

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

FILED

OCT 28 2004

IN THE MATTER OF THE AMENDED)
REQUEST FOR AGENCY ACTION OF)
WHITMAR EXPLORATION)
COMPANY FOR AN ORDER)
ESTABLISHING 160-ACRE DRILLING)
AND SPACING UNITS FOR THE)
PRODUCTION OF GAS (INCLUDING)
COALBED METHANE) FROM THE)
FERRON FORMATION IN SECTIONS)
22 AND 27, TOWNSHIP 13 SOUTH,)
RANGE 11 EAST, S.L.M., CARBON)
COUNTY, UTAH, AND FOR AN)
ORDER POOLING ALL INTERESTS)
IN CERTAIN OF THE SO-)
ESTABLISHED DRILLING AND)
SPACING UNITS IN THE SW¼ OF)
SECTION 22 AND THE NW¼, NE¼,)
SW¼, AND SE¼ OF SECTION 27,)
TOWNSHIP 13 SOUTH, RANGE 11)
EAST, S.L.M.)

SECRETARY, BOARD OF
FINDINGS OF FACTS & MINING
CONCLUSIONS OF LAW, AND
ORDER POOLING INTERESTS

Docket No. 2004-011
Cause No. 241-6

THIS CAUSE came on regularly for hearing before the Board of Oil, Gas and Mining (the "Board") on August 25, 2004, at the hour of 10:00 a.m. in the Board Room, Suite 1050, Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah, and on September 22, 2004, at the hour of 10:00 a.m. in the Commission Chambers of the Juab County Courthouse, 160 North Main, Nephi, Utah. The following Board members were present at the August 25, 2004 hearing: W. Allan Mashburn, Chairman, J. James Peacock, Robert J. Bayer, Kent R. Peterson, Douglas E. Johnson, and Samuel C. Quigley; and the following Board members were present at the September 22, 2004 hearing: W. Allan Mashburn, Chairman, Stephanie B. Cartwright, Kent R. Peterson, and Douglas E. Johnson. John R. Baza, Associate Director—Oil and

Gas, Dustin Doucet, Petroleum Engineer, and Michael Hebertson, Hearing and Enforcement Manager, were present for the Division of Oil, Gas and Mining (the "Division") at both hearings. The Division was represented by Alison Garner, Assistant Attorney General, and the Board was represented by Michael S. Johnson, Assistant Attorney General. Brad Hill, Staff Geologist, testified on behalf of the Division at the August 25, 2004 hearing. The petitioner, WhitMar Exploration Company ("WhitMar"), was represented by Thomas W. Clawson of Van Cott, Bagley, Cornwall & McCarthy, and Les White, Contract Landman, and Dave Decker, Contract Geological Engineer, testified on behalf of WhitMar at the August 25, 2004 hearing. Respondent Westport Oil and Gas Company, L.P. ("Westport") was represented by A. John Davis of Pruitt Gushee. Attending on behalf of the United States Department of the Interior, Bureau of Land Management ("BLM") at the August 25, 2004 hearing was Robert Henricks, Utah State Office, and attending for the BLM at the September 22, 2004 hearing were Terry L. Catlin, Acting Chief—Branch of Fluid Minerals and Assad M. Raffoul. No other persons or parties appeared at either hearing or filed written comments in opposition to WhitMar's Amended Request for Agency Action (the "Amended Request").

On or about July 12, 2004, Westport filed its Objection of Respondent Westport Oil and Gas Company, L.P. to Amended Request for Agency Action. Westport did not object to WhitMar's request to establish 160-acre drilling and spacing units on the lands subject to the Amended Request, but did object to the entry of a pooling order as requested by WhitMar. At the August 25, 2004 hearing, based on the condition that any pooling order affecting the lands subject to the Amended Request contain certain provisions as stipulated to by WhitMar and Westport on the record at the August 25, 2004 hearing, Westport agreed to withdraw its objection to the Amended Request. The referenced stipulation between WhitMar and Westport includes: (1) Westport is to be the designated operator for the drilling unit established by the Board in this Cause comprising the

SW¼ of Section 22, Township 13 South, Range 11 East, SLM; (2) the pooling order entered by the Board in this Cause shall contain a non-consent penalty of not greater than 225% of the costs detailed in Section 40-6-6.5(4)(d)(i)(D) of the Utah Code; and (3) that no interest is to be imposed on a non-consenting owner's share of applicable costs.

