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JAN 10 2019

**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 WESCO OPERATING INC. FOR AN ORDER AUTHORIZING THE DRILLING OF THE PROPOSED CCU 7-2R2-26-20 HORIZONTAL WELL TO BE LOCATED IN PORTIONS OF SECTIONS 4, 5, 7 AND 8, TOWNSHIP 26 SOUTH, RANGE 20 EAST, SLM, GRAND COUNTY, UTAH	REQUEST FOR AGENCY ACTION Docket No. 2019-007 Cause No. 166-11
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COMES NOW, Wesco Operating Inc. (“Wesco”), acting by and through its attorneys, MacDonald & Miller Mineral Legal Services, PLLC, and pursuant to Utah Code Ann. § 40-6-5(3)(b) and Utah Admin. Code Rules R641-111-100 and R649-3-3, and hereby respectfully requests the Utah Board of Oil, Gas and Mining (the “Board”) to enter an order: (1) authorizing the drilling of the proposed CCU 7-2R2-26-20 Well (the “Well”), to be drilled horizontally with a proposed surface hole location 854 feet FNL and 875 feet FEL in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, intersection with the Cane Creek Clastics (being the targeted production interval) at 160 feet FNL and 2,627 feet FEL in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, and a terminus 1,048 feet and 1,816 feet FEL in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, all in Township 26 South, Range 20 East, SLM, Grand County, Utah; and (2) clarifying and declaring that, pursuant to Utah Admin. Code Rules R649-3-2(9) and 649-3-3(1.2), the Utah Division of Oil, Gas and Mining (the “Division”) has the administrative authority to grant an exception location approval for a horizontal well

which crosses a Federal unit boundary if all owners within a 460-foot radius of the proposed wellbore have provided their written consent, and without the need for establishment of a “temporary drilling unit.”

In support of this Request, Wesco respectfully states and represents:

1. Wesco is a Wyoming corporation in good standing, with its principal place of business in Casper, Wyoming, and is duly 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. The oil and gas underlying the affected lands are owned by the United States of America and are subject to the following oil and gas leases:

<u>Lease</u>	<u>Lands</u>
UTU-53626	Sec. 7: E $\frac{1}{2}$
UTU-68122	Sec. 5: N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 8: NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$
UTU-64820	Sec. 5: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 8: E $\frac{1}{2}$ NE $\frac{1}{4}$
UTU-93005	Sec. 4: All
UTU-010529	Sec. 9: All

The relevant record operating rights in said leases are owned by Kirkwood Oil & Gas LLC (“Kirkwood”) and Nerd Gas Company LLC (“Nerd”), and Wesco serves as their designated operator.

3. The affected Sections 5, 7 and 8 lands and above described leases covering them are committed to the Cane Creek Federal Unit (the “Unit”), which is administered by the United States Bureau of Land Management (“BLM”) and was approved effective April 15, 2002. Wesco serves as Unit Operator. The Sections 4 and 9 lands are outside of, and therefore Leases UTU-93005 and UTU-010529 are not committed to, the Unit.

4. All of subject Section 8 is included within the 4th Revision of the Second Consolidated Paradox Participating Area of the Unit. As a consequence, A.G. Andrikopoulos Resources, Inc. (“AARI”) has a contractual working interest therein under the governing Unit and Unit Operating Agreements even though not a record operating rights owner in Leases UTU-68122 and UTU-64820. However, under the terms of the governing Unit Operating Agreement, AARI has contractually agreed that Wesco, as Unit Operator, has the exclusive rights to drill wells within the Unit Area.

5. Wesco, as part of its 2019 drilling program, is proposing to drill the Well as outlined above and as depicted on the plat attached hereto as Exhibit “1” and by this reference incorporated herein. Wesco will utilize the existing wellbores of the CCU 7-2-26-20 and 7-2R-26-20 Wells to the “landing point” designated on Exhibit “1.” As indicated, the Wellbore will cross over the Unit boundary. Wesco will shortly be filing a

sundry notice/application for permit to drill (“APD”) with both the BLM and the Division as required under Federal and State regulations.

