 and 2 and the SE $\frac{1}{4}$  in the first instance, and Lots 3 and 4 and the SW $\frac{1}{4}$  in the second instance. As to Section 6, the special units will be comprised of Lots 1 and 2 in the first instance, and Lots 3 through 6 and the E $\frac{1}{2}$ SW $\frac{1}{4}$  in the second instance.

5. The permitted well for each such unit shall be located no closer than 660 feet from the outer boundary of said unit and no closer than 1,320 feet from other wells completed and producing from the Blackhawk 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"); provided, however, that the authorized exceptions under the 220-2 and 220-3 Orders shall remain in effect.

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 issued. Utah Code Ann. § 63-46b-14(3)(a) 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 30<sup>th</sup> day of April, 2002.

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

By: Elise L. Erler  
Elise L. Erler, Chairperson

**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. 2002-007, Cause No. 220-04 to be mailed with postage prepaid, this 8 day of May, 2002, to the following:

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First Security Bank of Utah  
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Co-Trustees of the Steve and Diane O'Berto  
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Helper, UT 84526

Tony O'Berto, Jr. a/k/a Tony O'Berto  
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Paula M. Butcher, Trustee of the Trust of  
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Paula M. Butcher  
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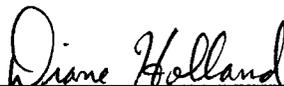
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Clint W. Turner and Camile Turner  
Joint Tenants  
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United States of America  
Bureau of Land Management  
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