After deliberating at the August 25, 2004 hearing, the Board voted unanimously to approve WhitMar's Amended Request for Agency Action regarding establishing 160-acre drilling and spacing units. The Board declined to approve the Amended Request regarding the requested pooling order and continued this Cause in that regard until the Board's regularly scheduled September 22, 2004 hearing.

At the Board's September 22, 2004 hearing, by and through its attorneys, WhitMar presented the Affidavit of Whitney Marvin (the "Affidavit"), which, in part, provided evidentiary foundation for WhitMar's Revised Exhibit 3 and Exhibit 10, which were attached to the Affidavit as Exhibits "A" and "B," respectively. WhitMar also presented a letter dated September 21, 2004, addressed to Allan Mashburn, Chairman, Utah Board of Oil, Gas & Mining, from A. John Davis on behalf of Westport confirming that, subject to WhitMar's and Westport's stipulation as agreed to at the Board's August 25, 2004 hearing, as described above, Westport had no objection to the entry of a pooling order in accordance with the Amended Request. After deliberation at the September 22, 2004 hearing, the Board voted unanimously to approve WhitMar's Amended Request for Agency Action to pool the interests in certain of the drilling and spacing units, as described herein, established by the Board in this Cause.

NOW, THEREFORE, the Board having fully considered the testimony and evidence adduced and the exhibits and materials received at the August 25, 2004 and September 22, 2004

hearings, being fully advised, and good cause appearing, hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Notices of the time, place, and purpose of the Board's regularly scheduled August 25, 2004 hearing and September 22, 2004 hearing were mailed to all interested parties by first-class mail, postage prepaid, and were duly published in the Salt Lake Tribune, Deseret News, and the Sun Advocate pursuant to the requirements of Utah Administrative Code ("U.A.C.") Rule R641-106-100. Copies of the Amended Request were mailed to all interested parties pursuant to U.A.C. Rule R641-104-135.

2. WhitMar is an Oklahoma corporation in good standing, having its principal place of business in Houston, Texas. WhitMar is qualified to do and is doing business in Utah.

3. WhitMar's Amended Request seeks, in part, an order pooling all interests in the following drilling and spacing units for the development and operation of such units (sometimes individually, "Unit" or collectively, the "Units"):

Township 13 South, Range 11 East, S.L.M.

Section 22: SW $\frac{1}{4}$

Section 27: NW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ (All)

4. The Units comprise 160-acre drilling and spacing units established pursuant to the Board's Findings of Fact, Conclusions of Law, and Order Establishing Spacing and Drilling Units issued September 22, 2004 in this Cause (the "Spacing Order"). The Units were established for the production of gas, including but not limited to coalbed methane, from the Ferron Formation (as the Ferron Formation is defined in the Spacing Order) including all coals and surrounding sands.

5. WhitMar and Westport are the "Owners," as such term is defined in the Utah Code, of more than 99% of the working interests in the Units. Michael Burnett Major is the only

mineral interest Owner in each of the Units that has not executed a lease. WhitMar has diligently sought to secure either leases or voluntary pooling agreements with the other Owners in the Units.

6. The ownership of the minerals in the lands embraced within each of the Units is set forth in WhitMar's Revised Exhibit 3, a copy of which is attached hereto and incorporated herein. The figures in Revised Exhibit 3 should be used to determine the proper allocation of revenues and costs for each "Nonconsenting owner," as such term is defined in Section 40-6-2(11) of the Utah Code.

7. WhitMar has in good faith attempted to contact Michael Burnett Major for the purpose of leasing his mineral interests in each of the Units or entering a voluntary agreement for the drilling of a well to be located within each of the Units, but WhitMar has been unable to locate Michael Burnett Major for such purposes. WhitMar has in good faith attempted to enter a voluntary pooling agreement with Westport for the drilling of a well to be located within each of the Units, but WhitMar and Westport have been unable to agree upon the terms of such a voluntary pooling agreement.

