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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 AMENDED
REQUEST FOR AGENCY ACTION OF XTO
ENERGY INC. FOR AN ORDER
ESTABLISHING A SPECIAL DRILLING UNIT
FOR THE HCU 1-30F HORIZONTAL WELL
FOR THE PRODUCTION OF GAS AND
ASSOCIATED OIL AND HYDROCARBONS
FROM A DEFINED PORTION OF THE
MANCOS FORMATION COMPRISED OF
PORTIONS OF SECTIONS 30 AND 31,
TOWNSHIP 10 SOUTH, RANGE 20 EAST, SLM,
UINTAH COUNTY, UTAH

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

Docket No. 2013-005

Cause No. 197-14

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, February 27, 2013, at approximately 2:50 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 James T. Jensen, Jake Y. Harouny, Jean Semborski, Ruland J. Gill, Jr., Kelly L. Payne, Carl F. Kendell and Chris D. Hansen. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner XTO Energy Inc. ("XTO") were Paul L. Keffer – Sr. Staff Land Representative, James M. Kwolek – Production Geologist, and Mary J. Flynn – Sr. Reservoir Engineer. Said witnesses were recognized by the Board as experts in petroleum land management, geology and petroleum engineering, respectively, for

purposes of this Cause. Frederick M. MacDonald, 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. Cameron Johnson, Esq., Assistant Attorney General, appeared as attorney for the Division. At the conclusion of XTO’s presentation in-chief, Mr. Johnson expressed the Division’s support for the granting of XTO’s Amended Request for Agency Action dated January 28, 2013 (the “Request”), as conformed to the testimony and other evidence provided at the hearing.

At the conclusion of XTO’s and the Division’s presentations–in–chief, Michael Coulthard, Petroleum Engineer, Utah State Office of the Bureau of Land Management (the “BLM”), made a statement expressing the BLM’s support for the granting of the Request.

No other party filed a response to XTO’s 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 findings of fact, conclusions of law and order in this Cause.

FINDINGS OF FACT

1. XTO is a Delaware corporation in good standing, with its principal place of business in Fort Worth, Texas, 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 at issue in the Cause are owned by the United States of America, administered by the Bureau of Land Management (“BLM”), and subject to the following oil and gas leases:

<u>Lease</u>	<u>Lands (all within T10S, R20E, SLM)</u>
UTU-29784	Section 30: S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$
UTU-30693	Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$

(the “Subject Leases” and the “Subject Lands,” respectively). The operating rights in the Subject Leases in the portions of the Mancos formation relevant to this Cause (*see* Findings of Fact No. 5 below) are solely owned by XTO. There are also owners of overriding royalty interests in both leases as reflected on Page 2 of Exhibit “C” admitted into evidence.

3. The Subject Lands and Subject Leases are fully committed to the Hill Creek Federal Exploratory Unit, approved by the BLM effective April 1, 2000. XTO

serves as Unit Operator. Pursuant to the Board's Order entered on August 17, 2000 in Cause No. 197-11, application of Utah Admin. Code Rule R649-3-2 was suspended as to the committed lands within the Hill Creek Unit.

4. Under the terms of the Hill Creek Unit Agreement, all oil and gas in all formations underlying the committed lands are unitized. However, production is only allocated on a participating area basis, established by wells that are capable of producing Unitized Substances in Paying Quantities; *to wit*: "quantities sufficient to repay the costs of drilling, completing and producing operations, with a reasonable profit." Production from any well not meeting the "Unit Paying Quantities" criteria and not otherwise within an established participating area is instead to be allocated on a leasehold basis.

5. Pursuant to an application to drill approved by both the BLM and the Division, XTO spud the HCU 1-30F Well (the "Subject Well") on March 22, 2010 at a surface location 592 feet FNL and 570 feet FEL in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, and drilled it horizontally with a terminus located 1,558 feet FNL and 1,297 feet FEL in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31. The lateral was drilled through and perforated with hydraulic fracture stimulation in those portions of the Mancos formation defined as follows:

the interval commencing at the stratigraphic equivalent measured depth of 12,544 feet below Kelly Bushing (TVDSS elevation -7345') down to the stratigraphic equivalent of 13,137 feet below Kelly Bushing (TVDSS elevation -7937') as shown on the Schlumberger Lateral Array Log dated August 24, 2008 for the HCU 12-29F well located in the

SW¹/₄ of Section 29, Township 10 South, Range 20 East,
Uintah County, Utah, API No. 43-047-39611,

and the Subject Well was completed on October 27, 2010 as a producing gas well. The Subject Well was the first producing horizontal Mancos formation well in the Hill Creek Unit Area. However, despite several months of testing and production, the BLM, by Letter dated December 13, 2012, notified XTO that the Subject Well, under current conditions, did not satisfy the “Unit Paying Quantities” criteria under the Hill Creek Unit Agreement.

6. The lateral and perforated intervals of the Subject Well extend over portions of both of the Subject Leases. As a consequence, the BLM has requested XTO to obtain an order for the Board establishing a special drilling unit for the Subject Well so a communitization agreement can be prepared and approved in accordance with Federal regulations, guidelines and practices.

7. The relevant Mancos shales and sands have low permeability. There appear to be confining intervals above and below the Mancos interval defined in Findings of Fact No. 5 above. The gamma ray log for the Subject Well suggests coarser fraction intervals toward the terminus. The interval of the Mancos formation as defined in Findings of Fact No. 5 above constitutes a common source of supply of gas and associated oil and hydrocarbons.

