

MAY 05 2009

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 HARVEST (US) HOLDINGS, INC. FOR AN ORDER ESTABLISHING 40-ACRE OR EQUIVALENT DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL, GAS AND OTHER HYDROCARBONS IN SECTIONS 29 AND 20, T4S R2W, USM, DUCHESNE COUNTY, UTAH.

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

Docket No. 2009-004

Cause No. 266-01

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the “**Board**”) on Wednesday, March 25, 2009, at approximately 10:00 a.m. at the Utah State Capitol Complex, Salt Lake City, and again on Wednesday, April 22, 2009, at approximately 10:00 a.m. at the Rio Tinto Regional Center in South Jordan. Board members present and participating in the March 25, 2009 hearing were: Douglas E. Johnson, Chairman, Jake Y. Harouny, Jean Semborski, James T. Jensen, and Kelly L. Payne. Douglas E. Johnson, Chairman, Jean Semborski, Ruland J Gill, Jr., James T. Jensen, Samuel C. Quigley and Kelly L. Payne participated in the April 22, 2009 hearing. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Harvest (US) Holdings, Inc. (“**Harvest**”) in the March 25, 2009 hearing were Gil S. Porter, Manager of Lands, Harvest Natural Resources, Inc., Martin F. Shields, Managing Director, Branta E&P, and John Paul McKee, Production Operations Manager, Harvest Natural Resources, Inc. Testifying on behalf of Harvest in the

April 22, 2009 hearing were Mr. Porter, Gerald L. Stone, consulting geologist, and Eugene Williams, Consulting Engineer. James P. Allen, Esq. of Snell & Wilmer L.L.P. appeared as counsel for Harvest.

Clinton Dworshak, Geologist, testified on behalf of the Division of Oil, Gas and Mining (the “**Division**”) in both hearings. Kevin L. Bolander, Esq., Assistant Attorney General appeared as counsel for the Division. At the conclusion of Harvest’s presentation in the April 22, 2009 hearing, the Division presented its analysis and expressed its support for the Request.

El Paso E&P Company and El Paso Oil & Gas Resources Company (“**El Paso**”), represented by Phillip Wm. Lear, Esq. of Lear & Lear L.L.P. filed a Response and Objections to the Request. The Request was withdrawn prior to the April 22, 2009 hearing at El Paso’s request. A letter opposing the request was submitted by Newfield Production Company. Newfield also provided comments in opposition at the April 22, 2009 hearing through its attorney Thomas W. Clawson of Van Cott, Bagley, Cornwall & McCarthy.

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

April 22, 2009 hearing were Mr. Porter, Gerald L. Stone, consulting geologist, and Eugene Williams, Consulting Engineer. James P. Allen, Esq. of Snell & Wilmer L.L.P. appeared as counsel for Harvest.

Clinton Dworshak, Geologist, testified on behalf of the Division of Oil, Gas and Mining (the “**Division**”) in both hearings. Kevin L. Bolander, Esq., Assistant Attorney General appeared as counsel for the Division. At the conclusion of Harvest’s presentation in the April 22, 2009 hearing, the Division presented its analysis and expressed its support for the Request.

El Paso E&P Company and El Paso Oil & Gas Resources Company (“**El Paso**”), represented by Phillip Wm. Lear, Esq. of Lear & Lear L.L.P. filed a Response and Objections to the Request. The Request was withdrawn prior to the April 22, 2009 hearing at El Paso’s request. A letter opposing the request was submitted by Newfield Production Company. Newfield also provided comments in opposition at the April 22, 2009 hearing through its attorney Thomas W. Clawson of Van Cott, Bagley, Cornwall & McCarthy.

