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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 MODIFYING THE BOARD'S ORDERS ENTERED IN CAUSE NOS. 245-1 AND 245-04, TO ALLOW THE DRILLING OF AN ADDITIONAL WELL FOR THE PRODUCTION OF GAS (INCLUDING BUT NOT LIMITED TO COALBED METHANE) FROM THE FERRON FORMATION IN EACH OF THE DRILLING UNITS ESTABLISHED THEREUNDER LOCATED IN ALL OF SECTION 35, TOWNSHIP 16 SOUTH, RANGE 7 EAST, SLM, ALL OF SECTIONS 2 AND 35, TOWNSHIP 17 SOUTH, RANGE 7 EAST, SLM, AND ALL OF SECTIONS 2, 11, 14, 23, 26 AND 35, TOWNSHIP 18 SOUTH, RANGE 7 EAST, SLM, EMERY COUNTY, UTAH	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** Docket No. 2009-018 Cause No. 245-06

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, December 9, 2009, at approximately 10:50 a.m. in the hearing room of the Department of Natural Resources Building (1594 W. North Temple) in Salt Lake City. The following Board members were present and participated at the hearing: Chairman Douglas E. Johnson, Jean Semborski, James T. Jensen, Kelly L. Payne, Jake Y. Harouny and Ruland J. Gill, Jr. Board Member Samuel C. Quigley was unable to attend. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner XTO Energy Inc. were Ryan O'Kelley – Landman, T.H. Joshua Stark – Geologist, and Leonard West – Reservoir Engineer, who were recognized as experts in petroleum land management, geology and reservoir engineering, respectively, for the purposes of this Cause. 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 Gil Hunt – Associate Director – Oil & Gas. 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 filed October 19, 2009 in this Cause (the "Request"), at the conclusion of its presentation.

The Utah Department of Transportation ("UDOT"), a communitized working interest owner within the area affected by the Request, and a working interest owner in lands adjacent to the area affected by the Request, filed a letter with the Board expressing no objection to the granting of the Request.

No other party filed a response to the Request and no other party appeared or participated at the hearing.

As testimony proceeded, Ms. Semborski, Mr. Jensen, and Mr. Gill disclosed interests (in various capacities) in and to certain oil and gas rights under lands adjacent to those covered by the captioned Request. In all cases, both Mr. Hunter and Mr. Alder

expressed no objection to the Board members' continued participation in 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 Order in Cause No. 245-1 (the "245-1 Order"), the Board established drilling units for the production of gas (including but not limited to coalbed methane) from the Ferron Formation, defined in that Order as:

> the stratigraphic equivalent of the interval between 3,255 feet and 3,426 feet as shown on the Bulk Density Log for the Federal "P" 10-42 well in the NW¼NE¼ of Section 10, Township 18 South, Range 7 East, SLM.

Each drilling unit is a 160-acre governmental quarter section, or a combination of lots and quarter-quarter sections substantially comprising the same, covering the following lands:

> Township 17 South, Range 7 East, SLM
> Section 35: All
>
> Township 18 South, Range 7 East, SLM

Section 2:	Lots 1 (42.03), 2 (42.12), 3 (42.18), and 4 (42.27), S½N½, S½ [All]
Section 11:	All
Section 14:	All
Section 23:	NE¼, Lots 1 (41.45), 2 (41.11), 3 (41.66), 4 (40.32), 5 (40.79), 6, (40.44), 7 (40.32), and 8 (42.09), W½W½ [All]
Section 26:	Lots 1 (41.94), 2 (41.98), 3 (42.02) and 4 (42.06), W½E½, E½ [All]
Section 35:	Lots 1 (42.10), 2 (42.12), 3 (42.16), and 4 (42.18), W½E½, E½ [All],

among other lands. The above-described lands comprise the southern portion of the lands covered by the captioned Request (hereinafter the "Orangeville Area"). The 245-1 Order also required that wells drilled on the established drilling units not be located closer than 460 feet from the outer boundary of the drilling unit nor closer that 920 feet from other wells completed and producing from the Ferron Formation without exception authorization from the Division pursuant to Utah Admin. Code Rule R649-3-3.

3. By Order in Cause No. 245-04 (the "245-04 Order"), the Board established drilling units upon for the production of gas (including but not limited to coalbed methane) from the Ferron Formation, defined in that Order as:

> the stratigraphic equivalent of the interval between 4,191 feet (top of the Upper Ferron Sandstone) and 4,511 feet (base of the Lower Ferron Sandstone/Top of Tununk Shale) as seen on the gamma ray log track for the Utah Federal #16-7- 35-21 Well in the NE¼NW¼ of Section 35, Township 16 South, Range 7 East, SLM, Emery County, Utah.

