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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 EXTENDING THE BOARD'S ORDER ENTERED IN CAUSE NO. 245-1 TO ESTABLISH A 160-ACRE DRILLING UNIT FOR THE PRODUCTION OF GAS (INCLUDING COALBED METHANE) FROM THE FERRON FORMATION COMPRISED OF THE SE¼ OF SECTION 26, T17S, R7E, SLM, EMERY COUNTY, UTAH	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** Docket No. 2014 - 003 Cause No. 245 – 07

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, January 22, 2014, at approximately 4:45 p.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City. The following Board members were present and participated at the hearing: Chairman Ruland Gill, Jr., Chris D. Hansen, Kelly L. Payne, Carl F. Kendell and Michael R. Brown. Board member Susan S. Davis was unable to attend, and did not participate. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner XTO Energy, Inc. ("XTO") were G. Scott Thompson – Regional Land Manager, Rockies; James M. Kwolek – Production Geologist; and George Harold Staus – Reservoir Engineer. Mr. Thompson, Mr. Kwolek, and Mr. Staus were recognized as experts in petroleum land management, geology and petroleum engineering, respectively, for purposes of this Cause. Kurt P. Gasser, Esq., of

and for MacDonald & Miller Mineral Legal Services, PLLC, appeared as attorney for XTO.

The Division of Oil, Gas and Mining (the "Division") did not file a staff memorandum in this Cause, but nevertheless participated in the hearing. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney for the Division. At the conclusion of XTO's presentation in-chief, Mr. Alder expressed that the Division had no objection to the granting of XTO's Request for Agency Action dated December 10, 2013 (the "Request"), other than to question the necessity of giving retroactive effect (to the date of first production) of the requested spacing.

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 finding of facts, 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, Indian and State of Utah Agencies.

2. By Order entered on July 7, 1999 in Cause No. 245-1 (the "245-1 Order"), the Board established the following Emery County, Utah lands:

Township 17 South, Range 7 East, SLM

Sec. 33:	All
Sec. 34:	All
Sec. 35:	All
Sec. 36:	All

(containing 2,560.00 acres, more or less)

Township 18 South, Range 7 East, SLM

Sec. 1:	Lots 1(46.36), 2(41.59), 3(41.75), 4(41.92), 5(44.66), 6(44.52) and 7(44.39), W½SE¼, SW¼NE¼, S½NW¼, SW¼ [All]
Sec. 2:	Lots 1(42.03), 2(42.12); 3(42.18) and 4(42.27), S½N½, S½ [All]
Sec. 3:	Lots 1(43.83), 2(42.96), 3(43.34), 4(44.94), 5(41.16) and 6(41.33), SE¼NW¼, SW¼NE¼, S½ [All]
Sec. 4:	Lots 1(43.75), 2(43.69), 3(43.57) and 4(43.41), S½N½, S½ [All]
Sec. 5:	Lots 1(43.24), 2(43.14), 3(42.99) and 4(42.93) S½N½, S½ [All]
Sec. 6:	Lots 1(43.20), 2(43.29), 3(47.70), 4(46.73), 5(32.69), 6(32.74) and 7(32.79), SE¼NW¼, S½NE¼, E½SW¼, SE¼ [All]
Sec. 7:	Lots 1(32.93), 2(32.95), 3(32.96) and 4(32.98), E½W½, E½ [All]
Sec. 8:	All
Sec. 9:	All
Sec. 10:	All
Sec. 11:	All
Sec. 12:	All
Sec. 13:	All

Sec. 14:	All
Sec. 15:	All
Sec. 16:	Lots 1(39.99), 2(40.00), 3(39.99) and 4(39.98), NW¼, E½ [All]
Sec. 17:	Lots 1(43.22), 2(43.08), 3(42.83) and 4(42.69), S½N½, SE¼
Sec. 21:	Lots 1(42.21), 2(43.07), 3(42.84), 4(42.61); 5(38.60), 6(38.35) and 7(38.24), S½NW¼, SW¼NE¼, W½SE¼
Sec. 22:	All
Sec. 23:	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, NE¼ [All]
Sec. 24:	All
Sec. 25:	All
Sec. 26:	Lots 1 (41.94), 2(41.98), 3(42.02) and 4(42.06), W½E½, W½ [All]
Sec. 27:	Lots 1(41.17), 2(41.52), 3(41.51) and 4(41.15), NW¼, E½ [All]
Sec. 34:	Lots 1(37.92), 2(37.84), 3(37.75) and 4(37.66), W½W½, E½ [All]
Sec. 35:	Lots 1(42.10), 2(42.12), 3(42.16) and 4(42.18), W½E½, W½ [All]

(containing 16,407.99 acres, more or less),

(the "245-1 Lands"), as respective 160-acre (or substantially equivalent) drilling units for the production of oil and gas, including coal-bed methane, from the Ferron formation, defined, as follows:

> The stratigraphic equivalent of the interval from 3,255 feet to 3,496 feet as shown on the Bulk Density Log of the Federal "P" 10-42 well located in the NW¼NE¼ of Section 10, Township 18 South, Range 7 East, SLM,

(the "Subject Formation"). The 245-1 Order expressly provides that one well would effectively and economically drain approximately 160 acres in that pool, and would allow for orderly development, prevent waste by drilling unnecessary wells, adequately protect the correlative rights of all affected parties, result in the greatest recovery of hydrocarbon substances, and was just and reasonable under the circumstances.

