



David S. Christensen, Esq.  
Assistant Attorney General

Appearances were made by Nicholas F. McKean, for and in behalf of the Petitioners Joseph Fazzio and Maxine T. Fazzio, and Phillip Wm. Lear of Van Cott, Bagley, Cornwall & McCarthy for and in behalf of the Respondents SAM Oil, Inc., Quinex Energy Corporation, John D. Chasel, and Mark B. Oberhansly.

NOW, THEREFORE, the Board, having fully considered the written and oral arguments of counsel, and being fully advised in the premises, now makes and enters Conclusions of Law and Order as follows:

CONCLUSIONS OF LAW

1. The Board of Oil, Gas and Mining has jurisdiction over all matters covered by the Petition for Rehearing and over all parties interested therein, and has power and authority to make and promulgate the Order hereinafter set forth.

2. Due and regular notice of the time, place, and purpose of the July 25, 1985, hearing was given to all interested parties in the form and manner and within the time required by law pursuant to the statutes, rules, and regulations of the Board.

ORDER

IT IS THEREFORE ORDERED that:


1. The Order of the Board dated May 31, 1985, in Cause No. 131-64 is hereby confirmed and ratified.

2. The Petition for Rehearing of Joseph Fazzio and Maxine T. Fazzio is herewith denied.

3. The Board retains continuing jurisdiction over all matters covered by this Order and over all parties affected thereby.

ENTERED this 23rd day of August, 1985.

BOARD OF OIL, GAS AND MINING

By   
Gregory P. Williams  
Chairman

(3572s)



David S. Christensen, Esq.  
Assistant Attorney General

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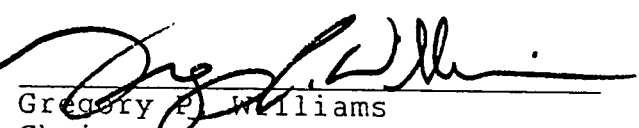
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ENTERED this 23rd day of August, 1985.

BOARD OF OIL, GAS AND MINING

By   
Gregory P. Williams  
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DAVID L. WILKINSON  
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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

JOSEPH FAZZIO, an Oregon	)	
resident, and MAXINE T.	)	
FAZZIO, an Oregon	)	
resident,	)	MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN
Plaintiffs,	)	SUPPORT OF
	)	MOTION TO DISMISS
vs.	)	FOR LACK OF
	)	PROSECUTION
	)	
THE BOARD OF OIL, GAS AND	)	
MINING, Department of Natural	)	
Resources for the State of	)	Civil No. C85-7858
Utah, SAM OIL, INC., a Utah	)	
Corporation, and QUINEX	)	Judge Phillip R. Fishler
ENERGY CORPORATION, a Utah	)	
Corporation.	)	
	)	
Defendants.	)	

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Defendant, Board of Oil, Gas and Mining, by and through  
its attorney, Alan S. Bachman, Assistant Attorney General, hereby  
submits the following Memorandum of Points and Authorities in  
support of its Motion to Dismiss for Lack of Prosecution.

### FACTS

1. On November 20, 1985, a Complaint was filed in this matter by the Plaintiffs herein by and through their attorneys, Alan Brinkerhoff and Louise Knauer of the law firm Watkiss & Campbell. The Complaint challenges an order of the Board of Oil, Gas and Mining in Cause No. 131-64 and Cause No. 131-64A.

2. On January 9, 1986, an Answer was filed by the Defendant Board of Oil, Gas and Mining, by and through its attorney, Barbara W. Roberts, Assistant Attorney General.

3. On January 20, 1986, an Answer was filed by the Defendants Sam Oil, Inc. and Quinex Energy Corporation, by and through their attorneys, Alan L. Sullivan, Phillip Wm. Lear and Patricia Ohlsen of the law firm Van Cott, Bagley, Cornwall & McCarthy.

4. About one and one-half years have passed with no prosecution of this matter in any form whatsoever and without any justification evident from the record herein.

### ARGUMENT

1. Rule 41(b) of the Utah Rules of Civil Procedure provides that "for failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or any claim against him". Additionally, said Rule further provides that unless the court



otherwise directs, such a dismissal "operates as an adjudication upon the merits".


2. Whether to grant or deny this Motion to Dismiss is within the sound discretion of this Court, and such discretion will be upheld on appeal absent a showing of abuse thereof.

