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APR 25 2001

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 TEXACO EXPLORATION AND PRODUCTION INC. FOR AN ORDER APPROVING THE HUNTINGTON (SHALLOW) CBM EXPLORATORY UNIT, COMPRISED OF ALL OR PORTIONS OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 7 EAST, SECTIONS 31 AND 32, TOWNSHIP 16 SOUTH, RANGE 8 EAST, SECTIONS 1-12, 14-23 AND 27-30, TOWNSHIP 17 SOUTH, RANGE 8 EAST, AND SECTIONS 6 AND 7, TOWNSHIP 17 SOUTH, RANGE 9 EAST, SLM, EMERY COUNTY, UTAH, INCLUDING COMPULSORY UNITIZATION OF ALL INTERESTS IN GAS (INCLUDING BUT NOT LIMITED TO COALBED METHANE) PRODUCED FROM ALL FORMATIONS FROM THE SURFACE OF THE EARTH TO THE STRATIGRAPHIC EQUIVALENT OF THE BASE OF THE FERRON FORMATION

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

Docket No. 2001-007

Cause No. 245-2

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, March 28, 2001, at the hour of 11:00 a.m. The following Board members were present and participated at the hearing: Chairman Dave D. Lauriski, Elise L. Erler, W. Allan Mashburn, Stephanie Cartwright, J. James Peacock, Robert J. Bayer and Kent R. Petersen. At the commencement of the hearing, Chairman Lauriski advised that he had been contracted by the Utah School and Institutional Trust Lands Administration ("SITLA"), an interested party in this matter, to assist in re-writing SITLA's mineral regulations and offered to recuse himself to avoid any appearance of conflict if there were any objections to his participation in this cause. No objections were

voiced. Attending and participating on behalf of the Division of Oil, Gas and Mining (the "Division") was John Baza, Associate Director – Oil and Gas. The Board and the Division were represented by Kurt Seel, Esq., and Thomas A. Mitchell, Esq., Assistant Attorneys General, respectively.

Attending and participating on behalf of the Bureau of Land Management ("BLM") was Robert Henricks, Chief-Branch of Fluid Minerals, Utah State Office. Attending and participating on behalf of SITLA was LaVonne J. Garrison, Assistant Director – Oil and Gas. Also appearing and presenting statements to the Board were Thomas W. Clawson, Esq., Van Cott, Bagley, Cornwall & McCarthy, on behalf of The First National Company of Marshall ("Marshall"), and Barron Kidd, General Partner of the Kidd Family Partnership Limited ("Kidd"), both lessees and working interest owners within the proposed unit area.

Testifying on behalf of Petitioner Texaco Exploration and Production Inc. ("TEXEP") were Chuck Snure – Land Representative, Robert Lamarre – Senior Geoscientist, and Joseph McHenry – Senior Petroleum Engineer. Frederick M. MacDonald, Esq., Pruitt, Gushee & Bachtell, appeared as attorney on behalf of TEXEP.

At the conclusion of TEXEP's presentation, the BLM expressed its objection to the Request for Agency Action insofar as it seeks compulsory unitization, reiterating its position first stated in its letter of protest to the Board dated March 26, 2001 that compulsory unitization is counter to the concept and design of what exploratory units are formed to accomplish. Thereafter, SITLA, Marshall and Kidd all expressed support of the

Request for Agency Action. The Division also expressed its support of the Request for Agency Action provided that, with respect to a compulsory unitized unleased owner, an average landowner's royalty of 12.612% would be applicable instead of 12.5% as requested, and a smaller percentage than the 300% requested be applicable as a risk element to the rate of return allowed to be charged against such a party. No other statements were made at the hearing in opposition of the Request for Agency Action and no other parties 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 appearing, hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Utah Code Ann. §§ 40-6-5, 40-6-7 and 40-6-8, and Utah Admin. Code Rule R649-2-3.
2. A copy of the Request for Agency Action was mailed via certified mail, return receipt requested, to all royalty, overriding royalty, other production interest, and working interest owners and operators in the Unit Area, being all persons whose legally protected interests may be affected by the Request for Agency Action, at their last known addresses as disclosed by the BLM, SITLA and Emery County realty records.
3. Notice, including special notice directed to those parties for whom a receipt of the mailing of the Request for Agency Action had not been received, was duly published in

the Salt Lake Tribune, Deseret News and Emery County Progress as required by Utah Admin. Code Rule R641-106-100.

4. TEXEP is a Delaware corporation in good standing, having its principal place of business in Denver, Colorado. TEXEP is duly qualified to conduct business in Utah and is fully and appropriately bonded with all Federal and State of Utah agencies.