6. Wesco previously filed APD’s for the CCU 7-2R-26-20 Well, following a nearly identical path as proposed for the Well: first with the BLM, the Agency having primary jurisdiction over the Unit and the subject Federal leases, originally on April 9, 2018, and with a Sundry Notice changing the location on May 21, 2018, pursuant to Federal regulation. The APD as so sundried was approved by the BLM on May 30, 2018; and second a conforming State form APD was filed with the Division on May 14, 2018.

7. However, by Email dated June 1, 2018, the Division advised Wesco it would not approve the APD without revision, stating that the proposed location violated Utah Admin. Code Rule R649-3-2(3) because the well was within 660 feet, and actually crossed over, the Unit boundary. A true and correct copy of said Email is attached hereto as Exhibit “2” and by this reference incorporated herein. After further discussions with the Division and its counsel, Wesco was subsequently advised that the Division not only would not approve the APD as an exception location pursuant to Utah Admin. Code Rule R649-3-3, but also that Wesco would be required to seek a “temporary spacing unit” from the Board before it would approve the APD.

8. Utah Admin. Code Rule R649-3-2, as relevant to the drilling of horizontal wells, provides:

3. In the absence of special orders of the Board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall not be closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the Application for Permit to Drill for a horizontal well shall be given by certified mail to all owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of 5, 6 and 7.

9. Exceptions to any of the above referenced conditions of 3 through 7 may be approved upon proper application pursuant to R649-3-3, Exception to Location and Siting of Wells, or R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a Request for Agency Action (Petition) filed in accordance with the Board's Procedural Rules.

(emphasis added). Other than certain provisions of Utah Admin. Code Rules R649-3-10 and R649-3-11, there are no other regulatory or statutory provisions addressing horizontal wells.

9. In addition, Utah Admin. Code Rule R649-3-3 provides:

1. Subject to the provisions of R649-3-11.1.2, the division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

(emphasis added). Nowhere does it state that the emphasized provision does not apply to horizontal wells. In fact, when coupled with Rule R649-3-2(9), it is clear the Board contemplated that exception locations to the requirements of Rule R649-3-2(3) satisfying this criteria are allowed for, and are equally applicable to, horizontal wells. It is also unclear why the Division emphasizes the crossing of a Unit boundary as somehow

limiting the exception location criteria. For example, the Division administratively approved an APD for the drilling of a directionally drilled well across a Federal unit boundary which was the subject of a subsequent spacing order in Cause No. 166-08 because the Rule R649-3-3(1.2) criteria had been satisfied.

10. Due to contractual rig obligations and other timing restrictions, rather than challenging the Division's position, Wesco modified the APD's for the CCU 7-2R-26-20 Well to turn north into Section 5 at the "landing point" designated on Exhibit "1" and have all parts of the wellbore within the Unit. The revised APD's were approved by both the BLM and the Division and Wesco drilled the well in accordance therewith. However, the well did not encounter sufficient hydrocarbon shows to justify completion. The well was consequently plugged back to the "landing point" referenced on Exhibit "1."

11. Wesco still believes the eastern productive limits need to be defined and to determine if potential Unit expansion is justified. As a consequence, it desires to drill the Well in 2019. However, given the Division's previously stated position, and to avoid potential delay, Wesco is hereby directly seeking Board authorization to drill the Well so the Division may unquestionably process and approve the APD for the Well once filed.

12. As indicated, the subject Sections 5, 7 and 8 lands are all within the Unit, and the proposed anticipated productive intervals of the Well will all be within Sections 4, 5, 8 and 9 (*see* Exhibit "1"). In addition, Kirkwood and Nerd, the only "owners" (as that term is defined in Utah Admin. Code Rule R649-1-1) within a 460-foot radius of all

points along the Wellbore path, as well as Wesco, as Unit Operator and the sole party having the rights to drill within the Unit Area pursuant to the terms of the governing Unit and Unit Operating Agreements, have provided their written consent to the drilling of the Well. A true and correct copy of such consents is attached hereto as Exhibit "3" and by this reference incorporated herein. Wesco therefore respectfully asserts all requirements for an exception location approval under Utah Admin. Code Rule R649-3-3 have been met.