Wilson v. Lambert, 613 P.2d 765 (Utah 1980).

3. Given that no action has taken place in this matter for the last eighteen months, this matter should be dismissed with prejudice for lack of prosecution.

DATED this 14<sup>th</sup> day of August, 1987.

DAVID L. WILKINSON  
Attorney General

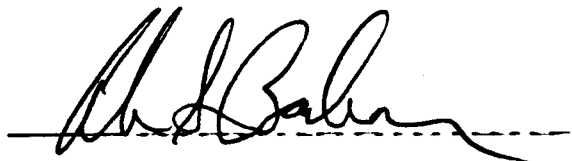
  
ALAN S. BACHMAN  
Assistant Attorney General

MAILING CERTIFICATE

This is to certify that I caused a true and correct copy of the foregoing Memorandum of Points and Authorities in Support of Motion to Dismiss for Lack of Prosecution to be mailed, postage prepaid this 14th day of August, 1987, to:

Allen T. Brinkerhoff, Esq.  
Louise T. Knauer, Esq.  
Watkiss & Campbell  
310 South Main Street  
Suite 1200  
Salt Lake City, Utah 84101

Alan L. Sullivan, Esq.  
Phillip Wm. Lear, Esq.  
Patricia A. Ohlsen, Esq.  
Vancott, Bagley, Cornwall & McCarthy  
50 South Main Street  
Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84145

A handwritten signature in cursive script, appearing to read "A. L. Sullivan", is written over a horizontal dashed line.

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

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IN THE MATTER OF THE PETITION )  
OF SAM OIL, INC. FOR AN ORDER )  
MODIFYING THE ORDER IN CAUSE )  
NO. 131-55 ONLY SO FAR AS SAID )  
CAUSE ORDER AFFECTS SECTION )  
24, TOWNSHIP 1 SOUTH, RANGE 1 )  
WEST, UINTAH COUNTY, UTAH )

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER  
  
Docket No. 85-041  
Cause No. 131-64(A)

This cause came on regularly for hearing before the Board of Oil, Gas and Mining on Thursday, July 25, 1985, at 10:00 a.m. in the Board Room of the Division of Oil, Gas and Mining, Department of Natural Resources, 355 West North Temple, 3 Triad Center, Suite 301, Salt Lake City, Utah, pursuant to the Notice of Rehearing issued by the Board on July 2, 1985.

The following Board members were present:

Gregory P. Williams, Chairman

Charles R. Henderson

E. Steele McIntyre

John M. Garr

Richard B. Larsen

Also present were:

Dr. Dianne R. Nielson, Director  
Division of Oil, Gas and Mining

Ronald Firth, Associate Director  
Division of Oil, Gas and Mining

Barbara W. Roberts, Esq.  
Assistant Attorney General

David S. Christensen, Esq.  
Assistant Attorney General

Appearances were made by Nicholas F. McKean, for and in behalf of the Petitioners Joseph Fazzio and Maxine T. Fazzio, and Phillip Wm. Lear of Van Cott, Bagley, Cornwall & McCarthy for and in behalf of the Respondents SAM Oil, Inc., Quinex Energy Corporation, John D. Chasel, and Mark B. Oberhansly.

NOW THEREFORE, the Board, having fully considered the written and oral arguments of counsel, the testimony adduced and the exhibits received at the original hearing in Cause No. 131-64, and being fully advised in the premises, now makes and enters its Findings of Fact, Conclusions of Law, and Order as follows:

#### FINDINGS OF FACT

1. By Order dated August 11, 1971, in Cause No. 131-14, the then Utah Oil and Gas Conservation Commission established drilling units comprising each governmental section for production of oil, gas, and associated hydrocarbons from the common sources of supply in the Lower Green River/Wasatch Formations affecting all sections in Township 1 South, Range 1 West, U.S.M., and other lands both inside and outside the Bluebell Field in Duchesne and Uintah Counties, Utah.

2. The interval spaced and referred to as the Lower Green River/Wasatch Formations is more specifically defined as follows:

That interval below the stratigraphic equivalent of 9,600 feet depth in the "E" Log of the Carter #2 Bluebell Well located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 3, Township 1 South, Range 2 West, USM (which equivalence is the depth 9,530 feet of the SP curve, Dual Induction Log, run March 25, 1968, in the Chevron #1 Blanchard Well located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 3), to the base of the Green River Formation.