8. WhitMar has filed the Amended Request to facilitate development of the Units in the absence of a lease or written agreement for pooling from Michael Burnett Major or Westport, as the case may be, as provided in Section 40-6-6.5 of the Utah Code. The evidence provided by WhitMar supports and justifies the issuance of a compulsory pooling order as provided herein.

9. In light of the circumstances under which the wells to be located within each of the Units will be drilled and operated and the accompanying risks to be taken by WhitMar and Westport and avoided by any Nonconsenting owner, and based on the evidence presented to and considered by the Board and the stipulation of WhitMar and Westport as described herein and

entered into the record at the August 25, 2004 hearing and affirmed at the September 22, 2004 hearing, the Board finds as follows with regard to the costs to be incurred by WhitMar and Westport:

a. Westport should be the designated operator for the Unit comprising the SW $\frac{1}{4}$ of subject Section 22 and WhitMar should be the designated operator of the remaining Units.

b. In the Board's discretion, the nonconsent penalty provided for in Section 40-6-6.5(4)(d)(i)(D) of the Utah Code should be 225% of any Nonconsenting owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing and completing, and the cost of equipment in the well to and including the wellhead connection.

c. WhitMar and Westport should be allowed to charge and collect reasonable fees for their administration and supervision of drilling and production operations, including \$3,000 per month per well for drilling wells and \$300 per month per well for producing wells, which fees are consistent with the current COPAS (Council of Petroleum Accountants Societies of North America) drilling and producing rates for the Rocky Mountain Region, and which are a reasonable and proper basis for such fees. WhitMar and Westport should be allowed to adjust such fees from time to time in accordance with the COPAS rates for the Rocky Mountain Region.

d. The estimated cost to plug, abandon, and reclaim a Unit well is \$17,500.00.

e. The average landowner's production royalty attributable to each Unit is set forth in WhitMar's Exhibit 10, a copy of which is attached hereto and incorporated herein.

10. The action requested by WhitMar and the order to be issued by the Board will further the statutory objectives of fostering, encouraging, and facilitating the development, production, and utilization of the state's gas resources in a manner that prevents waste while

adequately protecting the correlative rights of all affected parties, and will be just and reasonable under the circumstances.

11. WhitMar and Westport should be allowed, in their discretion, to enter into voluntary pooling agreements or leases with any Owner, including any unleased mineral interest owner, in each of the Units who wishes to do so after the issuance of the Board's order herein, without the need of further petitions, hearings, or Board approvals, and to treat such Owners thereafter as "Consenting owners," as that term is defined in Section 40-6-2(4) of the Utah Code, or lessors, as the case may be.

CONCLUSIONS OF LAW

12. Due and regular notice of the time, place, and purposes of the Board's regularly scheduled August 25, 2004 hearing and September 22, 2004 hearing was given to all interested parties in the form and manner and within the time required by law and the Rules and Regulations of the Board. Due and regular notice of the filing of the Amended Request was given to all interested parties in the form and manner and within the time required by law and the Rules and Regulations of the Board.

13. The Board has jurisdiction of the parties and subject matter of the Amended Request, pursuant to Sections 40-6-5 and 40-6-6.5 of the Utah Code Annotated and has power and authority to make and promulgate the order herein set forth.

14. WhitMar's Revised Exhibit 3, a copy of which is attached hereto and incorporated herein, sets forth the proper figures for allocation of revenues and costs for each Owner within the respective Units.

15. WhitMar's Exhibit 10, a copy of which is attached hereto and incorporated herein, sets forth the proper landowner's production royalty rates to be paid to a Nonconsenting

owner whose interest in a Unit is not subject to a lease or other contract for gas development prior to payout of the wells to be located in each of the Units.

16. Good cause appears to grant WhitMar's Amended Request regarding the pooling of all interests in the Units.

ORDER

IT IS THEREFORE ORDERED, that:

1. WhitMar's Amended Request for Agency Action regarding pooling of all interests in the Units is granted.

2. Westport shall be the designated operator for the Unit comprising the SW $\frac{1}{4}$ of subject Section 22 and WhitMar shall be the designated operator of the remaining Units.