5. The Huntington (Shallow) CBM Unit (the "Unit") is comprised of the following Emery County, Utah lands:

Township 16 South, Range 7 East, SLM

Section 36: All

Township 16 South, Range 8 East, SLM

Section 31: Lots 1 (46.46), 2 (46.46), 5 (39.96), 6 (39.94), 7 (39.91), 8 (4.11), 9 (2.5), 10 (6.61), 11 (13.22), 12 (20), 13 (42.35) and 14 (4.11), E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ [All]

Section 32: Lots 1 (39.81), 2 (39.84), 3 (39.86) and 4 (39.89), N $\frac{1}{2}$ S $\frac{1}{2}$ [S $\frac{1}{2}$]

Township 17 South, Range 8 East, SLM

Section 1: Lots 1 (40), 2 (40), 3 (40) and 4 (40), S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ [All]

Section 2: Lots 1 (40.7), 2 (40.5), 3 (40.3), 4 (40.1), 5 (39.95), 6 (39.95), 7 (39.95), 8 (39.95), 9 (41.13), 10 (41.41), 11 (41.37) and 12 (41.09), SE $\frac{1}{4}$ [All]

Section 3: Lots 1 (41.59), 2 (41.53), 3 (41.47), 4 (41.41), 5 (41.41), 6 (41.47), 7 (41.53), and 8 (41.59), N $\frac{1}{2}$ [All]

- Section 4: Lots 1 (41.33), 2 (41.35), 3 (41.37),
4 (41.49), 5 (41.47), 6 (41.35),
7 (41.33) and 8 (41.31), N $\frac{1}{2}$ [All]
- Section 5: Lots 1 (40.49), 2 (40.72), 3 (43.01),
4 (43.25), 5 (42.53), 6 (42.3),
7 (41.51), 8 (41.28), 9 (43.37),
10 (43.09), 11 (43.89) and 12 (44.17),
SW $\frac{1}{4}$ [All]
- Section 6: Lots 1 (40), 2 (40), 3 (40), 4 (36.42),
5 (36.48), 6 (36.52) and 7 (36.58),
S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$
[All]
- Section 7: Lots 1 (12.66), 2 (12.78), 3 (39.21),
4 (40), 5 (11.88), 6 (12.26), 7 (40),
8 (39.23), 9 (39.24) and 10 (39.25),
NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ [All]
- Section 8: Lots 1 (11.82), 2 (11.9), 3 (11.71),
4 (11.79), 5 (40.67), 6 (40.67),
7 (41.29), 8 (41.29), 9 (41.11),
10 (41.11), 11 (40.91) and 12 (40.91),
N $\frac{1}{2}$ [All]
- Section 9: All
- Section 10: All
- Section 11: All
- Section 12: N $\frac{1}{2}$
- Section 14: All
- Section 15: All
- Section 16: Lots 1 (7.58), 2 (7.94), 3 (8.29),
4 (8.64), 5 (39.95), 6 (39.94),
7 (39.94), 8 (39.94), 9 (41.25),
10 (39.95), 11 (39.95) and 12 (39.95),
N $\frac{1}{2}$ [All]
- Section 17: All
- Section 18: Lots 1 (43.37), 2 (43.44), 3 (43.5) and
4 (43.57), E $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$ [All]
- Section 19: Lots 1 (40), 2 (40), 3 (11.91),
4 (11.94), 5 (40), 6 (40), 7 (40), 8 (40),
9 (11.96), 10 (11.99), 11 (40) and
12 (40), E $\frac{1}{2}$ [All]
- Section 20: All

Section 21: All
Section 22: Lots 1 (39.48), 2 (46.07), 3 (40),
4 (36.28), 5 (5.16), 6 (4.23), 7 (36.43),
8 (40), 9 (40) and 10 (37.34), NE $\frac{1}{4}$,
SW $\frac{1}{4}$ [All]
Section 23: W $\frac{1}{2}$
Section 27: NW $\frac{1}{4}$
Section 28: All
Section 29: All
Section 30: Lots 1 (40), 2 (40), 3 (12), 4 (12),
5 (40), 6 (40), 7 (40), 8 (40), 9 (12),
10 (12), 11 (40) and 12 (40), E $\frac{1}{2}$ [All]

Township 17 South, Range 9 East, SLM

Section 6: Lots 1 (40.17), 2 (40.13), 3 (40.07),
4 (38.43), 5 (38.38), 6 (39.37) and
7 (39.86), S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ [All]
Section 7: Lots 1 (39.96) and 2 (39.69),
E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ [N $\frac{1}{2}$]

limited to production of gas, including but not limited to coalbed methane, from any and all formations from the surface of the earth to the stratigraphic equivalent of the base of the Ferron formation, as encountered at a depth of 3,626 feet in the Federal "M" #6-25 well, located 2,297 feet FNL and 1,130 feet FEL, in Section 6, Township 17 South, Range 8 East, SLM

(containing 18,395.78 acres)

(the "Unit Area").

6. The Unit Area is comprised of approximately 84.79% State of Utah mineral ownership, 14.29% fee (private) mineral ownership and 0.92% Federal mineral ownership.

7. There is uniformity of the Ferron coals, both in content and rank, across the Unit Area.

8. The Unit Area constitutes one or more pools of gas. Unit operations are reasonably necessary to carry out the purposes of the Utah Oil and Gas Conservation Act (the "Act"), given the unique nature of coalbed methane and the requirements for successful coalbed methane operations such as the dewatering and interference of wells needed to reduce the hydrostatic pressure and allow methane to desorb from the coal matrix.