3. The NE $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24 of Township 1 South, Range 1 West, U.S.M., are embraced within the boundaries of the Roosevelt Unit, a federal oil and gas exploration unit, leaving 400 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$  and S $\frac{1}{2}$  of Section 24, Township 1 South, Range 1 West, U.S.M., subject to the spacing requirements established in Cause No. 131-14.

4. By Order dated March 22, 1984, in Cause No. 131-55, the Board modified its Order in Cause No. 131-14 to establish a drilling unit on the 400 acres remaining in Section 24 not embraced within the Roosevelt Unit.

5. No geological or engineering evidence was submitted in Cause No. 131-55 to support the respacing, other than the historical precedent that all sections surrounding the Roosevelt Unit which had been encroached upon by the Roosevelt Unit had been previously respaced without requirement for geological or engineering underpinnings.

6. By Order dated April 27, 1985, in Cause No. 139-42, the Board found that one well would not efficiently drain the drilling units constituting the Altamont, Bluebell, and Cedar Rim-Sink Draw Fields.

7. Section 24 is part of the Greater Altamont-Bluebell Field and is subject to the Order in Cause No. 139-42. That Order authorized two wells to be drilled for production from the same drilling unit on drilling units of 400 acres or more. The Findings of Fact set forth in the Order in Cause No. 139-42 are incorporated herein by reference and for all relevant purposes made a part hereof.

8. By Order dated May 31, 1985, in Cause No. 131-64, the Board modified its Order in Cause No. 131-55 and established drilling units for the common sources of supply in the Lower Green River/Wasatch Formations in the following configurations and acreages:

Drilling Unit A:

Township 1 South, Range 1 West, U.S.M.

Section 24: SE $\frac{1}{4}$ , East 40 acres  
of the E $\frac{1}{2}$ SW $\frac{1}{4}$

(containing 200.0 acres, more or less)

Drilling Unit B:

Township 1 South, Range 1 West, U.S.M.

Section 24: S $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , East 20  
acres of the E $\frac{1}{2}$ SW $\frac{1}{4}$

(containing 200.0 acres, more or less)

9. SAM Oil owns undivided working and overriding royalty interests in acreage included within the Drilling Unit A referred to in Finding of Fact 8 above as follows:

Township 1 South, Range 1 West, U.S.M.

Section 24: N $\frac{1}{2}$ SE $\frac{1}{4}$

(containing 80.0 acres, more or less)

10. Mark B. Oberhansly owns an undivided mineral interest in acreage included within Drilling Unit A referred to in Finding of Fact 8 above as follows:

Township 1 South, Range 1 West, U.S.M.

Section 24: N $\frac{1}{2}$ SE $\frac{1}{4}$

(containing 80.0 acres, more or less)

11. John D. Chasel owns undivided working interests in acreage included within Drilling Unit A referred to in Finding of Fact 8 above as follows:

Township 1 South, Range 1 West, U.S.M.

Section 24: N $\frac{1}{2}$ SE $\frac{1}{4}$

(containing 80.0 acres, more or less)

12. Pursuant to a farmout agreement, Quinex Energy Corporation owns undivided interests in or is entitled to earn undivided working interests owned by Phillips Petroleum Company in acreage included within Drilling Unit A referred to in Finding of Fact 8 above, as follows:

Township 1 South, Range 1 West, U.S.M.

Section 24: S $\frac{1}{2}$ SE $\frac{1}{4}$ , East 40  
acres of the E $\frac{1}{2}$ SW $\frac{1}{4}$

(containing 120.0 acres, more or less)

13. Drilling Unit A is underlain by a common source of supply from the Lower Green River Formation and from the Wasatch "B" Zone and "Three-Fingers" Zone of the Wasatch Formation.

14. Drilling Unit B is underlain by a common source of supply from the Lower Green River Formation and from the Wasatch "B" Zone and "Three-Fingers" Zone of the Wasatch Formation.