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

FINDINGS OF FACT

1. Harvest is a Delaware corporation in good standing, with its principal place of business in Houston, Texas and is licensed to do business in Utah.
2. Harvest is a lessee and working interest owner of mineral interests in sections 20 and 29, Township 4 South, Range 2 West, USM, located in Duchesne County, Utah (the “**Subject Lands**”).
3. The surface of the Subject Lands is privately owned.
4. The mineral rights in the Subject Lands are uniformly held, in undivided amounts, by numerous private parties.
5. The subject lands are located a few miles northwest of the Greater Monument Butte Field, northeast of the Antelope Creek Field, and adjacent to the eastern boundary of the South Myton Bench Field.
6. No previous Board Order has provided for well spacing in the Subject Lands.
7. Harvest has sought permits to drill and operate eight wells located in the W¹/₂ of section 29 and the SW¹/₄ of section 20 to produce oil and gas from the Green River Formation, as defined herein.
8. Development over many years in these fields has occurred on a pattern dominated by one well per 40 acres, although the reasons for this pattern are varied. A recent Utah Geological Survey publication identified initial development and production on a 40-

acre pattern, followed in short order by conversion to pressure maintenance, as a “best practice” for Green River Formation wells in the Monument Butte area.

9. The subject lands are underlain by the Green River Formation known to be productive of oil, gas, and hydrocarbons. In the area of the Subject Lands the Green River Formation is a complex series of mostly isolated and discontinuous beds of productive sand that are randomly distributed vertically over several thousand feet. Productive sands occur within a marginal lacustrine zone as north-trending channels in a near-shore deltaic or mud flat environment. The productive beds are predominantly separate and distinct and not in communication with each other. Many of the productive beds cannot be correlated from well to well and will not afford communication between wells on 40-acre spacing. Of the productive beds that do correlate, various geologic factors prevent a significant number from communicating between wells in the same section.

10. The productive sands within the spaced interval in the Subject lands constitute a common source of supply of oil, gas, and hydrocarbons owing to their common depositional environment and interwoven nature.

11. Decline curve analyses from 40-acre wells on primary production in the adjacent Monument Butte Field shows relatively low recovery factors, suggesting that each 40-acre tract is not larger than the area that can be efficiently drained by a single well. Analysis of the primary production phase of analogous wells near the Monument Butte NE

Waterflood unit within the Greater Monument Butte Field indicates that wells in the subject lands should recover in excess of 50,000 bbls of oil in primary production.

12. As a consequence, it appears that one well in each 40-acre or equivalent unit is necessary to adequately recover the reserves therein. Economic analysis reflects that wells may be economically drilled and produced on 40-acre spacing in the subject lands at present oil prices. Drilling and producing on 40-acre spacing from the Spaced Formation will not constitute waste.

13. A copy of the Request was mailed to the last addresses as disclosed by the appropriate State or County realty records of all working interest owners and unleased mineral interest owners within the Subject Lands.

14. 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 March 1, 2009 and in the Uintah Basin Standard on March 3, 2009.

15. The vote of the Board members present on April 22, 2009 in the 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 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. Entry of an Order providing for 40-acre spacing of the Green River Formation in the subject lands, with the same set-off limitations contained in this Board's statewide well citing rule at Utah Administrative Code R649-3-2 will be in furtherance of the public policies of this State to promote greater recovery of said resources without waste and with protection of the correlative rights of all affected owners, will allow for the orderly development of the Subject Lands, and is just and reasonable under the circumstances.

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

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. Drilling units are established in section 20, Township 4 South, Range 2 West, USM consisting of each 40-acre government quarter-quarter section.
3. Drilling units are established in section 29, Township 4 South, Range 2 West, USM as follows:

Three units consisting of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, each comprising 40 acres;
and
Four units consisting of Lots 1, 2, 3, and 4, comprising 58.90, 29.90, 40.90, and 51.90 acres, respectively;

excepting any portion or tract therein that is "Indian Country" as that term is defined at 18 U.S.C. § 1151.

4. Only one well may be drilled within each drilling unit at a location within a 400-foot-square window in the center of the unit, provided that no well may be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool, or closer than 460 feet to the boundary of the drilling unit without an exception location approval from the Division in accordance with Utah Admin. Code R649-3-3.

5. This Order applies to all wells in the Subject Lands drilled and completed in the Green River Formation, defined as:

that interval below the top of the Green River Formation at the stratigraphic equivalent of 1,438 feet depth in the Log of the Jensen #1 well, located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 21, Township 8 South, Range 16 East, SLM, downward to the top of the Wasatch Formation at the stratigraphic equivalent of 7,100 feet depth in the Log of the same well, an interval of 5,662 feet more or less,

upon each of the established drilling units as described herein.

