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

**SECRETARY, BOARD OF
OIL, GAS & MINING**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF XTO ENERGY INC. FOR AN ORDER MODIFYING THE BOARD'S ORDER ENTERED IN CAUSE NO. 245-3 TO ALLOW THE DRILLING OF AN ADDITIONAL WELL IN THE DRILLING UNIT COMPRISED OF LOTS 1 AND 2 AND S $\frac{1}{2}$ NE $\frac{1}{4}$ [NE $\frac{1}{4}$] IN SECTION 6, TOWNSHIP 17 SOUTH, RANGE 8 EAST, SLM, EMERY COUNTY, UTAH, FOR THE PRODUCTION OF GAS (INCLUDING BUT NOT LIMITED TO COALBED METHANE) FROM THE FERRON FORMATION

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

Docket No. 2008-023

Cause No. 245-05

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, October 22, 2008, at approximately 10:00 a.m., in Moab, Utah. The following Board members were present and participated at the hearing: Chairman Douglas E. Johnson, Kent R. Petersen, Jake Y. Harouny, Samuel C. Quigley and Ruland J. Gill, Jr. Board Members Jean Semborski and Robert J. Bayer were unable to attend. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner XTO Energy Inc. ("XTO") were Ryan O'Kelley – Landman, and Leonard L. West, P.E. – Manager of Special Projects, who were recognized by the Board as experts in petroleum land management and reservoir engineering, respectively. Anthony T. Hunter, Esq., of and for Beatty & Wozniak, P.C., appeared as attorney for XTO.

Testifying on behalf of the Division of Oil, Gas and Mining (the "Division") was Brad Hill – Oil and Gas Permitting Manager. Steven F. Alder, Esq., Assistant Attorney General,

appeared as attorney on behalf of the Division. The Division expressed its support for the granting of XTO's Request for Agency Action dated September 8, 2008 (the "Request") at the conclusion of its presentation.

At the conclusion of XTO's and the Division's presentations, Eric Jones, Petroleum Engineer, Moab Field Office, United States Bureau of Land Management ("BLM"), made a statement expressing the BLM's support for the granting of the Request.

No other party filed a response to the Request and no other party 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, hereby makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. XTO is a Delaware corporation with its principal place of business in Fort Worth, Texas. XTO is duly qualified to conduct business in the State of Utah and is fully and appropriately bonded with all relevant Federal and State of Utah agencies.

2. By virtue of its Order entered on July 23, 2002 in Cause No. 245-3 (the "Order"), the Board established a drilling unit comprised of the following Emery County lands:

Township 17 South, Range 8 East, SLM

Section 6: Lots 1 (40.00) and 2 (40.00)
and S½NE¼ [NE¼]

(containing 160 acres)

(hereinafter the “Subject Lands”) for the production of gas (including but not limited to coalbed methane) from the Ferron Formation, defined as:

the stratigraphic equivalent of the interval between 3,357 feet and 3,626 feet as shown on the Bulk Density Log for the Federal “M” 6-25 well

(the “Subject Formation”), and declared the Federal “M” 6-25 Well (the “6-25 Well”) located 2,297 feet FNL and 1,130 feet FEL, in the SE¼NE¼ of said Section 6 was the one and only authorized well for said drilling unit so established. The 6-25 Well produces from the Spaced Formation. XTO is the operator.

3. The oil and gas underlying Lots 1 and 2 and the SE¼NE¼ of captioned Section 6 are owned by the United States of America and subject to the terms of United States Oil and Gas Lease UTU-74378. XTO is the current lessee of record.

4. The oil and gas under the SW¼NE¼ are owned in fee, but all leased and unleased interests are committed to the Huntington (Shallow) CBM Unit (the “CBM Unit”) pursuant to the Board’s Order entered in Cause No. 245-2. Over 99.7 % of the working interest in the unit is owned by XTO and the remaining interest is owned by PetroGulf Corporation and Dennis and Pauline Lott, with after-payout interests owned by Questar Exploration and

Production, Merrion Oil and Gas Corporation and Patricia Fessenden Roy. The SW $\frac{1}{4}$ NE $\frac{1}{4}$ is included within the CBM Unit. XTO is the designated Operator of the CBM Unit.

5. The Subject Lands are subject to Communitization Agreement UTU-80464 which allocates production from the leases and lands on a pro-rata acreage basis as follows:

<u>Lands</u>	<u>Lease</u>	<u>Production Allocation</u>
Sec. 6: Lots 1 and 2 and SE $\frac{1}{4}$ NE $\frac{1}{4}$	UTU-74378	75%
Sec. 6: SW $\frac{1}{4}$ NE $\frac{1}{4}$	[the CBM Unit]	25%

6. XTO is a non-operating working interest/operating rights owner in the Drunkards Wash Federal Exploratory Unit (the "DWU"), located to the northeast of the Subject Lands. All wells in the DWU produce gas (primarily coalbed methane) from the Ferron Formation. From its inception in 1991 through 2006, development within the DWU has occurred on a 160-acre well density pattern.