15. Porosity in the Wasatch sands ranges from 5% to 9%. Permeability is below 100 millidarcies.

16. Wells drilled in Section 24 will have a drainage radius in the Wasatch sands of approximately 2,000 feet maximum.

17. A well drilled in the SE $\frac{1}{4}$  on Drilling Unit A would not affect lands in Drilling Unit B.

18. Findings of Fact 13 through 17 hereto constitute evidence in addition to the evidence presented in proceedings for Cause Nos. 131-55 and 139-42 which support the downspacing.

19. The Petitioners own mineral interests of record in Drilling Unit B which are currently subject to an oil and gas lease held by Phillips Petroleum Company.



20. Petitioners filed their complaint in the Seventh Judicial District Court of Uintah County seeking termination of the lease by virtue of an alleged breach of implied covenants to drill and develop. The Petitioners' complaint was dismissed by the Seventh Judicial District Court of Uintah County. Petitioners have appealed to the Utah Supreme Court, oral arguments have been made, and all parties are awaiting the decision of the Utah Supreme Court.

21. Petitioners are entitled to participate in proceeds of production from any well drilled on Drilling Unit B.

#### CONCLUSIONS OF LAW

1. The Board of Oil, Gas and Mining has jurisdiction over all matters covered by the Petition for Rehearing and over all parties interested therein, and has power and authority to make and promulgate the Order hereinafter set forth.

2. Due and regular notice of the time, place, and purpose of the July 25, 1985 hearing was given to all interested parties in the form and manner and within the time required by law pursuant to the statutes, rules, and regulations of the Board.

3. Geological and engineering evidence presented in Cause No. 139-42 supports the downspacing of lands subject to

the spacing orders affecting the Greater Altamont-Bluebell Fields of which Section 24 is a part.

4. Findings of Fact 13 through 17 hereto constitute new facts supporting the downspacing established in Cause No. 131-64.

5. Respondent SAM Oil, Inc. met its burden of proof in support of its petition to down-space the 400-acre drilling unit to two 200-acre drilling units in that the evidence offered and received at the hearing in Cause No. 131-64, as supported by the evidence adduced in Cause No. 139-42, was "substantial evidence" supporting a change in knowledge of the geologic and engineering conditions of the spaced interval, such that the 400-acre drilling unit would not efficiently and economically drain the said pool or common source of supply in Section 24.

6. A 400-acre drilling unit in Section 24 no longer serves to prevent waste or to provide for the operation and development of oil and gas properties in such a manner that the greatest ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners may be fully protected.

7. The establishment of Drilling Unit "A" and Drilling Unit "B" under the Board's Order in Cause No. 131-64 dated May 31, 1985, is justified, in light of the new

geological and engineering evidence to the effect that one well would drain an area no greater than an area circumscribed by a drainage circle having a 2,000-foot radius.

8. The correlative rights of the Petitioners, Joseph Fazzio and Maxine T. Fazzio, in Drilling Unit "B" would not be adversely affected by a well drilled in Drilling Unit "A."

9. The Board's order in Cause No. 131-64 is lawful and reasonable in that it protects the correlative rights of the Petitioners Joseph Fazzio and Maxine T. Fazzio to enjoy their just and equitable shares produced from any well drilled to the common source of supply in Drilling Unit "B."

10. The Petition of Joseph Fazzio and Maxine T. Fazzio for an Order of this Board vacating the May 31, 1985 Order in Cause No. 131-64, establishing two 200-acre drilling units denominated as Drilling Unit "A" and Drilling Unit "B," should be denied.

#### ORDER

IT IS THEREFORE ORDERED that:

In order to foster, encourage, and promote the development, production, and utilization of oil and gas in such a manner as will prevent waste; will provide for the greatest ultimate recovery of oil and gas; will protect correlative rights of all owners; and will avoid the drilling of

unnecessary wells; the following Order is hereby promulgated to govern operation on the lands described in Finding of Fact 8 above:

1. The Order of the Board dated May 31, 1985, in Cause No. 131-64 is hereby confirmed and ratified.
2. Petition of Joseph Fazzio and Maxine T. Fazzio is herewith denied.
3. The Board retains continuing jurisdiction over all matters covered by this Order and over all parties affected thereby.

ENTERED this \_\_\_\_ day of August, 1985, but effective as of July 25, 1985, with the appeal period running from July 25, 1985.

BOARD OF OIL, GAS AND MINING

By \_\_\_\_\_  
Gregory P. Williams  
Chairman

APPROVED AS TO FORM:

\_\_\_\_\_

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