

**FILED**

MAR 28 2012

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 BERRY PETROLEUM COMPANY FOR AN ORDER ESTABLISHING A 640 ACRE DRILLING UNIT FOR THE HORIZONTAL WELL, THE FOY TRIBAL 12H-33-55 WELL, FOR PRODUCTION OF OIL AND GAS FROM THE LOWER GREEN RIVER FORMATION UNDERLYING SECTION 33 IN TOWNSHIP 5 SOUTH, RANGE 5 WEST, USM, DUCHESNE COUNTY, UTAH.

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

**Docket No. 2012-007**

**Cause No. 277-01**

This cause came on for hearing before the Utah Board of Oil, Gas, and Mining (the "Board") on Wednesday January 25, 2012, at approximately 2:00 p.m. in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The following Board members were present and participated in the hearing: James T. Jensen, Chairman, Ruland J. Gill, Jr., Jake Y. Harouny, Chris D. Hansen, Kelly L. Payne, Carl F. Kendell, and Jean Semborski. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner, Berry Petroleum Company ("Berry"), was Jerry L. Gonzalez, Senior Landman, and Jeffrey Ehrenzeller, Geologist. A. John Davis, Esq. of Holland & Hart, LLP appeared as counsel for Berry.

Attending and participating on behalf of the Division of Oil, Gas and Mining (the "Division") was Brad Hill, Oil and Gas Permitting Manager, and Clinton Dworshak, Compliance and Public Outreach Manager. The Division was represented by Emily

Lewis, Esq. Assistant Attorney General. The Division expressed its support for the Request for Agency Action (the "Request").

Kathy Olsen, a working interest owner within the Subject Lands, appeared and observed the proceedings.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause shown, hereby enters the following findings of fact, conclusions of law, and order:

#### **FINDINGS OF FACT**

1. Petitioner is a Delaware corporation in good standing having its principal place of business in Denver, Colorado. Petitioner is qualified to do business in Utah and is fully and appropriately bonded with all Federal, Indian, and State of Utah agencies.

2. This Request covers all of Section 33, Township 5 South, Range 5 West, USM (the "Subject Lands").

3. The Subject Lands are within the area generally known as the Brundage Canyon Field. Oil and gas ownership in the Subject Lands consists of Ute Indian and private (fee) lands. Petitioner has leased 100% of the minerals underlying the Subject Lands within the Lower Green River Formation.

4. The requested spacing is for the Foy Tribal 12H-33-55 Well in the Lower Green River Formation underlying the captioned lands, defined as:

That part of the geologic section from 3604 feet (TGR3 Marker) to 5872 feet (base of the Uteland Butte Member/top of Wasatch) found in the Ute Tribal 4-33-55 Well.

5. The Foy Tribal 12H-33-55 Well is a horizontal well, with a surface location of 2,408' FSL and 733' FEL in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Subject Section 33, and a terminus of the productive horizontal located 1,980' FSL and 800' FWL in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Subject Section 33.

6. Currently, there are two producing wells located on the Subject Lands, the Ute Tribal 4-33-55 Well and the Foy Tribal 12H-33-55 Well. Both of these wells are producing from the Lower Green River Formation. Petitioner is the operator of both of these wells.

7. The Foy Tribal 12H-33-55 Well began producing on December 15, 2011. Because this well has been producing only a short time, extensive production and drainage data for this Well is unavailable.

8. No previous Board Order has provided for well spacing for the Subject Lands. To date, development of the Subject Lands has proceeded pursuant to the general statewide well siting rule set forth in Utah Admin. Code R649-3-2.

9. A copy of the Request was sent via certified mail, with return receipt requested, to all mineral, leasehold and production interest owners in the Subject Lands, and to the Bureau of Indian Affairs and the State of Utah and Vernal Field Offices of the Bureau of Land Management.

10. Notice of the filing of the Request and of the hearing thereon was duly published in the Salt Lake Tribune and the Deseret Morning News on January 1, 2012, the Uintah Basin Standard on January 3, 2012, and the Vernal Express on January 4, 2011.

11. The vote of the Board members present at the January 25, 2012 hearing in this cause was unanimous 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 in the form and manner as required by law and the rules and regulations of the Board and Division to all parties whose legally protected interests are affected by the Request.

2. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. § 40-6-1. *et seq.*

3. The Lower Green River Formation, as defined above, constitutes a “common source of supply” as defined in Utah Code Ann. § 40-6-2(18).