3. WhitMar and Westport are authorized to pool the interests of all Nonconsenting owners within the Units for the development and operation of said Units using the ownership information set forth in WhitMar's Revised Exhibit 3 and Exhibit 10 (copies of which are attached hereto and incorporated herein) to determine the relative share of revenues and costs for each Nonconsenting owner, in accordance with the following parameters which are based on the provisions of Section 40-6-6.5 of the Utah Code:

a. Operations incident to the drilling of a designated Unit well upon any part of a Unit shall be deemed for all purposes to be the conduct of operations upon each separately owned tract in the Unit.

b. The portion of production allocated or applicable to a separately owned tract within any Unit shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.

c. Production from any part of a Unit shall be deemed to be production from all parts of that Unit.

d. The Consenting owners are entitled to the payment of just and reasonable costs incurred in the drilling and operation of the designated Unit wells, including but not limited to:

(i) the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities;

(ii) reasonable charges for the administration and supervision of operations, including \$3,000 per month per well for drilling wells and \$300 per month per well for producing wells, as adjusted from time to time in accordance with similar COPAS rates for the Rocky Mountain Region; and

(iii) other costs customarily incurred in the industry.

e. The Consenting owners are entitled to be reimbursed for any Nonconsenting owner's share of the costs out of production from the Unit attributable to the Nonconsenting owner's tract.

f. The Consenting owners shall own and be entitled to receive, subject to royalty or similar obligations, the share of production attributable to their working interests in the Units, and unless the Consenting owner has agreed otherwise, his or her proportionate part of the Nonconsenting owner's share of the production until costs are recovered as provided herein.

g. If an Owner does not elect to participate in advance in the just and reasonable costs incurred and to be incurred in the drilling and operation of the designated Unit wells, within a reasonable time following written notice of the

opportunity to participate (a Nonconsenting owner), then such party shall be entitled to receive, subject to royalty or similar obligations, the share of production of the well applicable to his or her interest in the Unit after the Owners who elect to participate in advance in the just and reasonable costs incurred and to be incurred in the drilling and operation of the designated Unit wells (Consenting owners) have recovered from the Nonconsenting owner's share of production the following amounts, less any cash contributions made by the Nonconsenting owner:

(i) 100% of the Nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping, or such similar surface equipment;

(ii) 100% of the Nonconsenting owner's share of the estimated cost to plug, abandon, and reclaim the well, which cost has been determined by the Board to be \$17,500 per well;

(iii) 100% of the Nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the Consenting owners have recovered all costs;

(iv) 225% of the Nonconsenting owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing and completing, and the cost of equipment in the well to and including the wellhead connections.

h. A Nonconsenting owner's share of the costs specified in subparagraph 2(g) herein is that interest which would have been chargeable to the Nonconsenting

owner had he or she initially agreed to pay his or her share of the cost of the well from the commencement of the operation.

i. If a Nonconsenting owner's tract in a Unit is subject to a lease or other contract for gas development, the Consenting owners shall pay any royalty interest or other interest in the tract not subject to the deduction of the costs of production from the production attributable to that tract.

j. If a Nonconsenting owner's tract in a Unit is not subject to a lease or other contract for gas development, then such party shall receive as a royalty the average landowner's production royalty attributable to each tract within such Unit, as specified in WhitMar's Exhibit 10 (a copy of which is attached hereto and incorporated herein), said royalty to be paid from production attributable to each such tract until the Consenting owners have recovered the costs as provided in subparagraph 2(g) herein.

k. The operator of any Unit well shall furnish any Nonconsenting owner with monthly statements specifying costs incurred, the quantity of gas produced, and the amount of gas proceeds realized from the sale of the production during the preceding month.

l. When the Consenting owners have recovered from a Nonconsenting owner's relinquished interest all of the amounts specified in subparagraph 2(g) herein, the relinquished interest shall automatically revert to the Nonconsenting owner. The Nonconsenting owner shall from that time own the same interest in the designated Unit well and the production from it, and be liable for the further costs of the operation, as if he or she had participated in the initial drilling and operation. Such

costs shall be payable out of production unless otherwise agreed between the Nonconsenting owner and the Consenting owners or Operator, as the case may be.

k. In any circumstance where a Nonconsenting owner has relinquished his or her share of production to the Consenting owners or at any time fails to take his or her share of production in-kind when he or she is entitled to do so, the Nonconsenting owner shall be entitled to an accounting of the gas proceeds applicable to his or her relinquished share of production, and payment of the gas proceeds applicable to that share of production not taken in-kind, net of costs.

