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SECRETARY, BOARD OF
OIL, GAS & MINING

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

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF XTO ENERGY INC. FOR AN ORDER: (1) VACATING THE BOARD'S ORDER ENTERED IN CAUSE NO. 233-1; AND (2) SUSPENDING UTAH ADMIN. CODE RULE R649-3-2 AS TO THE WEST WILLOW CREEK FEDERAL UNIT, COMPRISED OF SECTION 23: LOTS 9-13, E½SE¼; SECTION 24: LOT 2, NE¼NW¼, S½NW¼, E½, SW¼ [ALL]; SECTION 25: ALL; SECTION 26: LOTS 4-7, E½, SW¼; TOWNSHIP 9 SOUTH, RANGE 19 EAST, S.L.B. & M., UINTAH COUNTY, UTAH

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

Docket No. 2015-008

Cause No. 233-02

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, February 25, 2015 at approximately 9:30 a.m. in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City, Utah. The following Board members were present and participated at the hearing: Chairman Ruland J. Gill, Jr., Gordon L. Moon, Chris D. Hansen, Carl F. Kendell, and Michael R. Brown. Board members Kelly L. Payne and Susan S. Davis were unable to attend the hearing. The Board was represented by Michael S. Johnson, Esq, Assistant Attorney General.

Testifying on behalf of Petitioner XTO Energy Inc. ("XTO") was Paul Keffer, Division Landman. Mr. Keffer was recognized by the Board as an expert in Petroleum

Land Management. Seth A. Loughmiller, Esq., of and for MacDonald & Miller Mineral Legal Services, PLLC, appeared as the attorney for XTO.

The Utah Division of Oil, Gas and Mining (the “Division”) elected not to file a staff memorandum in this Cause, but participated in the hearing. John Robinson Jr., Esq., Assistant Attorney General, appeared as attorney for the Division. At the conclusion of XTO’s presentation in-chief, Mr. Robinson made a statement indicating the Division supported the granting of XTO’s Request for Agency Action filed on January 12, 2015 in this Cause (the “Request”), as conformed to the testimony and other evidence provided at the hearing.

The Bureau of Land Management (“BLM”) filed a letter in support of granting the Request on February 9, 2015. 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 in this Cause.

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. The West Willow Creek Federal Unit (hereinafter the "Unit") is comprised of the following Uintah County, Utah lands:

Township 9 South, Range 19 East, S.L.B. & M.

Section 23: Lots 9 through 13, E $\frac{1}{2}$ SE $\frac{1}{4}$
Section 24: Lot 2, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
E $\frac{1}{2}$, SW $\frac{1}{4}$ [All]
Section 25: All
Section 26: Lots 4 through 7, E $\frac{1}{2}$, SW $\frac{1}{4}$

(containing 2,067.58 acres)

(hereinafter the "Unit Area"). XTO became Unit Operator in 2008 in conjunction with its acquisition of Dominion Exploration and Production Inc.'s Utah assets.

3. All of the oil, gas and associated hydrocarbons underlying the Unit Area are owned by the United States of America, administered by the BLM, and subject to the following oil and gas leases:

<u>Lands</u>	<u>Federal Lease No.</u>
Section 25: All	UTU-39221
Section 24: E $\frac{1}{2}$ E $\frac{1}{2}$	UTU-68108
Section 23: Lots 9 through 13, E $\frac{1}{2}$ SE $\frac{1}{4}$	UTU-68625
Section 24: Lot 2, W $\frac{1}{2}$ E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$	
Section 26: Lots 4 through 7, NE $\frac{1}{4}$, S $\frac{1}{2}$	

XTO is the sole lessee and operating rights owner under each of these leases.

4. The Unit was approved by the BLM effective October 1, 1994. As originally approved, the Unit Area encompassed 2,932.08 acres. However, under the terms of the governing Unit Agreement, the Unit contracted upon the fifth anniversary of the establishment of its initial Green River participating area (October 1, 1999) to its then participating area boundaries, which constituted 1,291.49 acres. Effective June 1, 2013, the Unit and its participating area were expanded to 2,067.58 acres. All formations underlying the Unit Area are deemed unitized. All tracts are deemed “fully” or “effectively” committed by the BLM; there are no uncommitted unit tracts.

5. By the Board’s Order entered on June 22, 1994 in Cause No. 233-1 (the “233-1 Order”), the Board ordered the establishment and operation of a gas injection secondary recovery project encompassing the initial participating area of the Unit (1,291.49 acres) for the secondary recovery of oil from the Green River formation by the use of reinjected casinghead gas. Additionally, the 233-1 Order approved the conversion of the 1-26B Well, located in the NE¼NE¼ of Section 26, Township 9 South, Range 19 East, from a producing gas well to a Class II gas injection well. No specific well siting or setbacks were addressed in the Order. However, no secondary recovery operations have occurred in the Unit Area since 2008, and the 233-1 Order no longer corresponds with the Unit’s participating area. Instead, operations within the Unit Area and development of

the Unit Area are being conducted in accordance with only the terms of the Unit and Unit Operating Agreements.