13. As to the Division's assertion that a "temporary drilling unit" must be established by the Board as a requisite to approval of the APD, no such regulatory or statutory requirement exists. It is simply premature and uneconomic to have a hearing for any spacing order at this time, let alone requiring two hearings (one for a "temporary drilling unit" and one later to establish a permanent drilling unit). The Well is entirely exploratory at this time to determine the productive limits of the Unit and nearby areas. Any concerns by the Division over setbacks for any additional wells can be addressed at the time an APD for such a well is filed if prior to entry of a spacing order for the Well by the Board (as outlined below).

14. As the Utah Supreme Court stated in *Cowling v. Board of Oil, Gas and Mining*, 830 P.2d 220 (Utah 1991):

The Board's determination of the size of the drilling units in a field is necessarily a discretionary determination based on the acreage that wells in the field can efficiently drain so as to

maximize production from the pool as a whole and minimize the waste of oil and gas. See § 40-6-6(1). *The determination must, however, be based on geologic and reservoir engineering evidence pertaining to a number of factors, including; the reservoir's physical characteristics, such as the strength and nature of the pressures within the reservoir and the size and type of the producing formation; the porosity and permeability of the sands in which the hydrocarbons are trapped and through which they must move; available technology, including methods and resources for secondary and tertiary recovery; and, far from least, economic considerations such as the market price of oil and gas and extraction costs. It is, however, impossible to extract all the oil and gas from a pool, even with secondary and tertiary enhanced recovery techniques.*

When a successful exploratory well is initially drilled, it is ordinarily impossible to determine with any degree of precision what area the well drains or the characteristics and extent of the pool. After the initial discovery is made, however, geologic and reservoir engineering data can be developed which enable the Board to fix the size of the drilling units needed to drain the reservoir efficiently. Landowners' correlative rights are then definable based on each landowner's fractional share of the total surface ownership within a particular drilling unit. See § 40-6-6(6). Of course, not all the wells will produce equal volumes of oil or gas. Thus, the actual value of an interest owner's interest in a particular drilling unit will vary depending on the productivity of the well. Accordingly, a fractional interest in one drilling unit may have greater value than the same fractional interest in another drilling unit in the same field.

In short, under the Act, it is not possible to ascertain a landowners' correlative rights until the Board acquires the necessary data in a formal hearing, makes findings of fact, and enters a spacing and drilling unit order.

Id. at 225-226 (emphasis added).

15. If the Well is non-productive or is productive only in intervals within the Unit Area, no spacing will be required. However, if the Well is productive from intervals both within and outside of the Unit, Wesco readily acknowledges it must seek a special drilling unit for the Well as the BLM will require such a Board order in order to approve a communitization agreement required under Federal laws, regulation and policy due to the Well crossing Unit/lease boundaries. Depending on the results of the Well (if the Well not only is productive but also meets the “Unit Paying Quantities” criteria of the Cane Creek Unit Agreement), expansion of the Unit may also be an alternate possibility. But until the Well has been drilled and produced, it is impossible for Wesco to acquire the technical data outlined in *Cowling* to come before the Board for a spacing order or determine if Unit expansion is justified and feasible.

16. Wesco therefore respectfully submits the clear and unambiguous language of Utah Admin. Code Rules R649-3-2(9) and R649-3-3(1.2) allow for an administrative exception location approval of horizontal wells crossing unit boundaries without the necessity of establishment of a “temporary drilling unit.” Wesco also seeks clarification and a declaration from the Board that Wesco’s interpretation of the current regulations is correct, and that the Division’s is erroneous, for planning of additional wells under similar circumstances.

17. Wesco believes and therefore alleges that granting its Request will be in furtherance of the public policies of this State to promote greater recovery of resources

without waste and with protection of the correlative rights of all affected owners, and is just and reasonable under the circumstances.

18. Wesco will, in accordance with Board rules, timely submit exhibits and present testimony in support of these allegations.

19. Wesco will separately file a certificate of mailing listing all parties known to it, based on a search of the applicable BLM and Grand County realty records, and the records of the Division, whose “legally protected interests” will be affected by this Request. Other than possibly the Division, there are no respondents or adverse parties known at this time to Wesco.