8. Utilizing the following circle-tangent method currently employed by the Reservoir Management Group of the Wyoming State Office of the BLM to determine the participating areas (drainage area) for horizontal wells within Federal exploratory units; namely:

creating circles with 660' radii around the casing shoe point of the lateral in the producing formation and around the end of the lateral, constructing tangents between them, and including as part of the participating area any 10-acre subdivision then cut by the circles and tangent so created/constructed,

modified to utilize the first and last perforations in the Subject Well as the points for the radii, which method has been approved by the BLM and utilized as the basis for the Board's Order entered in Cause Nos. 197-012 and 197-013, the Subject Lands are not smaller than the maximum area that can be effectively and economically drained by the Subject Well. Testimony established the methodology as valid based on EUR by decline curve analysis and gas saturation porosity, reflecting a 608 foot radius of drainage is more likely. In addition, because of the deeper depths, there would likely be more vertical fracturing than horizontal.

9. Although not applicable to the lands with a Federal unit (*see* Utah Admin. Code Rule R649-3-2(8)), Utah Admin Code Rule R649-3-2(5) provides for a 1,320 foot set back for any well (whether vertical or horizontal) drilled to and producing from the same formation from any portion of a horizontal well, XTO has requested such a set back

be adopted in this Cause, and there is no evidence before the Board to reflect a different set back should instead be adopted.

10. Although questionable that it may ever occur, in the event the Subject Well is deemed by the BLM to produce Unitized Substance in Paying Quantities as defined in the Hill Creek Unit Agreement, XTO desires that the requested drilling unit be suspended, the conforming communitization agreement be terminated, and the terms of the Hill Creek Unit Agreement then govern, particularly the participating area allocation provisions set forth therein.

11. A copy of the Request was mailed, postage pre-paid, certified with return receipt requested, and properly addressed to the addresses disclosed by searches of the respective BLM and Uintah County records, and based on XTO's internal records, to all overriding royalty owners in the leases covering, and to the governmental agencies owning the oil and gas and having jurisdiction over said minerals underlying, the Subject Lands. Copies of the return receipts, evidencing receipt of such mailings, or of the returned mailing themselves, evidencing either their undeliverability to the last addresses disclosed by the searches of the records indicated above, or the refusal of the addressee to pick them up from the United States Postal Service, were filed with the Board.

12. 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 February 3, 2013, in

the Uintah Basin Standard on February 5, 2013, and in the Vernal Express on February 6, 2013.

13. The vote of the Board members present in the hearing and participating in this Cause was unanimous (7-0) 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 matter 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. XTO has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the Request.

4. Creation of a special drilling unit for production from the defined Mancos formation interval from the Subject Lands for the Subject Well, retroactively to October 27, 2010, its date of first production, is required for the protection of the correlative rights of the parties owning interests in the Subject Leases, and is a requisite to allowing conforming communitization of the Subject Lands in accordance with Federal

regulations, guidelines and practice, and the express request of the BLM. It is also fair, reasonable and justified under the circumstances.

5. Suspension of said drilling unit upon the determination by the BLM that the Subject Well is capable of producing Unitized Substances in Paying Quantities, as defined in the Hill Creek Unit Agreement, and inclusion of the Subject Lands within a Unit participating area is fair, reasonable and justified under the circumstances.

6. Adoption of the 1,320-foot set back as set forth in Utah Ann. Code Rule R649-3-2(5) and as requested by XTO will be protective of correlative rights and prevent waste, and is fair reasonable and justified under the circumstances.

7. The relief granted hereby will result in consistent and orderly development and the greatest recovery of gas and associated oil and hydrocarbons from the defined Mancos formation interval underlying the Subject Lands.

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 is granted.

2. A special drilling unit for the HCU 1-30F Well for the production of gas

and associated oil and hydrocarbons for the Mancos formation, defined as:

the interval commencing at the stratigraphic equivalent measured depth of 12,544 feet below Kelly Bushing (TVDSS

elevation -7345') down to the stratigraphic equivalent of 13,137 feet below Kelly Bushing (TVDSS elevation -7937') as shown on the Schlumberger Lateral Array Log dated August 24, 2008 for the HCU 12-29F well located in the SW $\frac{1}{4}$ of Section 29, Township 10 South, Range 20 East, Uintah County, Utah, API No. 43-047-39611,

comprised of the following Uintah County, Utah lands:

Township 10 South, Range 20 East, SLM

Section 30: S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$

Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$

(containing 310 acres)

is hereby established, retroactive to October 27, 2010, the date of first production from said Well.

3. No well (whether vertical or horizontal) producing from defined Mancos interval may be located closer than 1,320 feet from any portion of the HCU 1-30F Well's lateral located within said interval without an exception location approval by the Division or Board in accordance with Utah Admin. Code Rule R649-3-3.

4. This Order shall be suspended upon the determination by the BLM that the HCU 1-30F Well is capable of producing Unitized Substances in Paying Quantities, as defined in the Hill Creek Unit Agreement, and inclusion of the drilling unit lands in a Unit participating area. XTO, or its successor Unit Operator, shall provide to the Board's

secretary a copy of the BLM Letter reflecting such determination so the Board's records may be properly noted to reflect such suspension becoming effective.

5. 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.

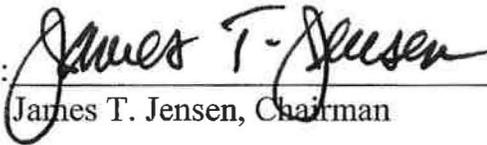
Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. §63G-4-302 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of 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.

6. 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.

7. 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 21st day of March, 2013.

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

By: 
James T. Jensen, Chairman

FMM:nmc
1600.02

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A handwritten signature in cursive script that reads "Julie Ann Carter". The signature is written in black ink and is positioned above a solid horizontal line that spans the width of the signature.

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. 2013-005, Cause No. 197-14 to be mailed via E-Mail, and First Class Mail, with postage prepaid, this 22nd day of March, 2013, to the following:

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