

FILED

MAY 05 2011

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 BERRY PETROLEUM COMPANY FOR AN ORDER ESTABLISHING 40 ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL AND GAS FROM THE GREEN RIVER FORMATION IN THE SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ AND THE S $\frac{1}{2}$ SW $\frac{1}{4}$ OF SECTION 10, TOWNSHIP 5 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

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

Docket No. 2011-005

Cause No. 272-01

This cause came on for hearing before the Utah Board of Oil, Gas, and Mining (the "Board") on Wednesday March 23, 2011, at approximately 10:00 a.m., and again on April 27, 2011, in the auditorium of the Utah Department of Natural Resources, 1594 North Temple, Salt Lake City, Utah.

Pursuant to Utah Admin. Code R641-113-100, *et seq.*, at the March 23, 2011 hearing the Board, by its own motion appointed John R. Baza, Director of the Division of Oil, Gas, and Mining, as the designated hearing examiner (the "Hearing Examiner") for this matter. The Board members present at the March 23, 2011 were: James T. Jensen, Chairman, Jake Y. Harouny, Kelly L. Payne, and Jean Semborski. The Hearing Examiner was represented by Michael S. Johnson, Esq., Assistant Attorney General.

All parties who were present at the March 23, 2011 hearing for this matter consented to the appointment of the Hearing Examiner and agreed that the hearing would proceed immediately following the conclusion of the regularly scheduled Board meeting.

On March 23, 2011, at 10:30 a.m., the Hearing Examiner was presented with testimony and evidence from Berry, the Division and all other interested parties.

Testifying on behalf of Petitioner, Berry Petroleum Company (“Berry”), at the March 23, 2011 hearing was Clint Turner, Professional Landman of Turner Petroleum Land Services, Inc., Jeffrey Ehrenzeller, Geologist, Susan Sears, Petroleum Engineer. Mark L. Burghardt, of Holland & Hart, LLP appeared as counsel for Berry.

Dustin Doucet, Petroleum Engineer, testified on behalf of the Utah Division of Oil, Gas, and Mining (the “Division”) at the March 23, 2011 hearing. Steve F. Alder, Assistant Attorney General, appeared as counsel for the Division. The Division expressed its support for the Request for Agency Action (the “Request”).

Paul M. Lehrman, a working interest owner within the Subject Lands, appeared, gave testimony, and represented himself *pro se* at the March 23, 2011 hearing. Mr. Lehrman indicated that he was not opposed to the Request.

The April 27, 2011 hearing was conducted before the Board. The Hearing Examiner’s March 31, 2011 Recommended Findings of Fact and Conclusions of Law were presented to and adopted by the Board and a final ruling was reached at the April 27, 2011 hearing. The Board members present and participating in the April 27, 2011 hearing were: James T. Jensen, Jake Y. Harouny, Kelly L. Payne and Jean Semborski. The Board was represented by Fredric J. Donaldson, Assistant Attorney General.

The Board, having considered the recommendation of the Hearing Examiner and having had no objections presented at the April 27, 2011 hearing, being fully advised, and for good cause, hereby enters the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. The lands included in this Request are:

Township 5 South, Range 4 West, USM

Section 10: SW $\frac{1}{4}$ SE $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$,

(the "Subject Lands").

2. The spacing will apply only to the Green River Formation underlying the captioned lands, defined as:

the stratigraphic equivalent of the geologic section from 1,151 feet to 5,859 feet measured depth in Berry Petroleum Company's SFW Fee 15-10-54 Well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 10, T5S, R4W, USM, Duchesne County, Utah.

3. Oil and gas ownership in the Subject Lands is vested in multiple private (fee) owners, who each own an undivided interest.

4. Berry is the owner of a majority of the working interest in the Subject Lands, pursuant to multiple oil and gas leases issued by the mineral interest owners, and is the operator of the SFW Fee 15-10-54 Well, the only well located on the captioned lands. Also, Berry is the operator of a variety of other wells located in close proximity to the Subject Lands.

5. No previous Board Order has provided for well spacing for the Subject Lands. To date, development of the Subject Lands has proceeded pursuant to the general statewide well siting rule set forth in Utah Admin. Code R649-3-2.

6. The Subject Lands are underlain by the Green River Formation known to be productive of oil, gas, and hydrocarbons. Sandstones were deposited in distributary channel and mouth bar environments resulting in a complex stratigraphic setting with multiple, vertically stacked, lenticular beds. These discontinuous sandstone beds form the primary oil and gas reservoirs in the Subject Lands and in many cases, cannot be correlated with any certainty from one well to the next. Production comes from the Garden Gulch, Douglas Creek, Castle Peak, and Uteland Butte members of the Green River Formation which can result in perforations for well completion occurring across a stratigraphic section exceeding 2000 feet in thickness. There has been no evidence of communication between any of the surrounding wells drilled on an approximately 40 acre spacing pattern.