4. WhitMar and Westport are authorized, in their discretion, to enter into voluntary pooling agreements or leases with any Owner, including any unleased mineral interest owner, in each of the Units who wishes to do so after the issuance of the Board's order herein, without the need of further petitions, hearings, or Board approvals, and shall be authorized in that event to treat such Owners thereafter as Consenting owners or lessors, as the case may be.

5. Pursuant to U.A.C. Rule R641 and Utah Code Ann. § 63-46b-6 to -10 (1953, as amended), the Board has considered and decided this matter as a formal adjudication.

6. This Findings of Fact, Conclusions 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 Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and U.A.C. Rule R641-109.

7. 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) (1953, as amended), 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)(a) and -16 (1953, as amended). 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 Administrative Code 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 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.

Id. See Utah Administrative Code 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 (1953, as

amended) and the deadline in Utah Administrative Code 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.

8. 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.

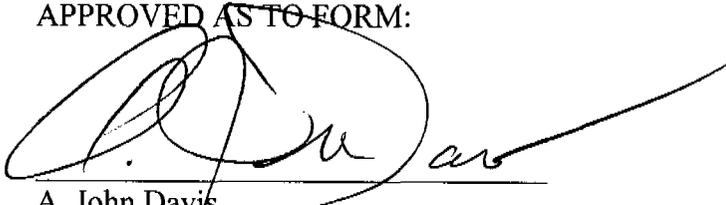
9. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

ISSUED this 27th day of October, 2004.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By W. Allan Mashburn
W. Allan Mashburn, Chairman

APPROVED AS TO FORM:



A. John Davis
PRUITT GUSHEE
Attorneys for Westport Oil and Gas Company, L.P.

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 Pooling Interests" for Docket No. 2004-011, Cause No. 241-06 to be mailed with postage prepaid, this 3rd day of November, 2004, to the following:

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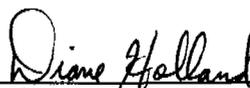
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Robert L. Bayless Producer, LLC
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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

SEP 22 2004

SECRETARY, BOARD OF
OIL, GAS & MINING

IN THE MATTER OF THE AMENDED)
REQUEST FOR AGENCY ACTION OF)
WHITMAR EXPLORATION)
COMPANY FOR AN ORDER)
ESTABLISHING 160-ACRE DRILLING)
AND SPACING UNITS FOR THE)
PRODUCTION OF GAS (INCLUDING)
COALBED METHANE) FROM THE)
FERRON FORMATION IN SECTIONS)
22 AND 27, TOWNSHIP 13 SOUTH,)
RANGE 11 EAST, S.L.M., CARBON)
COUNTY, UTAH, AND FOR AN)
ORDER POOLING ALL INTERESTS)
IN CERTAIN OF THE SO-)
ESTABLISHED DRILLING AND)
SPACING UNITS IN THE SW¼ OF)
SECTION 22 AND THE NW¼, NE¼,)
SW¼, AND SE¼ OF SECTION 27,)
TOWNSHIP 13 SOUTH, RANGE 11)
EAST, S.L.M.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER ESTABLISHING SPACING
AND DRILLING UNITS

Docket No. 2004-011
Cause No. 241-6

THIS CAUSE came on regularly for hearing before the Board of Oil, Gas and Mining (the "Board") on August 25, 2004, at the hour of 10:00 a.m. in the Board Room, Suite 1050, Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The following Board members were present: W. Allan Mashburn, Chairman, J. James Peacock, Robert J. Bayer, Kent R. Peterson, Douglas E. Johnson, and Samuel C. Quigley. John R. Baza, Associate Director—Oil and Gas, Dustin Doucet, Petroleum Engineer, and Michael Hebertson, Hearing and Enforcement Manager, were present for the Division of Oil, Gas and Mining (the "Division"). The Division was represented by Alison Garner, Assistant Attorney General, and the Board was represented by Michael S. Johnson, Assistant Attorney General. Brad Hill, Staff Geologist, testified