7. In 2006, an in-fill pilot program to determine the effect of an 80-acre well density pattern was started in the DWU. Five of the eight wells are located approximately nine miles to the northeast of the Subject Lands and, together with the offsetting 23 base wells originally drilled on a 160-acre density pattern, served as the study area for XTO's exhibits and testimony.

8. Data from the DWU in-fill study area reflects a projected incremental production of approximately 1.2 bcf per well. Furthermore, a comparison of average reserves from the DWU in-fill study area and immediate offsetting wells to the Subject Lands reflects similar recoveries, and therefore suggests the projected incremental production may very well be achieved from and around the Subject Lands. This indicates that, without in-fill drilling, additional gas reserves underlying the Subject Lands may not be recovered.

9. Economic analyses of a projected 1.2 bcf well in and around the Subject Lands indicate the well will yield a rate of return of 33%. Economic reserve sensitivity analysis indicates a well recovering only 850 MMcf will still generate a rate of return greater than 20%, therefore establishing that in-fill drilling should be economic.

10. Based on the results of the DWU in-fill study area, XTO is conducting its own pilot in-fill study program, including the drilling of in-fill wells within in the Huntington (Shallow) CBM Unit area, which entirely surrounds the Subject Lands and in which XTO is a working interest owner and serves as Unit Operator. However, while these wells have been drilled and most have been completed, the wells have not produced for sufficient time to generate an independent projection of potential recoveries.

11. As part of its pilot program, XTO is proposing to drill the "Federal 17-8-6-31" Well, to be located in Lot 2 of subject Section 6 (the "6-31 Well"), in anticipation of gas production from the Subject Formation. XTO's proposed location appears to be the optimum

location upon the Subject Lands for an 80-acre offset to the 6-25 well to maintain a regular development pattern in the pilot program area. However, without modification of the Order, XTO is currently prohibited from drilling the 6-31 Well as proposed.

12. A copy of the Request was mailed via certified mail, return receipt requested, addressed to their last addresses as disclosed by the appropriate Federal, State, and County realty records to all production interest owners within the Subject Lands and to the working interest owners in the CBM Unit, and was received by all, except for Patricia Fessenden Roy, whose copy remained unclaimed as of October 9, 2008. In addition, a copy of the Request was mailed properly addressed to all governmental agencies having any supervisory jurisdiction over any of those lands.

13. Notice of the filing of the Request and of the hearing thereon was duly published in the Salt Lake Tribune and Deseret Morning News on October 1, 2008 and the Emery County Progress on October 8, 2008.

14. The vote of the Board members present and participating in the hearing 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.

2. The Board has jurisdiction over all matter covered by the Request 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(6)(d).

3. The drilling of the proposed 6-31 Well is currently prohibited unless the Order is modified by the Board.

4. In-fill drilling of an additional well on the Subject Lands appears necessary to recover gas reserves that would otherwise be left in the ground and is deemed otherwise just and reasonable under the circumstances.

5. Correlative rights will not be adversely affected because of the existing CBM Unit and the communitization agreement, and the fact that in-fill drilling authorization, and not down spacing, is requested.

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

7. The relief granted hereby will result in the orderly development and greatest recovery of gas from the Subject Formation as to the Subject Lands, prevent waste and adequately protect the correlative rights of all affected parties.

ORDER

Based upon the Request, testimony and 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. The Board's Order entered in Cause No. 245-3 is hereby modified to permit the drilling of an additional well for the production of gas, including, but not limited to, coalbed methane, from the Ferron Formation, defined as:

the stratigraphic equivalent of the interval between 3,357 feet and 3,626 feet as shown on the Bulk Density Log for the Federal "M" 6-25 well,

including all coals and surrounding sands, upon the existing drilling unit comprised of the following described Emery County lands:

Township 17 South, Range 8 East, SLM

Section 6: Lots 1 (40.00) and 2 (40.00)
and S $\frac{1}{2}$ NE $\frac{1}{4}$ [NE $\frac{1}{4}$]

(containing 160 acres)

such additional well shall be drilled at a location either (1) in conformance with Utah Admin. Code Rule R649-3-2 or (2) as otherwise permitted by administrative action for topographic, cultural, archaeological, environmental or geologic reasons or other good cause pursuant to Utah Admin. Code Rule R649-3-3, or (3) in conformance with the location specified in the pleadings and exhibits on file in this Cause;

3. Pursuant to Utah Admin. Code Rule R641 and Utah Code Ann. § 63G-4-204 to 208, the Board has considered and decided this matter as a formal adjudication.

4. This 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. § 63G-4-208 and Utah Admin. Code Rule R641-109.

5. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63G-4-204(e) to 204(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. § 63G-4-401(3)(a) and 403. 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. § 63G-4-302, 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 63G-4-301 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 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 the month.

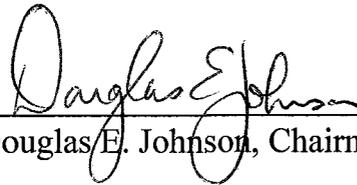
Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63G-4-302 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later 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.

6. 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.

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

DATED this 3 day of DEC, 2008.

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

By: 
Douglas E. Johnson, 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. 2008-023, Cause No. 245-05 to be mailed, postage prepaid, on this 8th day of December, 2008, to the following:

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