7. 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.

8. Decline curve analyses from the SFW Fee 15-10-54 Well, and from adjacent wells located in close proximity to the Subject Lands, show 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.

9. As a consequence, from the geological, engineering, and other data obtained by Berry, it appears that one well in each 40 acre unit is necessary to adequately and efficiently recover the reserves therein. Economic analysis reflects that wells may be economically drilled and produce on 40 acre spacing from the Green River Formation and will not constitute waste.

10. A copy of the Request was mailed to all owners within the Subject Lands except for Mr. Lehrman, who was mistakenly omitted from the mailing list, but who sent a letter to the Division regarding the matter on February 18, 2011, filed a Request to Participate and Give Testimony on March 9, 2011, and who appeared at the March 23, 2011 hearing.

11. Notice of both the March 23, 2011 hearing where the Hearing Examiner was appointed by the Board and the April 27, 2011 hearing where the Board considered

the recommendation of the Hearing Examiner was duly published as required by Utah Admin. Code R641-106-100.

12. The vote of the Board members present at the April 27, 2011 hearing in this case was unanimous in favor of granting the Request.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place, and purpose of the hearings was properly given in the form and manner as required by law and the rules and regulations of the Board and Division to all of the fee owners within the subject lands and all appropriate government agencies.

2. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. § 40-6-1. *et seq.*

3. Entry of an Order providing for 40 acre spacing of the Green River Formation in the Subject Lands, as defined in Paragraph 2 above, 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. Berry 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 other 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 and spacing units are established for the Green River Formation within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 10, Township 5 South, Range 4 West, USM, Duchesne County, Utah, consisting of 40 acre government quarter-quarter sections.
3. Only one well may be drilled within each drilling and spacing unit, with the location of each permitted well in the center of the respective quarter-quarter section, shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center of such designated quarter-quarter section and no closer than 920 feet from any other well drilling to or capable of producing oil and gas from the Green River Formation as so defined, except as may otherwise be permitted pursuant to Utah Admin. Code R649-3-3.
4. This Order applies to all wells drilled on the Subject Lands within the Green River Formation as defined above. The SFW Fee 15-10-54 Well is designated as the authorized well for the 40 acre drilling and spacing unit comprised of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, Township 5 South, Range 4 West, USM

5. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204 through 208, and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

6. This Order is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

7. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. § 63G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63G-4-401(3)(a) and 403.

8. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63G-4-302. The Utah Administrative Procedures Act provides:

(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 Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

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. Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a

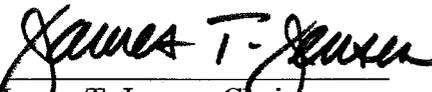
timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

9. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

10. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

DATED this 5th day of May, 2011.

STATE OF UTAH
BOARD OF OIL, GAS, AND MINING

By: 
James T. Jensen, 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. 2011-005, Cause No. 272-01 to be mailed with postage prepaid, this 5th day of May, 2011, to the following:

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Heirs and/or devisees of
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(no address of record)

Jake Alan Reay
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Nicholas Faye Reay
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South Jordan, UT 84095



FILED

MAR 31 2011

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 BERRY PETROLEUM COMPANY FOR AN ORDER ESTABLISHING 40 ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL AND GAS FROM THE GREEN RIVER FORMATION IN THE SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ AND THE S $\frac{1}{2}$ SW $\frac{1}{4}$ OF SECTION 10, TOWNSHIP 5 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

**HEARING EXAMINER'S
RECOMMENDED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Docket No. 2011-005

Cause No. 272-01

This cause came on for hearing before the Utah Board of Oil, Gas, and Mining (the "Board") on Wednesday March 23, 2011, at approximately 10:00 a.m. in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

Pursuant to Utah Admin. Code R641-113-100, *et seq.*, at the March 23, 2011 hearing, the Board, on its own motion, appointed John R. Baza, Director of the Division of Oil, Gas, and Mining, as the designated hearing examiner (the "Hearing Examiner") for this matter. The Board directed that the Hearing Examiner would immediately conduct an evidentiary hearing on all issues in this Cause. The Board members present at the March 23, 2011 were: James T. Jensen, Chairman, Jake Y. Harouny, Kelly L. Payne, and Jean Semborski. The Hearing Examiner was represented by Michael S. Johnson, Esq., Assistant Attorney General.

All parties who were present at the March 23, 2011 hearing for this matter consented to the appointment of the Hearing Examiner and agreed that the hearing would proceed immediately following the conclusion of the regularly scheduled Board meeting. On March 23, 2011, at 10:30 a.m.

Testifying on behalf of Petitioner, Berry Petroleum Company (“Berry”), at the March 23, 2011 hearing before the Hearing Examiner was Clint Turner, Professional Landman of Turner Petroleum Land Services, Inc., Jeffrey Ehrenzeller, Geologist, Susan Sears, Petroleum Engineer. Mark L. Burghardt, of Holland & Hart, LLP appeared as counsel for Berry.