on behalf of the Division. The petitioner, WhitMar Exploration Company (“WhitMar”), was represented by Thomas W. Clawson of Van Cott, Bagley, Cornwall & McCarthy, and Les White, Contract Landman, and Dave Decker, Contract Geological Engineer, testified on behalf of WhitMar. Respondent Westport Oil and Gas Company, L.P. (“Westport”) was represented by A. John Davis of Pruitt Gushee. Attending on behalf of the United States Department of the Interior, Bureau of Land Management (“BLM”) was Robert Henricks, Utah State Office. No other persons or parties appeared at the August 25, 2004 hearing in opposition to WhitMar’s Amended Request for Agency Action (the “Amended Request”). On or about July 12, 2004, Westport filed its Objection of Respondent Westport Oil and Gas Company, L.P. to Amended Request for Agency Action. Westport did not object to WhitMar’s request to establish 160-acre drilling and spacing units on the lands subject to the Amended Request, but did object to the entry of a pooling order as requested by WhitMar. At the August 25, 2004 hearing, based on the condition that any pooling order affecting the lands subject to the Amended Request contain certain provisions as stipulated to by WhitMar and Westport on the record at the August 25, 2004 hearing, Westport withdrew its objection to the Amended Request. After deliberating, the Board voted unanimously to approve WhitMar’s Amended Request for Agency Action regarding establishing 160-acre drilling and spacing units. The Board declined to approve the Amended Request regarding the requested pooling order and continued this Cause in that regard until the Board’s regularly scheduled September 22, 2004 hearing. This Finding of Facts, Conclusions of Law, and Order Establishing Spacing and Drilling Units applies to WhitMar’s Amended Request only so far as it seeks approval of 160-acre drilling and spacing units for the Subject Lands (as defined herein).

NOW, THEREFORE, the Board having fully considered the testimony adduced and the exhibits received at the August 25, 2004 hearing, being fully advised, and good cause appearing, hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Notices of the time, place, and purpose of the Board's regularly scheduled August 25, 2004 hearing were mailed to all interested parties by first-class mail, postage prepaid, and were duly published in the Salt Lake Tribune, Deseret News, and the Sun Advocate pursuant to the requirements of Utah Administrative Code ("U.A.C.") Rule R641-106-100. Copies of the Amended Request were mailed to all interested parties pursuant to U.A.C. Rule R641-104-135.

2. WhitMar's Amended Request seeks, in part, an order establishing 160-acre drilling and spacing units for the production of gas, including, but not limited to, coalbed methane, from the Ferron Formation underlying the following described lands (the "Subject Lands"):

Township 13 South, Range 11 East, S.L.M.

Section 22: All

Section 27: All

(containing 800 acres, more or less).

3. The formation to be unitized for drilling and spacing purposes is the Ferron Formation described as follows:

The Ferron Formation as identified by the Dual Induction Log run in the Pease Drilling Company--Coal Creek No. 1 Well located in the SE¼ of Section 28, Township 13 South, Range 11 East, Carbon County, Utah, with the top of the unitized formation being found at a measured depth of 3,020 feet, a vertical depth of 3,020 feet below the surface (3,162 feet above sea level) and the base of the unitized formation being found at a measured depth of 3,270 feet, a vertical depth of 3,270 feet below the surface (2,912 feet above sea level) or to the stratigraphic equivalent thereof.

4. WhitMar is an Oklahoma corporation in good standing, having its principal place of business in Houston, Texas. WhitMar is qualified to do and is doing business in Utah.

5. WhitMar is an owner of working interests in the Subject Lands.

6. The minerals in the lands embraced within the Subject Lands are owned by the United States of America and private (fee) owners and most are subject to federal and fee oil and gas leases. The surface of the Subject Lands is owned by the United States of America and a private land owner, being the Lester and Carol Lynn Thayn Trust. The BLM administers the federally-owned minerals and the federal public lands.

7. The Subject Lands are not currently subject to any spacing order by the Board.

8. The Ferron Formation, including all coal and surrounding sands, underlies all of the Subject Lands and constitutes a pool for gas contained within the Subject Lands.