3. The 245-1 Order provided that each unit should be comprised of a governmental quarter section, *e.g.* NE¼, or lots and quarter-quarter sections substantially comprising the same.

4. The 245-1 Order provided for each permitted well in each such unit should be located no closer than 460 feet from the outer boundary of said unit and no closer than 920 feet from other wells completed and producing from the Subject Formation, except as may be permitted by administrative action for topographical or geologic reasons or other good cause shown.

5. The Utah Federal 17-7-26-44D Well (the "Subject Well") is located in the SE¼ of Section 26, Township 17 South, Range 7 East, SLM (the "Subject Lands"), and production was first achieved therefrom on December 21, 2007.

6. The Subject Well was drilled with a surface hole location 1,030 feet FSL and 946 feet FWL in the SW¼ of adjacent Section 25, and a bottom hole location 753 feet FSL and 654 feet FEL in (and with all producing intervals within) the Subject Lands.

The intersection with the Subject Formation, productive intervals in the Subject Formation, and bottom hole location all fall within the location tolerances set forth in the 245-1 Order.

7. The oil and gas underlying the Subject Lands is owned by, and subject to oil and gas leases, as follows:

Owner	Lease	Lands
United States of America	UTU-75667	NE¼SE¼ and S½SE¼ (among other lands)
PacifiCorp, d/b/a Utah Power & Light Company	Fee, recorded on October 27, 2008 as Entry No. 392411, Emery County Realty Records	NW¼SE¼ (among other lands)

XTO is the current and sole lessee under both leases.

8. Production from the Subject Well and associated production proceeds have been allocated by XTO to the production interest owners within the Subject Lands on a pro-rata acreage basis since the date of first production, based on a tacit agreement between the parties regarding the same, and without objection, as if the 245-1 Order were applicable to the Subject Lands. The fact that proceeds have been allocated on a 160-acre basis since the date of first production was cited by the Petitioner and the Division as an important factor supporting retroactive spacing.

9. The geologic and engineering exhibits received into evidence and the testimony received relating to technical data from the Subject Well and cross-sectional wells show that the geologic characteristics of the Subject Formation as underlying the Subject Lands are nearly identical to those addressed in the 245-1 Order and therefore the Subject Formation constitutes one "common source of supply." Volumetric and economic analyses presented to the Board also confirm the Subject Well is efficiently and economically draining the Subject Lands, with a 79% recovery factor.

10. Consistent with the BLM regulations, guidelines and practices regarding appropriate effective dates for communitization agreements, and based on the tacit agreement between all parties regarding distribution of proceeds since first production[1], the date of first production is the appropriate effective date for this Order.

11. A copy of the Request for Agency Action was mailed to and received by all of the production interest owners within the Subject Lands as disclosed by the appropriate Federal, State and County realty records.

12. Notice was duly published in the Salt Lake Tribune and the Deseret Morning News on January 5, 2014, and the Emery County Progress on January 7, 2014, as required by Utah Admin. Code Rule R641-106-100.

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[1] This agreement was initially based on a mutual misunderstanding as to the spacing status of the Subject Lands, but the parties continue to honor that agreement and share in proceeds on that basis.

13. The vote of the Board members present in the hearing and in this cause was unanimous (5-0) in favor of granting the Request for Agency Action.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place, and purpose of the hearing was properly given to all interested parties 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 interest 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. The Request for Agency Action satisfies all statutory and regulatory requirements for the relief sought therein and should be granted.

4. Because no objection was made to the Request, because of the tacit agreement among the parties, because payment of production proceeds was made as if 160-acre spacing were in place since the date of first production, and in light of the Federal regulations, guidelines and practices providing for the effective dates of communitization agreements, retroactive application of the requested spacing to the date of first production is just and reasonable under the circumstances.

ORDER

Based upon the Request for Agency Action, testimony and evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Request for Agency Action in this cause is granted.

2. The 245-1 Order (as defined herein) is hereby extended to the Subject Lands (as defined herein) to establish the Subject Lands as a drilling unit for the production of oil and gas, including but not limited to coalbed methane, from the Subject Formation (as defined herein), including all coals and surrounding sands.

3. This Order shall be deemed retroactively effective to the date of first production of the Utah Federal 17-7-26-44D Well, such date being December 21, 2007.

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

5. This Findings of Fact, Conclusion of Law and Order ("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 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:

> (l)(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.

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.

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 7th day of March, 2014.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By: _____
Ruland J. Gill, Jr., Chairman

1600.06

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. 2014-003, Cause No. 245-07 to be mailed via E-Mail, and First Class Mail, with postage prepaid, this 10th day of March, 2014, to the following:

MacDonald & Miller
Mineral Legal Services, PLLC
Kurt P. Gasser, Esq.
Frederick M. MacDonald, Esq.
7090 S. Union Park Ave., Ste. 400
Salt Lake City, Utah 84047

XTO Energy Inc.
Attn: Paul Keffer, Sr. Staff Landman
810 Houston Street
Fort Worth, TX 76102-6298

Michael S. Johnson
Assistant Attorney General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
[Via Email]

Steven F. Alder
Assistant Attorney General
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
[Via Email]

Bureau of Land Management
Utah State Office
Attn: Roger L. Bankert
440 West 200 South, Suite 500
Salt Lake City, UT 84101

Bureau of Land Management
Price Field Office
Attn: Leslie Peterson
125 South 600 West
Price, UT 84501

PacifiCorp d/b/a Utah Power & Light Company
Attn: Brian Young
1407 West North Temple, Suite 110
Salt Lake City, UT 84116

Julie Ann Carter