

**FILED**

**MAR 25 2019**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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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

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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

Docket No. 2019-007

Cause No. 166-11

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This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the “Board”) on Wednesday, February 27, 2019, at approximately 11:30 a.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City, Utah. The following Board members were present and participated at the hearing: Chairman Ruland J. Gill, Jr., Chris D. Hansen, Michael R. Brown, Gordon L. Moon, Carl F. Kendell and Susan S. Davis. Board Member Richard K. Borden was unable to attend. The Board was represented by Emma Whitaker, Esq., Assistant Attorney General.

Participating and testifying on behalf of Petitioner Wesco Operating, Inc. (“Wesco”) were Steve Degenfelder - Landman, and Tom Kirkwood - Petroleum Engineer. Mr. Kirkwood was recognized by the Board as an expert in petroleum engineering for purposes of this Cause. Frederick M. MacDonald, Esq., of and for MacDonald & Miller Mineral Legal Services, PLLC, appeared as attorney for Wesco.

The Division of Oil, Gas and Mining (the “Division”), with leave from the Board, filed a staff memorandum in this Cause on February 20, 2019, opposing the granting of

Wesco's Request for Agency Action filed on January 10, 2019 in this Cause (the "RAA"). The Division asserted it and the Board do not have the authority to grant an exception location for the well and objected to any declaration by the Board interpreting Utah Admin. Code Rules R649-3-2 and R649-3-3 to the contrary. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney for the Division. The Division neither provided sworn testimony nor submitted any exhibits. However, with the Board's permission, John Rogers, Associate Director - Oil & Gas, made a statement on the Division's behalf. After presentation of Wesco's testimony and exhibits, the Division, in its summation, expressed it no longer objected to the Board authorizing the drilling of the well at issue, but reiterated its objection to any declaration by the Board interpreting Utah Admin. Code Rules R649-3-2 and R649-3-3 as requested by Wesco. Rather than the Board issue a "declaratory judgement or ruling" interpreting Utah Admin. Code Rules R649-3-2 and R649-3-3, the Division proposed that the Board suspend the rules in conjunction with the suspension already allowed for Federal units by R649-2-3 and the purpose of the Well, which is to determine if there is sufficient production to expand the Federal unit at issue. The Division stated it believed authorizing the Well on this basis would be a more limited exception to the general rules and preferable to authorizing the Well under the exception location rule.

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

The Board, having considered the testimony presented and 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 in this Cause.

**FINDINGS OF FACT**

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 lands relevant to this Cause 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 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 Exploratory 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 4<sup>th</sup> Revision of the Second Consolidated Paradox Participating Area of the Unit (the "Unit PA"). 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 and, in particular, to satisfy its annual drilling requirements under Section 2(e) of the governing Unit Agreement, plans to drill the "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 (the "Landing Point"), 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, as depicted on Exhibit "D" admitted

into evidence. Wesco will utilize the existing wellbores of the CCU 7-2-26-20 and 7-2R-26-20 Wells to the Landing Point. Under this configuration, the Well will cross-over an eastern boundary of the Unit.

6. A conforming application for permit to drill (“APD”) for the Well was filed by Wesco with the Division on February 20, 2019, and a conforming Sundry Notice for the Well was filed with the Moab Field Office of the BLM on February 21, 2019. Both are still pending approval.

7. 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 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.

8. However, by Email dated June 1, 2018, a true and correct copy of which was admitted into evidence as Exhibit “K,” 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. In the June 1st email, the Division also advised Wesco of three options: Wesco could (1) seek a temporary spacing unit; (2) come before the Board to have the well spaced; or (3) work with the BLM to expand the Unit to include the entire well. 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 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.

9. Wesco still believes the eastern productive limits of the Unit need to be defined to determine if potential Unit expansion is justified. Wesco testified that, due to its obligations under the governing Unit Agreement, and in order to make an expansion determination, a well must commence within the Unit.

10. As reflected by Exhibits "E" and "F" admitted into evidence, Kirkwood, Nerd and AARI, the only "owners" in the leases described in Findings of Fact No. 2 above and the Unit PA, have consented in writing to the drilling of the Well as outlined above.

11. If the Well is productive but does not meet the Unit Paying Quantities criteria of Article 9 of the governing Unit Agreement, Wesco has represented it will 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 and for the protection of correlative rights.

12. Due to unique non-uniform natural fracturing occurring throughout the general Cane Creek Unit area, unless and until the Well is drilled and produced for a sufficient period of time, it is premature to establish any drilling unit, whether a "temporary drilling unit" as defined in Utah Admin. Code Rule R649-1-1 or on a permanent basis as

contemplated under Utah Code Ann. § 40-6-6. See *Cowling v. Board of Oil, Gas and Mining*, 830 P.2d 220, 225-226 (Utah 1991).

13. Based on the foregoing and other testimony and exhibits admitted into evidence, suspending the general rules and authorizing Wesco to drill the Well is fair, reasonable and justified, subject to the caveats outlined in the order below.

14. A copy of the RAA was mailed, postage pre-paid, certified with return receipt requested, and properly addressed to Kirkwood, Nerd and AARI, being all of the “owners” in the affected leases and the Unit PA, to their last addresses disclosed by the appropriate Federal and Grand County realty records, and to the Moab Field Office and Utah State Office of the BLM. As evidenced by Exhibit “Z” as supplemented and admitted into evidence, all parties received said mailing.

15. Notice of the filing of the RAA and of the hearing thereon was duly published in the Salt Lake Tribune and Deseret Morning News on February 3, 2019 and the Moab Times-Independent on February 7, 2019.