Each drilling unit is a 160-acre governmental quarter section, or a combination of lots

and quarter-quarter sections substantially comprising the same, covering the following lands:

Township 16 South, Range 7 East, SLM
Section 35: All

Township 17 South, Range 7 East, SLM
Section 2: Lots 1 (14.18), 2 (13.92), 3 (13.68), 4 (13.42), 5 (40.00), 6 (40.00), 7 (40.00), 8 (40.00), 9 (40.00), 10 (40.00), 11 (40.00), and 12 (40.00), S½ [All],

among other lands. The above-described lands comprise the northern portion of the lands covered by the captioned Request (hereinafter the "Huntington Area") (together with the Orangeville Area, the "Subject Lands"). The 245-04 Order also required that wells drilled on the established drilling units not be located closer than 460 feet from the outer boundary of the drilling unit nor closer that 920 feet from other wells completed and producing from the Ferron Formation without exception authorization from the Division pursuant to Utah Admin. Code Rule R649-3-3.

4. All of the oil and gas underlying the Subject Lands are currently leased to XTO, which owns 100% of the working interest therein.

5. The oil and gas underlying the Orangeville Area are primarily owned by the United States of America (administered by the Bureau of Land Management ("BLM")) and the State of Utah (administered by the Utah School and Institutional Trust Lands Administration ("TLA")), with some of the acreage owned in fee (privately) and by the

Utah Department of Transportation ("UDOT") (administered by the Division of Forestry, Fire and State Lands ("DFFSL")).

6. Communitization Agreements ("CAs" or "CA") or pooling agreements applicable to the formation spaced by the 245-1 Order were entered into covering the following drilling units:

<u>Township 18 South, Range 7 East, SLM</u>
Section 14: NE¼ (UTU-78511)
Section 14: NW¼ (UTU-78512)
Section 14: SW¼ (UTU-78508)
Section 14: SE¼ (Declaration of Pooled Unit)
Section 23: NE¼ (UTU-78509),

where mineral ownership is not uniform throughout each established drilling unit. Mineral ownership under the remainder of the drilling units in the Orangeville Area is uniform.

7. The oil and gas underlying the Huntington Area are owned by the United States of America (administered by the BLM) and the State of Utah (administered by the TLA).

8. CAs applicable to the formation spaced by the 245-04 Order were entered into covering the following drilling units:

<u>Township 16 South, Range 7 East, SLM</u>
Section 35: NE¼ (UTU-84720)

<u>Township 17 South, Range 7 East, SLM</u>

Section 2: Lots 1, 2 and 7-10 [NE¼] (UTU-86245),

where mineral ownership is not uniform throughout each established drilling unit. Mineral ownership under the remainder of the drilling units in the Huntington Area is uniform.

9. By Order in Cause No. 245-04A, the Board modified the Order in Cause No. 245-04, authorizing an 80-acre equivalent well density for the drilling unit comprised of Lots 3-6 and Lots 11-12 [NW¼] of Section 1, Township 17 South, Range 7 East. Also, by Order in Cause No. 245-05, the Board modified the Order in Cause No. 245-03, authorizing an 80-acre equivalent well density for the drilling unit comprised of Lots 1 and 2 and S½NE¼ [NE¼] of Section 6, Township 17 South, Range 8 East. Both drilling units were a part of a larger 80-acre infill-drilling pilot program conducted by XTO in and around the Huntington (Shallow) CBM Unit (the "CBM Unit"), which consisted of 11 infill wells.

10. Productive capacities (as determined by peak gas flow rates) of the infill wells, the pilot program base (pre-existing) wells, and the base wells in the Subject Lands are primarily determined by the presence of naturally occurring faults and fractures. These faults and fracture systems greatly increase the ability of methane to move through the coal seams of the formation. These features also provide conduits for the migration of formation fluid and biogenic agents that ultimately determine the recoverable gas content

of the area coals.

11. In the Huntington Area, both north-south oriented normal faults and northwest-southeast oriented tear faults are present. Identical north-south oriented normal faults and northwest-southeast oriented tear faults are present in the Orangeville Area as well.

12. The pilot program wells (including wells in the CBM Unit, unspaced lands outside the CBM Unit and one of the two pilot program wells previously approved by the Board) indicate that an 80-acre well density pattern appears to provide a more efficient network for the production of coalbed methane by reducing local reservoir pressure within the coal seam near the wellbore. Additional data gathered in the course of production may indicate even higher-density drilling in specific areas may be needed to adequately drain the formation.

13. Analysis indicates that estimated ultimate recovery ("EUR") from the infill wells in the pilot study area is an average of 1.8 BCF of gas. Without in-fill drilling, additional gas reserves from both the Huntington Area and the Orangeville Area may not be recovered.

14. Analysis of the base (pre-existing) wells indicates no significant deviation from their previous decline curve.

15. Analysis indicates that a typical infill well in the Huntington and

Orangeville areas will achieve a rate of return of approximately 29% and a discounted present value profit in excess of $1 Million.

