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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 MARION ENERGY, INC. FOR AN ORDER GRANTING AN AQUIFER EXEMPTION AND APPROVING THE CONVERSION OF THE ALPINE SCHOOL DISTRICT #6-17 WELL LOCATED IN SECTION 17, TOWNSHIP 13 SOUTH, RANGE 7 EAST, CARBON COUNTY, UTAH, TO A CLASS II INJECTION WELL	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** Docket No. 2010-021 Cause No. UIC-362.1

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, April 28, 2010, at approximately 2:00 p.m. in the Auditorium of the Utah Natural Resources Building in Salt Lake City. Cause No. UIC-362.2 was called concurrently with this Cause in the interest of efficiency. The following Board members were present and participated at the hearing: Chairman Douglas E. Johnson, Jean Semborski, James T. Jensen, Jake Y. Harouny and Kelly L. Payne. Board Members Samuel C. Quigley and Ruland J. Gill, Jr. were unable to attend. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

At the commencement of the hearing, Board Member Jensen disclosed that he and his siblings own royalty interests in the Clear Creek Unit, operated by the Petitioner, Marion Energy, Inc. ("Marion"). Further, Board member Kelly Payne disclosed that his wife is an employee of Alpine School District, owner of the surface location of the 6-17 well, and his children attend Alpine School District. Chairman Johnson asked if there were objections to

the participation of either Mr. Jensen or Mr. Payne in the proceedings. No objections were raised and both Mr. Jensen and Mr. Payne participated in the hearing.

Testifying on behalf of Marion were Keri Clarke – Vice President Land, John C. Pinkerton – Geologist, and J. Jay Stratton, Jr. – Petroleum Engineer. Messrs. Pinkerton and Stratton were recognized as experts in geology and petroleum engineering, respectively, for purposes of this Cause. Relma M. Miller, Esq., of and for Beatty & Wozniak, P.C., appeared as attorney for Marion.

Present and participating on behalf of the Division of Oil, Gas and Mining (the "Division") were Gil Hunt – Associate Director, Oil and Gas, Brad Hill – Oil and Gas Permitting Manager, and Dustin Doucet – Petroleum Engineer. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney on behalf of the Division.

A protest was received from Carbon County on April 12, 2010, based upon Marion's failure to file an application with the county for a conditional use permit. Marion subsequently filed the appropriate application and a hearing is scheduled with the Carbon County Planning and Zoning Department in early May. Two additional items of correspondence were received by the Board, both filed late. Letters were received on April 19, 2010, from Kent Pilling of East Carbon, Utah and on April 27, 2010, from Alpine School District. Neither stated specific objections, and Alpine School District indicated that Marion had been responsive to their concerns in the past. No parties appeared at the hearing to object to Marion's request.

The Division of Oil, Gas and Mining filed its memorandum regarding this matter on April 15, 2010. The Division expressed no recommendation regarding the aquifer exemption but requested that Marion's injection application be processed administratively. Marion concurs.

At the conclusion of the hearing, a question arose as to the lateral extent applicable to the aquifer exemption. The Board took the matter under advisement and Marion submitted its supplemental Memorandum of Authority addressing this issue on April 29, 2010.

The Board, having considered the testimony presented, the exhibits received into evidence at the hearing, and Marion's supplemental Memorandum of Authority, being fully advised, and for good cause, hereby makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Marion is the wholly-owned U.S. subsidiary of Marion Energy, Limited, a publicly traded company on the Australian stock exchange. Marion is in good standing and authorized to conduct business in the State of Utah. It is duly bonded with all appropriate State of Utah and Federal agencies relevant to this cause.

2. Marion is operator of the Clear Creek Unit, a Federal unit established in 1957. The Unit has produced from the Ferron formation since that time.

3. Pursuant to Utah Administrative Code Rule R649-5-4, the Board, after notice and hearing, subject to EPA approval, may authorize exemption of certain aquifers from

classification as an underground source of drinking water (a "USDW"). The Ferron sandstone member of the Mancos formation meets the definition of a USDW.

4. The Ferron sandstone member of the Mancos formation appears at a depth in excess of 4,000 feet in the Alpine School District 6-17 Well. The aquifer is confined by the Bluegate Shale above and the Tunuck Shale below.

5. The Ferron sandstone member of the Mancos formation within a one-half mile radius of the Alpine School District #6-17 Well does not currently serve as a source of drinking water.

6. The aquifer cannot now and will not in the future serve as a source of drinking water because it is hydrocarbon producing.

7. Water testing results in total dissolved solid levels between 3,000 and 10,000 mg/l from the Ferron formation.

8. Water injected into the subject aquifer will be limited to water produced from wells within the Clear Creek Unit.

9. A copy of the Request was mailed, postage pre-paid, certified with return receipt requested, and properly addressed, to all surface and mineral owners and operators within one-half mile of the Alpine School District #6-17 Well to their last addresses disclosed by the appropriate Federal, State and County realty records, and to the Bureau of Land Management, the governmental agency having jurisdiction over the Unit. Copies of the return receipts, evidencing receipt of all such mailings, were filed with the Board.

10. Notice of the filing of the Request and of the hearing thereon was duly published in the Price Sun Advocate on April 1, 2010 and in the Salt Lake Tribune and Deseret Morning News April 4, 2010.

11. The Board deliberated and voted to approve Marion's Request.

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 the matters 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(5) and authority delegated by the United States Environmental Protection Agency pursuant to 40 CFR § 147.2251.

3. The Ferron sandstone member of the Mancos shale formation, within one-half mile of the Alpine School District #6-17 Well, should be exempt as a USDW because it is not currently a source of drinking water and it will not in the future be used as a source of drinking water because it is productive of hydrocarbons.

4. Marion 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. Marion's request for an aquifer exemption for selected zones of the Ferron sandstone member of the Mancos Formation, within a one-half mile radius of the Alpine School District #6-17 Well, located in Section 17, Township 13 North, Range 7 East, Carbon County, Utah, is approved.

2. Marion's application to convert the Alpine School District #6-17 Well to an injection well is referred to the Division to be processed administratively.

3. Marion may apply to the Division for authorization to inject into the subject aquifer only water produced from wells within the Clear Creek Federal Unit. Should Marion, or any other party, wish to inject water produced from outside the Clear Creek Federal unit into the aquifer exempted herein, Board approval must first be obtained.

4. 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.

5. 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.

6. 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.

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.

DATED this 11 day of MAY, 2010.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By: Douglas E. Johnson
Douglas E. Johnson, Chairman

2010-21

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. 2010-021, Cause No. UIC-362.1 to be mailed with postage prepaid, this 13th day of May, 2010, to the following:

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