WHEREFORE, Wesco respectfully requests:

1. That this matter be set for hearing on February 27, 2019 in Salt Lake City;
2. That notice of such hearing be given as provided by law; and
3. That upon sufficient evidence produced and testimony given at the hearing,

the Board issue an order:

- a) authorizing Wesco to drill the Well as outlined above without the need to establish a “temporary drilling unit”;
- b) directing the Division to approve a conforming APD for the Well once filed presuming it is complete in all other respects;
- c) clarifying and declaring for future horizontal well development that, pursuant to Utah Admin. Code Rules R649-3-2(a) and 649-3-3(1.2), the Division has the administrative authority to grant an exception location approval for a horizontal well which crosses a Federal unit boundary if all owners within a 460-foot radius of the proposed

wellbore have provided their written consent, and without the need for establishment of a “temporary drilling unit””

- d) making such findings and orders in connection with this Request as it deems necessary; and
- e) providing for such other and further relief as may be just and equitable under the circumstances.

Respectfully submitted this 10th day of January, 2019.

**MACDONALD & MILLER
MINERAL LEGAL SERVICES, PLLC**

By: 

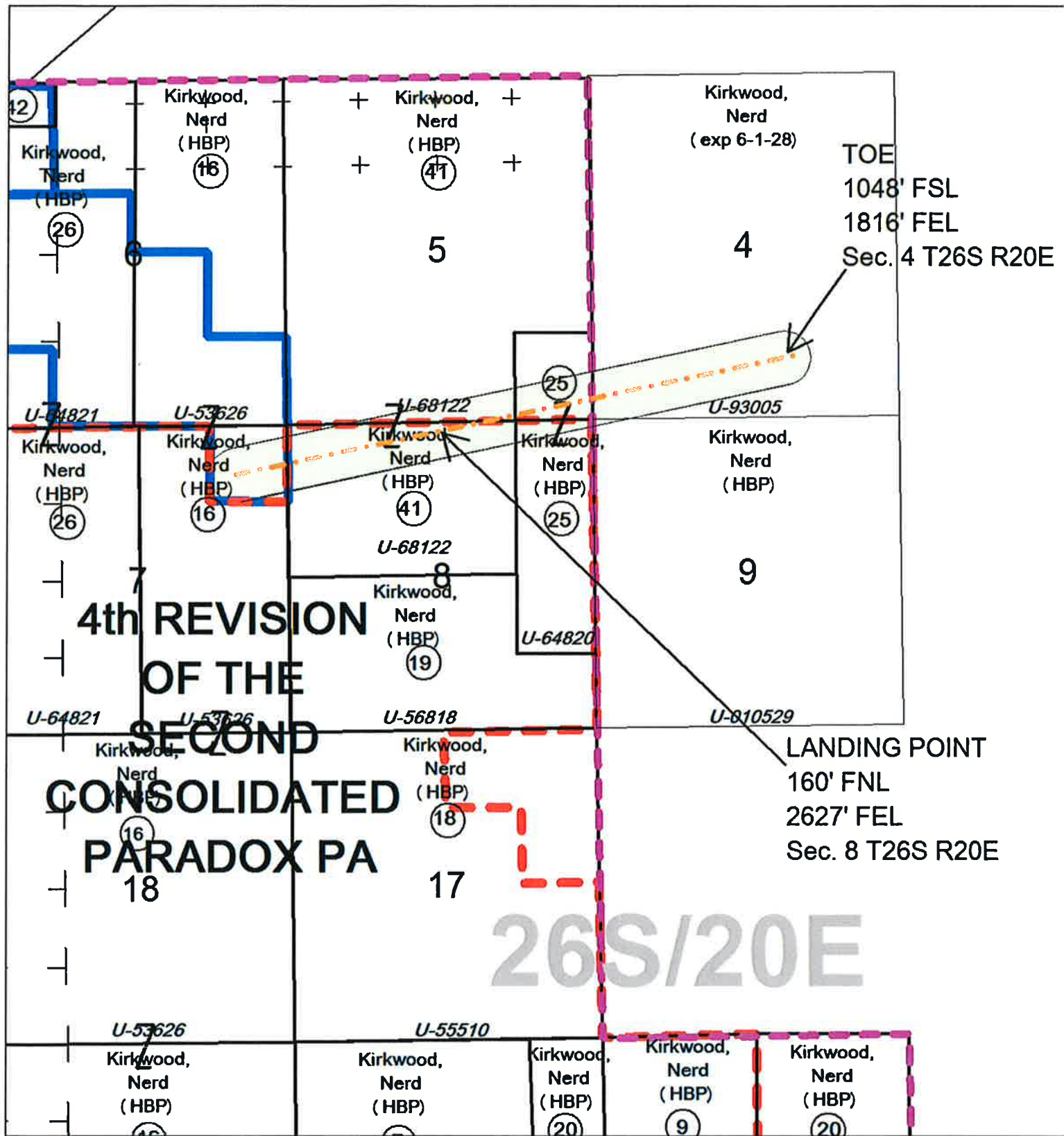
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1750.14