16. A copy of the Request was mailed, postage pre-paid, certified with return receipt requested, and properly addressed to the governmental agencies having jurisdiction over the minerals underlying said lands. Notice was also mailed to all working interest/operating rights owners and operators adjacent to the Subject Lands to their last addresses disclosed by the appropriate Federal, State and County realty records, and copies of the return receipts or electronic records of the United States Postal Service, evidencing receipt of all such mailings, were filed with the Board.

17. 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 November 22, 2009, and in the Emery County Progress on November 24, 2009.

18. The vote of the Board members present in the hearing and participating in this Cause was unanimous (6-0) 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 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 render the order herein set forth pursuant to Utah Code Ann. §§ 40-6-5(3)(b) and 40-6-6(6).

3. The captioned Request was described as a wider-scale expansion of the pilot program approved by the Board in Cause Nos. 245-04A and 245-05 and pursued within and around the CBM Unit. While the captioned Request does not apply to the entirety of the lands covered by the 245-1 Order, and testimony indicates that further Board action regarding the Subject Lands may be necessary in the future, the weight of the evidence supports the conclusion that the requested relief is more in the nature of a development program.

4. The modification of the 245-1 and 245-04 Orders to allow the drilling additional wells on each drilling unit to achieve the equivalent of an approximate 80-acre well density pattern for the production of gas (including, but not limited to, coalbed methane) from the Ferron Formation, with the proviso that the additional wells so authorized may be located no closer than 460 feet from the exterior boundary of each drilling unit and no closer than 920 feet from a well producing from the Ferron Formation unless an exception is granted by the Division in accordance with Utah Admin. Code Rule R649-3-3 for topographical, geological, environmental, and archeological considerations and when "no surface occupancy" stipulations imposed by the lessors

prohibit drilling at a legal location, is just and reasonable under the circumstances.

5. Declaring that all existing wells located on the Subject Lands and producing gas (including, but not limited to, coalbed methane gas) from the Ferron Formation are authorized and deemed to be at lawful locations, notwithstanding the relief granted hereby, is necessary to avoid inconsistency with prior Board Orders and is just and reasonable under the circumstances.

6. Authorizing in-fill drilling, rather than downspacing, is necessary to avoid interfering with the contractual rights established under the existing communitization agreements and declaration of pooling covering portions of the Subject Lands. The correlative rights of the parties to said agreements will not be adversely affected by the in-fill drilling authorized hereby.

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

8. The relief granted hereby will result in the orderly development and greatest recovery of gas from the Ferron Formation underlying 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 in Cause No. 245-1 is hereby modified to permit an additional well on each drilling unit within the following lands:

Township 17 South, Range 7 East, SLM
Section 35: All

Township 18 South, Range 7 East, SLM
Section 2: Lots 1 (42.03), 2 (42.12), 3 (42.18), and 4 (42.27), S½N½, S½ [All]
Section 11: All
Section 14: All
Section 23: NE¼, Lots 1 (41.45), 2 (41.11), 3 (41.66), 4 (40.32), 5 (40.79), 6, (40.44), 7 (40.32), and 8 (42.09), W½W½ [All]
Section 26: Lots 1 (41.94), 2 (41.98), 3 (42.02) and 4 (42.06), W½E½, E½ [All]
Section 35: Lots 1 (42.10), 2 (42.12), 3 (42.16), and 4 (42.18), W½E½, E½ [All]

in order to achieve an 80-acre equivalent well density pattern within the Orangeville Area.

3. The Board's Order in Cause No. 245-04 is hereby modified to permit an additional well on each drilling unit within the following lands:

Township 16 South, Range 7 East, SLM
Section 35: All

Township 17 South, Range 7 East, SLM
Section 2: Lots 1 (14.18), 2 (13.92), 3 (13.68), 4 (13.42), 5 (40.00), 6 (40.00), 7 (40.00), 8 (40.00), 9 (40.00), 10 (40.00), 11 (40.00), and 12 (40.00), S½ [All],

in order to achieve an 80-acre equivalent well density pattern within the Huntington Area.

4. Wells so authorized may be located no closer than 460 feet from the exterior boundary of each such drilling unit nor closer than 920 feet from any well currently producing from the Ferron Formation as defined in the Board's prior Orders; provided, however, that approval by the Division may be granted in accordance with Utah Admin. Code Rule R649-3-3 for exception well locations for topographical, geological, environmental, and archaeological considerations and when "no surface occupancy" stipulations imposed by the lessors prohibit drilling at a legal location, without the necessity of a full hearing before the Board.

5. All existing wells located on the Subject Lands and producing gas (including, but not limited to, coalbed methane) from the Ferron Formation are hereby declared to be authorized and located at lawful locations, notwithstanding the consequences of the relief granted hereby.

6. 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.

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 Administrative Code Rule 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(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.

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 13 day of JANUARY, 2010.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

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

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER for Docket No. 2009-018, Cause No. 245-06 to be mailed with postage prepaid, this 13th day of January, 2010, to the following:

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