9. The Unit is not deemed an "exploratory" unit for purposes of this cause. It is simply deemed a "unit" necessary for conducting cooperative coalbed methane development and operations in compliance with the Act.

10. The Unit Agreement with referenced exhibits (received into evidence as TEXEP's Exhibits A, B and C) and the Unit Operating Agreement with referenced exhibits (received into evidence as TEXEP's Exhibit E) shall govern operations and development of the Unit Area. TEXEP is designated as Unit Operator and SITLA is the designated authorized officer.

11. At the time of the hearing, the Unit Agreement had been ratified by 82.5% of the non-cost bearing (royalty, overriding royalty and other production interest) owners, and the Unit Agreement and Unit Operating Agreement had been ratified by 89.35% of the cost bearing (working interest) owners, in the Unit Area.

12. Compulsory unitization of the interests of all parties within the Unit Area which have not already voluntarily ratified the Unit Agreement and Unit Operating Agreement is fair and reasonable and protective of correlative rights; provided, however, that the interests in the Federal Tracts (Unit Tracts 1-3) are exempt from compulsory unitization, given the sovereign status of the Federal government and the BLM's refusal to ratify and approve the Unit Agreement; and further provided that, only as to all parties compulsory unitized hereunder, Article 12.5(b) of the Unit Operating Agreement shall be modified to read "one and one-half (1½) times [or 150%]" in lieu of "300%." A cost free royalty of 12.5% is deemed fair and reasonable and shall be applicable to any unleased compulsory unitized party as provided in the Unit Operating Agreement and as requested by TEXEP.

13. With respect to the modification of Article 12.5(b) of the Unit Operating Agreement as to parties compulsory unitized hereunder, the Board does not deem its modification to be a "non-consent penalty" but simply a risk element to the rate of return allowed to be charged against such a party under compulsory unitization. The Board recognizes there should be costs for non-participating parties that are higher than the costs of those who do participate in Unit operations.

14. The provisions of the Unit Agreement and Unit Operating Agreement, as modified under Paragraph 12 above, satisfy all requirements under Utah Code Ann. § 40-6-8(3) for inclusion in the Board's Order and are so adopted.

15. Operations conducted in accordance with the terms of the Unit Agreement and Unit Operating Agreement, as modified under Paragraph 12 above, are in the public interest, promote conservation, are protective of correlative rights of all owners and producers, are reasonably necessary to increase ultimate recovery of gas and will prevent both physical and economic waste.

16. The value of the estimated additional recovery of gas from the Unit Area substantially exceeds the estimated additional costs incident to conducting such operations.

17. The Unit Area is currently not subject to any order of the Board and therefore is ostensibly subject to the general well siting rule set forth in Utah Admin. Code Rule R649-3-2.

18. In order to allow the greatest flexibility in Unit well locations based on topographic and geological conditions, suspension of the general well siting rule as to the Unit Area is fair and reasonable; provided that no well may be located closer than 460 feet from the Unit Area boundary or to an uncommitted Federal or unleased tract within the Unit Area without the approval of the Division in accordance with Utah Admin. Code Rule R649-3-3; and provided further that the suspension shall only remain effective as to lands remaining in the Unit Area. Upon Unit contraction or termination, the general well siting rule shall once again apply.

19. The vote of the Board members present in the hearing and in this cause was unanimous in favor of granting the Request for Agency Action.

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:

- A. The Request for Agency Action in this cause is granted.
- B. The Huntington (Shallow) CBM Unit is approved.
- C. The Unit Agreement and Unit Operating Agreement, as modified pursuant to Paragraph D below, are approved as the plans of development and operations for the Unit.
- D. The interests of all parties in the Unit Area who have not voluntarily ratified the Unit Agreement and Unit Operating Agreement are compulsory unitized; provided, however, that all interests in the Federal Tracts (Unit Tracts 1-3) are exempt from compulsory unitization; and provided further that, only as to interests that are compulsory unitized, Article 12.5(b) of the Unit Operating Agreement shall be modified to read "one and one-half (1½) times [or 150%]" instead of "300%."
- E. The general well siting rule (Utah Admin. Code Rule R649-3-2) is suspended as to the Unit Area; provided, however, that no well may be located closer than 460 feet from the Unit Area boundary or to an uncommitted Federal or unleased tract within the Unit Area without the approval of Division in accordance with Utah Admin. Code Rule R649-3-3;

and provided further that the suspension shall only remain effective as to lands remaining in the Unit Area, *i.e.* upon Unit contraction or termination, the general well siting rule shall once again apply.

- F. Pursuant to Utah Admin. Code Rule R641 and Utah Code Ann. § 63-46b-6 to -10, the Board has considered and decided this matter as a formal adjudication.
- G. 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. § 63-46b-10 and Utah Administrative Code Rule R641-109.
- H. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10(e) to -10(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. § 63-46b-14(3)(a) and -16. 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. § 63-46b-13, 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 63-46b-12 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. § 63-46b-13 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.

- I. 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.
- J. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

ISSUED this 25th day of April, 2001.

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

By: 
Dave D. Lauriski, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in Docket No. 2001-007, Cause No. 245-2 to be mailed with postage prepaid, this 26 day of April, 2001, to the following:

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