9. One well will efficiently and economically drain 160 acres in the pool for gas beneath the Subject Lands.

10. The establishment of 160-acre drilling and spacing units within the Subject Lands will allow for the orderly development of the Subject Lands, prevent waste in the drilling of unnecessary wells, adequately protect the correlative rights of all affected parties, and result in the greatest recovery of hydrocarbon substances, and is just and reasonable under the circumstances.

11. Each drilling and spacing unit should comprise a governmental quarter section or equivalent lots, and the permitted well for each such unit should be located within a "window" in the center of the drilling unit, no closer than 920 feet from other wells completed and producing from the Ferron Formation and no closer than 460 feet from the outer boundary of the

160-acre drilling and spacing unit, except as may be permitted by administrative action for topographic, archeological, geological, or environmental reasons.

CONCLUSIONS OF LAW

12. Due and regular notice of the time, place, and purposes of the Board's regularly scheduled August 25, 2004 hearing was given to all interested parties in the form and manner and within the time required by law and the Rules and Regulations of the Board. Due and regular notice of the filing of the Amended Request was given to all interested parties in the form and manner and within the time required by law and the Rules and Regulations of the Board.

13. The Board has jurisdiction of the parties and subject matter of the Amended Request, pursuant to Sections 40-6-5 and 40-6-6 of the Utah Code Annotated and has power and authority to make and promulgate the order herein set forth.

14. Good cause appears to grant WhitMar's Amended Request regarding establishing 160-acre drilling and spacing units for the Ferron Formation beneath the Subject Lands.

ORDER

IT IS THEREFORE ORDERED, that:

1. WhitMar's Amended Request for Agency Action regarding establishing 160-acre drilling and spacing units for the Ferron Formation beneath the Subject Lands is granted.

2. 160-acre drilling and spacing units are hereby established for the Subject Lands (as defined herein) for the production of gas, including but not limited to coalbed methane, from the Ferron Formation (as defined herein) including all coals and surrounding sands.

3. Each such drilling and spacing unit shall be comprised of a governmental quarter section or equivalent lots, and the permitted well for each such unit shall be located within a "window" in the center of the unit located no closer than 920 feet from other wells completed and

producing from the Ferron Formation and no closer than 460 feet from the outer boundary of the 160-acre drilling and spacing unit, unless otherwise permitted by administrative action approved by the Division according to U.A.C. Rule 649-3-3.

4. Pursuant to U.A.C. Rule R641 and Utah Code Ann. § 63-46b-6 to -10 (1953, as amended), the Board has considered and decided this matter as a formal adjudication.

5. This Findings of Fact, Conclusions 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 Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and U.A.C. Rule R641-109.

6. 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) (1953, as amended), 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)(a) and -16 (1953, as amended). 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 Administrative Code 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 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.

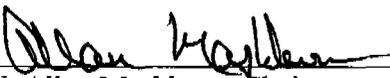
Id. See Utah Administrative Code R641-110-200 for the required contents of a petition for rehearing. If there is any conflict between the deadline in Utah Code Ann § 63-46b-13 (1953, as amended) and the deadline in Utah Administrative Code R641-110-100 for moving to rehear this matter, the Board hereby 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.

7. 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.

8. 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 22nd day of September, 2004.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By 
W. Allan Mashburn, Chairman

APPROVED AS TO FORM:

 9/15/04

A. John Davis
PRUITT GUSHEE
Attorneys for Westport Oil and Gas Company, L.P.

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 Establishing Spacing and Drilling Units" for Docket No. 2004-011, Cause No. 241-06 to be mailed with postage prepaid, this 29 day of September, 2004, to the following:

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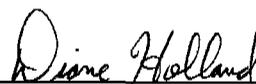
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FILED

AUG 09 2004

**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 WHITMAR EXPLORATION COMPANY FOR AN ORDER ESTABLISHING 160-ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF GAS (INCLUDING COALBED METHANE) FROM THE FERRON FORMATION IN SECTIONS 22 AND 27, TOWNSHIP 13 SOUTH, RANGE 11 EAST, S.L.M., CARBON COUNTY, UTAH, AND FOR AN ORDER POOLING ALL INTERESTS IN CERTAIN OF THE SO-ESTABLISHED DRILLING AND SPACING UNITS IN THE SW $\frac{1}{4}$ OF SECTION 22 AND THE NW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$ AND SE $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 13 SOUTH, RANGE 11 EAST, S.L.M.