6. Pursuant to Utah Admin. Code R641 and Part 2 of Chapter 4, Utah Code Title 63G, the Board has considered and decided this matter as a formal adjudication.

7. 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 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. § 63G-4-208(1)(e) through (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 and 403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies each party that it 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 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(1)(a) and the deadline in Utah Admin. 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,

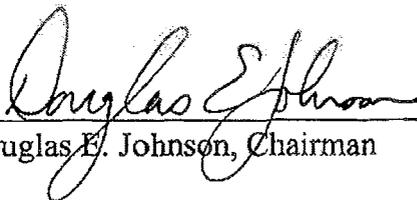
the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

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.

DATED this 5 day of May, 2009.

**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. 2009-004, Cause No. 266-001 to be mailed with postage prepaid, this 6th day of May, to the following:

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(Via-Email)


Maurine B. Bridges

FILED

APR 22 2009

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
HARVEST (US) HOLDINGS, INC.,
FOR AN ORDER ESTABLISHING 40-
ACRE OR EQUIVALENT DRILLING
AND SPACING UNITS FOR THE
PRODUCTION OF OIL, GAS AND
OTHER HYDROCARBONS IN
SECTIONS 29 AND 20, T4S, R2W,
USM, DUCHESNE COUNTY, UTAH**

**ORDER GRANTING EL PASO E&P
COMPANY, L.P. AND EL PASO OIL &
GAS RESOURCES COMPANY, L.P.,
LEAVE TO WITHDRAW RESPONSE
AND OBJECTIONS
(Spacing)**

Docket No. 2009-004

Cause No. 266-001

This matter came regularly for hearing before the Board of Oil, Gas, and Mining (the “Board”) on Wednesday, April 22, 2009, at 10:00 a.m. in conference room 1S 1101 at the Rio Tinto Regional Center, 4700 Daybreak Drive Parkway, in South Jordan, Utah.

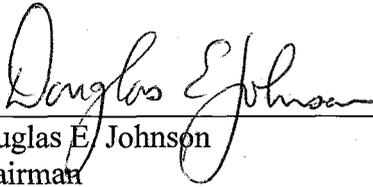
The Board, having considered the Unopposed Motion of El Paso E&P Company, L.P., and El Paso Oil & Gas Resources Company, L.P. (collectively “El Paso”) for an order granting leave to withdraw its Response and Objections in this matter; being fully advised in the premises; and good cause therefore appearing;

IT IS HEREBY ORDERED that El Paso is granted leave to withdraw its Response and Objections to the Request for Agency Action for spacing is granted, and El Paso’s Response and Objections is hereby withdrawn. The Chairman’s signature on a facsimile copy of this Order

shall be deemed the equivalent of a signed original for all purposes.

ENTERED this 22 day of April 2009.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



Douglas E. Johnson
Chairman

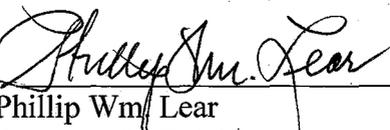
Approved as to Form:

Attorney General for the State of Utah

By: 

Steven F. Alder, Esq.
Kevin L. Bolander, Esq.
Assistant Attorneys General
Attorney for the Division of Oil, Gas and Mining

LEAR & LEAR L.L.P.

By: 

Phillip Wm. Lear
Attorney for Fidelity

Snell & Wilmer L.L.P.

By: 

James P. Allen, Esq.
Bradley R. Cahoon, Esq.
Attorneys for Harvest (US) Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing ORDER GRANTING EL PASO E&P COMPANY, L.P. AND EL PASO OIL & GAS RESOURCES COMPANY, L.P., LEAVE TO WITHDRAW RESPONSE AND OBJECTIONS (Spacing) for Docket No. 2009-004, Cause No. 266-001 to be mailed with postage prepaid, this 23rd day of April, to the following:

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