**4th REVISION
OF THE
SECOND
CONSOLIDATED
PARADOX PA**

26S/20E

-  4th Revision of the Second Consolidated Paradox PA Boundary
-  Cane Creek Unit Boundary
-  460' Radius
-  CCU 7-2R2-26-20 Well Path

Kirkwood Oil and Gas		
CCU-7-2R2-26-20 Well Path Grand County, Utah		
Author: ABD		Date: 9 January, 2019
	Scale: To Fit Paper	

From: Dayne Doucet <daynedoucet@utah.gov>
Date: June 1, 2018 at 2:19:13 PM MDT
To: Scott Kerr <scottk@kirkwoodcompanies.com>
Cc: Tom Kirkwood <tomk@kirkwoodcompanies.com>, Steve Degenfelder <SteveD@kirkwoodcompanies.com>
Subject: Re: Application For Permit to Drill Sent Back for Revisions

I talked to the BLM yesterday and they agreed that this well couldn't be drilled as is. Our rules allow for some exceptions for horizontal wells inside of units but this well is not entirely in a unit so we can't approve it as is. You could drill it on a temporary 640 acre horizontal spacing or you would have to come before the board to get the well spaced. I guess another option would be to work with the BLM to get the unit expanded to include all of the area where the well will be drilled. DOGM doesn't deal with CAs or PAs; those are BLM items. For example, Fidelity came before the board before the CCU 7-1-26-20 was drilled.

On Fri, Jun 1, 2018 at 2:02 PM, Scott Kerr <scottk@kirkwoodcompanies.com> wrote:
Dayne-

I checked with our Land Department and yes we understand that if we drill the lateral as proposed and the well is productive, a communitization agreement of unit land and non-unit lands would need to be submitted to and approved by Utah DOGM. Let me know if you need more information or if revisions to the APD are needed.

Thanks

Scott Kerr
HSE Coordinator
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P. O. Box 1650
Casper, Wyoming 82602
Office: (307) 577-5336
Cell: (307) 462-3844
Fax: (307) 265-1791
e-mail - scottk@kirkwoodcompanies.com

-----Original Message-----

From: daynedoucet@utah.gov <daynedoucet@utah.gov>
Sent: Friday, June 01, 2018 1:16 PM
To: Scott Kerr <scottk@kirkwoodcompanies.com>
Cc: dianawhitney@utah.gov
Subject: Application For Permit to Drill Sent Back for Revisions

APD Number: 12874
Well Name: Cane Creek Unit 7-2R-26-20
Operator: WESCO OPERATING, INC.

EXHIBIT 2

This well is not in a legal location. It violates R649-3-2.3. Not only is it within 660' of the unit boundary, it leaves the unit boundary.

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Dayne Doucet
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CONSENT TO EXCEPTION LOCATION

The undersigned hereby certify that they are the only operating rights owners/operator of all points within a 460' radius of the proposed 7-2R-26-20 Well, as depicted on the attached plat, and, pursuant to Utah Admin. Code Rule R649-3-3(1.2), hereby provide their written consent to the drilling of such well as so depicted.

Dated this 8th day of January, 2019.