4. Utah Admin. Code Rule R649-3-2(6) establishes a “temporary six hundred and forty (640) acre spacing unit” for a horizontal well. However, Utah Admin. Code R649-1-1 states that a “temporary spacing unit shall not be a drilling unit...and does not provide a basis for pooling the interest therein as does a drilling unit.” Because the ownership in the Subject Lands is not uniform, and contains both Indian and fee lands, a

communitization agreement is required in order to pool these interests. Therefore, an Order establishing a “permanent” 640 acre drilling unit is required in order to allow communitization of the captioned lands.

5. Because the exact drainage of this well is not known at this time, the 640 acre spacing, consistent with the temporary spacing unit established under Utah Admin. Code R649-3-2(6), is appropriate until such time as a different drainage pattern can be established.

6. Entry of an Order providing for 640 acre spacing of the Subject Lands for the Foy Tribal 12H-33-55 Well for production from the Lower Green River Formation will be in furtherance of the public policies of this State to promote greater recovery of said resources without waste and with protection of the correlative rights of all affected owners, will allow for the orderly development of the Subject Lands, and is just and reasonable under the circumstances.

7. Although not the Board’s general practice, the Board has on limited prior occasions made spacing orders retroactive to the date of first production of an existing well. This has occurred in cases, like the present one, where such relief aids in the establishment of a federal communitization agreement and where, after notice, no party has objected to this procedure (see Docket No. 2011-019, Cause No. 139-87). Consistent with this limited prior precedent, this Order should be made retroactive to the date of first production for the Foy Tribal 12H-33-55 Well on December 15, 2011.

8. Future vertical wells located in the Lower Green River Formation will not be governed by this Order, but will continue to be located under DOGM's general well location and siting rules as allowed under Utah Admin Code. R649-3-2(5). Vertical wells located on the Subject Lands will not be located within 1,320 feet to any horizontal well completed in and producing from the Lower Green River Formation without first obtaining an exception location from the Division pursuant to Utah Admin. Code R649-3-2(9).

9. This Order mandates the sharing of Lower Green River production from horizontal wells on a section-wide basis without mandating any corresponding sharing of Lower Green River production from vertical wells on the same basis. This practice, depending upon the location of wells and ownership patterns within the lands involved, has the potential to create correlative rights conflicts. In this particular case, these factors do not create any inequities that outweigh the benefits of the requested relief in light of the statutory goals discussed in paragraph 10, below. Petitioner owns 100% of the working interest in the spaced interval within the Subject Lands and the two mineral tracts involved will each contain part of the horizontal well as well as undrilled vertical well locations.

10. The relief granted will result in consistent and orderly development and the greatest recovery of oil, gas and associated hydrocarbons from the Lower Green River Formation underlying the Subject Lands, prevent waste, and adequately protect the correlative rights of all affected parties.

11. Berry has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the Request.

**ORDER**

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

1. The Request in this Cause is granted.
2. A 640 acre drilling unit covering the Subject Lands is established for the Foy Tribal 12H-33-55 Well in the Lower Green River Formation.
3. This drilling unit is limited to the Foy Tribal 12H-33-55 Well. The current vertical well, the Ute Tribal 4-33-55 Well, and all other vertical wells located on the Subject Lands are not covered by this Order, but will continue to be located in conformance with Utah Admin. Code R649-3-2 and other applicable rules. Vertical wells will not be located within 1,320 feet from the horizontal interval of the Foy Tribal 12H-33-55 Well, except as may otherwise be permitted pursuant to Utah Admin. Code R649-3-2(9).
4. This order shall be retroactive to the date of first production for the Foy Tribal 12H-33-55 Well on December 15, 2011.

5. Once Berry has obtained sufficient production data from the Foy Tribal 12H-33-55 Well, they will provide the Division and the Board with economic information for the Well showing that no waste is being committed.

6. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204 through 208, and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

7. This Order is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

8. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. § 63-G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63G-4-401(3)(a) and 403.

9. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this

proceeding that they may apply for reconsideration of this Order. Utah Code Ann. §

63G-4-302. The Utah Administrative Procedures Act provides:

(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 Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

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 that month. Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice

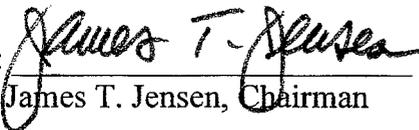
and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

10. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

11. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

DATED this 28<sup>th</sup> day of March, 2011.

STATE OF UTAH  
BOARD OF OIL, GAS, AND MINING

By:   
James T. Jensen, Chairman

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. 2012-007, Cause No. 277-01 to be mailed with postage prepaid, this 30th day of March, 2012, to the following:

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