6. XTO desires to operate only under the terms of the Unit and Unit Operating Agreement and not under the secondary recovery plan established under the 233-1 Order.

7. Existence of the 233-1 Order creates production allocation problems for XTO within the Unit expansion because the allocation schemes are inconsistent. The 233-1 Order allocation is based on the initial participating area, whereas the Unit Agreement allocation is based on the expanded participating area. Retroactively vacating the 233-1 Order to June 1, 2013 (the approved date of Unit expansion) will alleviate the production allocation problems because it will eliminate any period where both allocation schemes would apply to the Unit.

8. Other than the 233-1 Order, there are no other Board orders pertaining to the Unit Area. Consequently, and since the 233-1 Order does not expressly address well siting, the general well siting rules set forth in Utah Admin. Code R649-3-2 are applicable to the entire Unit Area.

9. Well location and density patterns within the Unit Area are determined in accordance with the Unit Agreement and, in particular, the annual plans of Unit development approved by the BLM. Said plans will be developed on such well density as the reservoir conditions justify. Flexibility to account for geologic anomalies and

topographical restrictions within the Unit Area will facilitate orderly and proper development. Applications for Permits to Drill (“APD’s”) are approved by the BLM and/or the Division.

10. Article 16 of the Unit Agreement expressly requires XTO, as Unit Operator, to produce unitized substances and conduct all operations to provide for the most economical and efficient recovery of said substances without waste, as defined by or pursuant to State or Federal law or regulations. XTO operates the Unit under these governing principles.

11. The Division requires compliance with Utah Admin. Code Rule R649-3-2 (the general statewide well location rule) with respect to wells within the Federal exploratory unit boundaries or requires an exception from the Division and the Board in accordance with regulations.

12. Given the findings outlined in Paragraph Nos. 6 through 11 above, vacating the 233-1 Order and suspending Utah Admin. Code Rule R649-3-2 as to the lands within the Unit Area is fair, reasonable and justified; provided however that no further well may be drilled closer than 460 feet from the boundary of the Unit Area without administrative approval of the Division in accordance with Utah Admin. Code Rule R649-3-3 to protect the correlative rights of the adjacent lands outside the Unit Area. Such action is consistent

with previous Board Orders granting similar relief under similar circumstances, *e.g.*, the Board's Orders entered in Cause Nos. 191-06, 268-06 and 173-25.

13. A copy of the Request was mailed, postage pre-paid, certified with return receipt requested and properly addressed to all mineral, leasehold and production interest owners in the Subject lands, including the State and Vernal Field Office of the BLM as the governmental agency having jurisdiction over the Subject lands. The mailings were sent to said parties at their last addresses disclosed by the BLM and Uintah County realty records and from XTO's internal land records including title opinions and paydecks.

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 February 1, 2015, and in the Uintah Basin Standard and the Vernal Express on February 3, 2015.

15. The vote of the Board members present and participating in the hearing on this Cause was unanimous (5-0) in favor of granting the Request as conformed to the testimony and the evidence presented at the hearing.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was properly given to all parties whose legally protected interests are affected by the Request 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 and all interested parties therein, and has the power and authority to vacate the Order, herein set forth, pursuant to Utah Code Ann. §40-6-5(3)(b) and Utah Admin. Code Rule R649-2-3.

3. Vacating the 233-1 Order retroactively as of June 1, 2013 and suspending Utah Admin. Code Rule R649-3-2, as applicable to the entire Unit Area, will result in the conservation of oil and gas and will prevent waste.

4. XTO has demonstrated good cause, and has sustained its burden of proof for the granting of the Request.

5. The Request for Agency Action satisfies all statutory and regulatory requirements for the relief sought therein, and therefore the Request should be granted.

ORDER

Based on the Request, testimony and evidence submitted, and findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Request in this Cause, as conformed to the testimony and other evidence provided at the hearing, is granted.

2. The Board's Order entered in Cause No. 233-1 is vacated retroactively as of June 1, 2013.

3. Utah Admin. Code Rule R649-3-2 as to lands within the Unit Area is suspended.

4. No future wells within the Unit Area may be located closer than 460 feet from the boundary of the Unit Area without administrative approval of the Division in accordance with Utah Admin. Code Rule R649-3-3.

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

6. 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 Administrative Code 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. §63G-4-208(e) - (g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. Utah Code Ann. §§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.

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.

DATED this 2nd day of April, 2015.

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

By: 
Ruland J. Gill, Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2015, I caused a true and correct copy of the foregoing ORDER for Docket No. 2015-008, Cause No. 233-02, to be mailed by Email or via First Class Mail with postage prepaid, to the following:

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