KIRKWOOD OIL & GAS LLC



Robert W. Kirkwood, Manager

NERD GAS COMPANY LLC

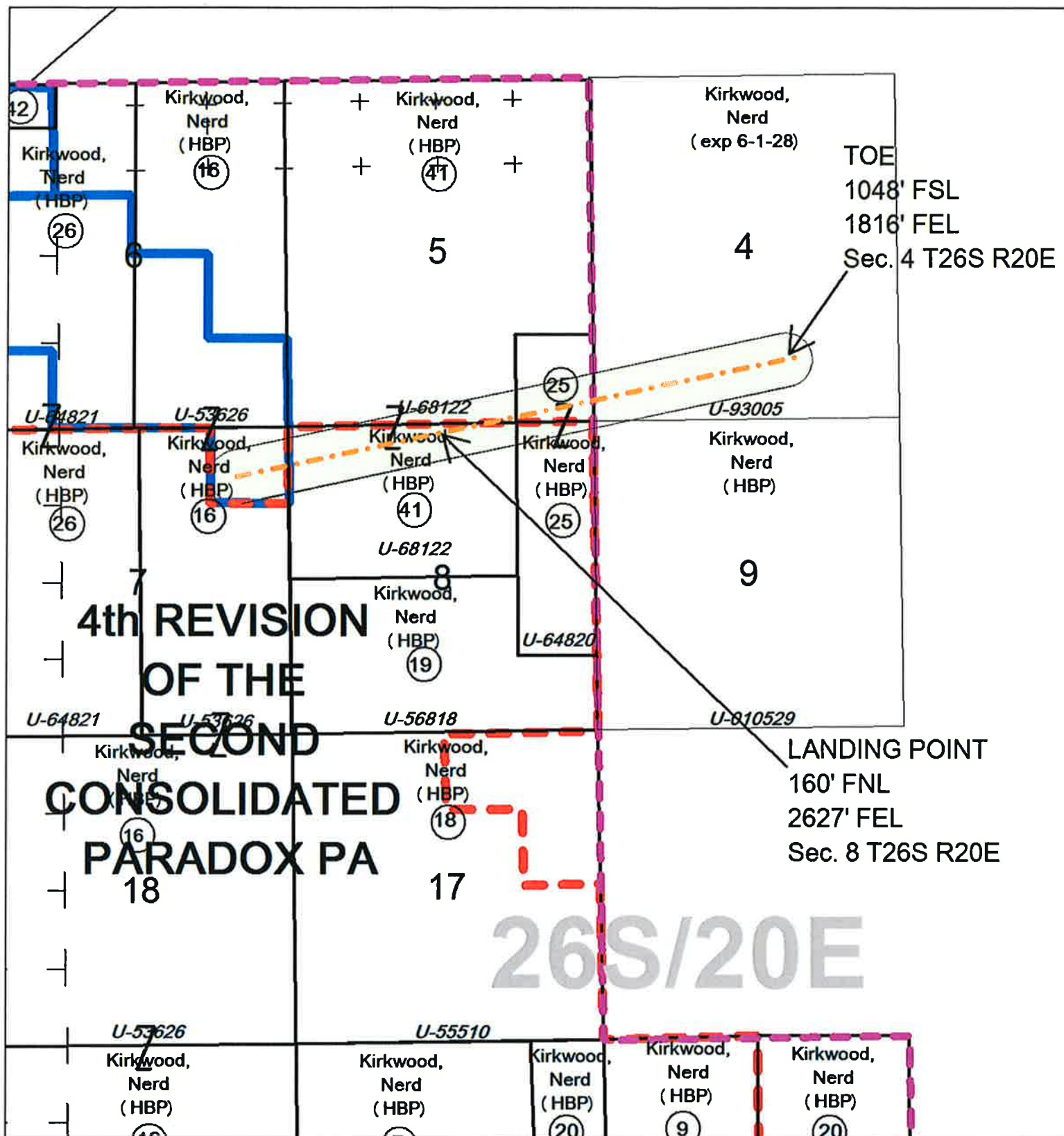


Cary E. Brus, Manager

WESCO OPERATING INC., Unit Operator of the Cane Creek Unit on behalf of all parties committed thereto







Robert W. Kirkwood, President



**4th REVISION
OF THE
SECOND
CONSOLIDATED
PARADOX PA**

26S/20E

-  4th Revision of the Second Consolidated Paradox PA Boundary
-  Cane Creek Unit Boundary
-  460' Radius
-  CCU 7-2R2-26-20 Well Path

Kirkwood Oil and Gas		
CCU-7-2R2-26-20 Well Path Grand County, Utah		
Author: ABD		Date: 9 January, 2019
	Scale: To Fit Page	