

FILED

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SECRETARY, BOARD OF  
OIL, GAS & MINING

Julie Carter <juliecarter@utah.gov>



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**process of declaratory relief.**

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Steve Alder <stevealder@agutah.gov>

Tue, Feb 26, 2019 at 4:02 PM

To: "Frederick M. MacDonald" <fred@macmillerlegal.com>, Michael Begley <mbegley@agutah.gov>

Cc: Emma Whitaker <ewhitaker@agutah.gov>, Julie Ann Carter <juliecarter@utah.gov>

At the request of board counsel and after discussion with Board counsel, and counsel for Wesco, counsel for the Division submits this email as a supplemental response to the RAA.

In re: Wesco Operating Inc. Docket No. 2019-007, Cause No. 166-11

The Wesco RAA includes a request for declaratory relief asking the board direct the division to find that R649-3-3 requires the division to approve horizontal well locations that cross drilling unit boundaries, or section boundaries, or cross between federal drilling unit and unspaced lands if they have consent of all owners. The Division disagrees that the rule is meant to apply to allow such action by it or by the Board. If the board believes it may grant such relief the Division argues that such authority is limited to the board. s to allow. The Division is of the opinion that making this declaratory order would be equivalent to rule-making.

The Board's rules at R641-111-100 and 200 allows for declaratory relief and provides that if the board finds an declaratory ruling is appropriate it will require filing a NOAA under 641-104.

This is odd way to proceed and the Division thinks such a NOAA should be a NOAA for formal Rulemaking as allowed by 641-112 which references the Utah Rulemaking Act. The Rulemaking Act at 63G-3-101 et seq. provides at 63G-3-210(6) that "each agency shall enact rules incorporating the principals of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases."

To the degree that the board does elect to allow the declaratory relief in addition to complying with its own rules it would be possible to comply with the Rulemaking Act which as statutory law is binding on the Board independently of the R641 Rules.

Steven F. Alder

Assistant Utah Attorney General

1594 West North Temple St. #300

Salt Lake City, Utah 84116

801 538 5348

Cell 801 580 5878

[stevealder@agutah.gov](mailto:stevealder@agutah.gov)