ORDER CONTINUING HEARING

Docket No. 2004-011

Cause No. 241-06

The foregoing matter came on for hearing before the Board at its regularly scheduled meeting on July 28, 2004. The Petitioner appeared through its counsel of record, Thomas W. Clawson, and Respondent Westport Oil and Gas Company, L.P. appeared through its counsel of record Shawn T. Welch. Prior to the hearing, Petitioner through its counsel made an oral motion

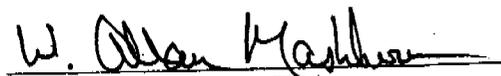
to the Board pursuant to Rule R641-106-700 for continuance of the matter until the August 25, 2004 hearing in order to allow time for Petitioner and Respondent to confer and attempt to resolve the remaining disputed issues between them. The Division, appearing through its counsel Alison Garner, Assistant Attorney General, indicated that the Division supported the Motion.

Now Therefore, pursuant to the provisions of Utah Administrative Code R641-106-700, and based upon the Petitioner's oral motion and good cause appearing, the hearing in this matter is HEREBY CONTINUED until the regularly scheduled Board hearing to be held on August 25, 2004 at 10:00 a.m., at which time the amended Petition and Respondent's objections thereto will be heard by the Board.

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 7th day of August, 2004.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


W. Allan Mashburn, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "Order Continuing Hearing" for Docket No. 2004-011, Cause No. 241-06 to be mailed with postage prepaid, this 12th day of August, 2004, to the following:

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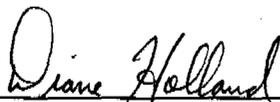
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JUN 03 2004

BEFORE THE BOARD OF OIL, GAS AND MINING SECRETARY, BOARD OF OIL, GAS & MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF THE REQUEST)
 FOR AGENCY ACTION OF)
 WHITMAR EXPLORATION)
 COMPANY FOR AN ORDER)
 ESTABLISHING 160-ACRE DRILLING)
 AND SPACING UNITS FOR THE)
 PRODUCTION OF GAS (INCLUDING)
 COALBED METHANE) FROM THE)
 FERRON FORMATION IN SECTIONS)
 13-15, 22-27, 34, AND 35, TOWNSHIP 13)
 SOUTH, RANGE 11 EAST, S.L.M.,)
 AND SECTIONS 3, 10, AND 11,)
 TOWNSHIP 14 SOUTH, RANGE 11)
 EAST, CARBON COUNTY, UTAH,)
 AND FOR AN ORDER POOLING ALL)
 INTERESTS IN CERTAIN OF THE SO-)
 ESTABLISHED DRILLING AND)
 SPACING UNITS IN THE SW¼ OF)
 SECTION 22 AND THE NW¼, NE¼,)
 SW¼ AND SE¼ OF SECTION 27,)
 TOWNSHIP 13 SOUTH, RANGE 11)
 EAST, S.L.M.)

ORDER CONTINUING HEARING

Docket No. 2004-011

Cause No. 241-06

The Board of Oil, Gas and Mining (the "Board") having fully considered WhitMar Exploration Company's (the "Petitioner") Motion to Continue Hearing (the "Motion") and the grounds and reasons provided therefore, and good cause appearing, hereby enters its order granting the Motion as follows:

1. The public hearing on Petitioner's Request for Agency Action before the Board shall be continued from the Board's regularly scheduled June 23, 2004 hearing to the Board's July 28, 2004 regularly scheduled hearing.

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 3rd day of June 2004.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



Alan W. Mashburn, Chairman

(over) E &

2004/06/03

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "Order Continuing Hearing" for Docket No. 2004-011, Cause No. 241-06 to be mailed with postage prepaid, this 8th day of June, 2004, to the following:

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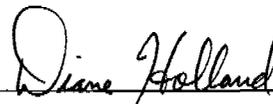
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