16. The vote of the Board members present and participating in the hearing on this Cause was unanimous (6-0) in favor of granting an exception location for, and authorization for Wesco to drill, the Well, subject to the caveats outlined in the order below, but denying any declaratory relief.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over all matters covered by the RAA 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)(a) and (b) and Utah Admin. Code Rules R641-111-100 and 200, R649-2-1(2) and (3) and R649-3-3(2).

2. 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 RAA in the form and manner as required by law and the rules and regulations of the Board and Division

3. Wesco has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the Board to suspend the general rules as allowed by Utah Admin. Code Rule R649-2-1(3) and grant authorization for Wesco to drill the Well without the need for establishing a “temporary drilling unit.”

4. Although the Board has the authority to grant non-binding declaratory relief pursuant to Utah Admin. Code Rule R641-111-220, under the facts and circumstances presented in this Cause, the Board declines to issue a declaratory ruling pursuant to Utah Admin. Code Rule R641-111-210. However, the Board recognizes the differing but reasonable interpretations of the existing horizontal well rules (R649-3-2(3) through (9)) and the exception location rule (R649-3-3) advocated by Wesco and the Division and the need for rule modifications. The Board therefore encourages the Division to commence informal rulemaking for such modifications to be promulgated, particularly to address horizontal wells exceeding one mile in length and wells drilled across Federal unit boundaries.



5. The granting of the authorization for the Well location is limited to the facts and circumstances presented in this Cause, and this Order is to be of no precedential value in future Board matters raising the same issues unless the facts and circumstances therein are substantively similar to the facts and circumstances presented in this Cause.

6. The relief granted hereby will result in consistent and orderly development and the greatest recovery of oil, gas and associated hydrocarbons, prevent waste and adequately protect the correlative rights of all affected parties.

### **ORDER**

Based upon the RAA, the testimony and evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Well location as requested is hereby granted to allow Wesco to drill the “CCU 7-2R2-26-20” Well as outlined in the RAA and as depicted on Exhibit “D” admitted into evidence. The Division is hereby directed to approve Wesco’s APD for the Well, presuming it conforms to the information reflected in the RAA and on Exhibit “D” and is complete in all other respects. No “temporary drilling unit” designation is required.

2. The authorization to drill the Well shall remain in effect, for a period of two (2) years from date of entry of this Order. If the Well is not drilled within that time period, the authorization automatically terminates and Wesco or its successor operator will be required to again seek Board approval for drilling the Well.

3. If the Well is drilled and completed as a “well capable of producing Unitized Substances in Paying Quantities” as defined in Article 9 of the governing Unit Agreement

(“UPQ”) and the Unit is expanded to include the affected portions of the Sections 4 and 9 lands within a Unit participating area, or if the Well is drilled and completed as a UPQ well but the lateral was only drilled, and drainage therefrom is only occurring, within the existing Unit area, Wesco or its successor operator shall notify the Board and Division in writing of that fact to allow the Board’s confirmation that correlative rights are being adequately protected under the Federal exploratory unit scheme.

4. If the Well is drilled and completed as a UPQ well and drainage therefrom is occurring both inside and outside the existing Unit area but the Unit is not expanded to include the affected portions of the Sections 4 and 9 lands, or if the Well is drilled and completed as a producer but is not a UPQ well, as soon as feasible after drainage of the Well can be determined, Wesco or its successor operator must file a request for agency action with the Board seeking a special drilling unit for the Well, which shall establish (and therefore protect) correlative rights and allow a conforming communitization agreement to be executed and approved by the BLM.

5. If either circumstance described under Paragraphs (3) and (4) of this Order does not occur within one (1) year of entry of this Order, Wesco or its successor operator shall submit to the Board and Division on or before that anniversary date and, if and as necessary, annually thereafter, a written report outlining the status of the Well, including any pertinent geologic and reservoir conclusions reached, and an estimate of when the applicable required filing to the Board and Division may be made. To the extent Wesco or its successor operator presents cogent argument and analysis as how the information

presented qualifies as protected “confidential and/or proprietary” information under Utah law, the Board will ensure all of the information remains protected. Unless requested by the Division, for good cause shown, any material designated by the Board and “confidential” and “proprietary” information will only be circulated with existing members of the Board, the Board’s secretary and the Board’s counsel. Any copy of such designated information will be sealed as “confidential and proprietary” information and will be stored and destroyed in a manner prescribed by Utah law for such information.

6. If the Well is a dry hole, Wesco or its successor operator shall notify the Board and Division of that fact and have no further obligations under this Order.

7. No declaratory ruling as requested by Wesco is hereby issued by the Board. However, the Division is strongly encouraged to informally initiate rulemaking to modify the current horizontal well rules (R649-3-2(3) through (9)) and the exception location rule (R649-3-3) to clarify the issues raised by Wesco, particularly to address horizontal wells in excess of one mile in length and wells drilled across Federal unit boundaries, and to prevent future disputes over their interpretations under similar circumstances.

8. 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.

9. 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 R64-109.

10. 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.

11. 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.

12. For all purposes, the Chairman's signature on an electronic version or a faxed copy of this Order shall be deemed the equivalent of a signed original.

DATED this 25th day of March, 2019.

**STATE OF UTAH  
BOARD OF OIL, GAS AND MINING**

By:

  
Ruland J. Gill, Jr., Chairman

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of March, 2019, I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** for Docket No. 2019-007 Cause No. 166-11, to be mailed with postage prepaid, via E-mail, or First Class Mail, to the following:

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A handwritten signature in blue ink, appearing to read "Julie Amante", is written over a solid horizontal line. The signature is fluid and cursive.