Dustin Doucet, Petroleum Engineer, testified on behalf of the Utah Division of Oil, Gas, and Mining (the “Division”) at the March 23, 2011 hearing. Steven F. Alder, Assistant Attorney General, appeared as counsel for the Division. The Division expressed its support for the Request for Agency Action (the “Request”).

Paul M. Lehrman, a working interest owner within the Subject Lands, appeared, gave testimony, and represented himself *pro se* at the March 23, 2011 hearing. Mr. Lehrman indicated that he was not opposed to the relief sought in the Request.

At the conclusion of the March 23, 2011 hearing, the Hearing Examiner directed that parties wishing to file proposed Findings of Fact and Conclusions of Law to be considered by the Hearing Examiner in preparing his recommendation to the Board do so by Monday, March 28, 2011.

FINDINGS OF FACT

1. The lands included in this Request are:

Township 5 South, Range 4 West, USM

Section 10: SW $\frac{1}{4}$ SE $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$,

(the "Subject Lands").

2. The spacing will apply only to the Green River Formation underlying the captioned lands, defined as:

the stratigraphic equivalent of the geologic section from 1,151 feet to 5,859 feet measured depth in Berry Petroleum Company's SFW Fee 15-10-54 Well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 10, T5S, R4W, USM, Duchesne County, Utah.

3. Oil and gas ownership in the Subject Lands is vested in multiple private (fee) owners, who each own an undivided interest.

4. Berry is the owner of a majority of the working interest in the Subject Lands, pursuant to multiple oil and gas leases issued by the mineral interest owners, and is the operator of the SFW Fee 15-10-54 Well, the only well located on the captioned lands.

Also, Berry is the operator of a variety of other wells located in close proximity to the Subject Lands.

5. No previous Board Order has provided for well spacing for the Subject Lands. To date, development of the Subject Lands has proceeded pursuant to the general statewide well siting rule set forth in Utah Admin. Code R649-3-2.

6. The Subject Lands are underlain by the Green River Formation known to be productive of oil, gas, and hydrocarbons. Sandstones were deposited in distributary channel and mouth bar environments resulting in a complex stratigraphic setting with multiple, vertically stacked, lenticular beds. These discontinuous sandstone beds form the primary oil and gas reservoirs in the Subject Lands and in many cases, cannot be correlated with any certainty from one well to the next. Production comes from the Garden Gulch, Douglas Creek, Castle Peak, and Uteland Butte members of the Green River Formation which can result in perforations for well completion occurring across a stratigraphic section exceeding 2000 feet in thickness. There has been no evidence of communication between any of the surrounding wells drilled on an approximately 40 acre spacing pattern.

7. 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.

8. Decline curve analyses from the SFW Fee 15-10-54 Well, and from adjacent wells located in close proximity to the Subject Lands, show 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.

9. As a consequence, from the geological, engineering, and other data obtained by Berry, it appears that one well in each 40 acre unit is necessary to adequately and efficiently recover the reserves therein. Economic analysis reflects that wells may be economically drilled and produce on 40 acre spacing from the Green River Formation and will not constitute waste.

10. A copy of the Request was mailed to all owners within the Subject Lands except for Mr. Lehrman, who was mistakenly omitted from the mailing list, but who sent a letter to the Division regarding the matter on February 18, 2011, filed a Request to Participate and Give Testimony on March 9, 2011, and who appeared and participated at the March 23, 2011 hearing.

11. Notice of the March 23, 2011 hearing was duly published as required by Utah Admin. Code R641-106-100.

CONCLUSIONS OF LAW

1. Sufficient notice of the time, place, and purpose of the hearing was given to all of the fee owners within the subject lands and all appropriate government agencies.

Mr. Lehrman received actual notice of the hearing and participated in this matter as set forth in paragraph 10, above.

2. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. § 40-6-1. *et seq.*

3. Entry of an Order providing for 40 acre spacing of the Green River Formation in the Subject Lands, as defined in Paragraph 2 above, 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. Berry has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the Request.

HEARING EXAMINER'S RECOMMENDATION

I, John R. Baza, Director of the Division, acting under Utah Admin. Code R641-113-100, *et seq.* as the Board's duly-appointed Hearing Examiner in the above-captioned matter, held an evidentiary hearing on the record on March 23, 2011, at approximately 10:00 a.m., in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. Based on the evidence received in the record, and based on applicable law, I hereby recommend that the Board adopt the foregoing "Hearing Examiner's Recommended Findings of Fact and Conclusions of Law."

DATED this 31st day of March, 2011.

By: 
John R. Baza, Director
Utah Division of Oil, Gas, and Mining

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER for Docket No. 2011-005, Cause No. 272-01 to be mailed with postage prepaid, this 4th day of April, 2011, to the following:

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