

**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 WESCO OPERATING, INC. for an order establishing a special drilling unit for the Threemile Unit 12-2-29-21 Horizontal Well for the production of oil and associated gas and hydrocarbons from the Cane Creek Shales comprised of portions of Sections 1 and 12, Township 29 South, Range 21 East, SLM, and Section 6, Township 29 South Range 22 East, SLM, San Juan County, Utah.

**Docket No. 2017-012
Cause No. 166-09**

INDEX OF ORDERS

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	06/07/2017	Findings of Fact, Conclusions of Law and Order

FILED

JUN 07 2017

**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 WESCO OPERATING, INC. FOR AN ORDER ESTABLISHING A SPECIAL DRILLING UNIT FOR THE THREEMILE UNIT 12-2-29-21 HORIZONTAL WELL FOR THE PRODUCTION OF OIL AND ASSOCIATED GAS AND HYDROCARBONS FROM THE CANE CREEK SHALES COMPRISED OF PORTIONS OF SECTIONS 1 AND 12, TOWNSHIP 29 SOUTH, RANGE 21 EAST, SLM, AND SECTION 6, TOWNSHIP 29 SOUTH RANGE 22 EAST, SLM, SAN JUAN COUNTY, UTAH

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

Docket No. 2017-012

Cause No. 166-09

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the “Board”) on Wednesday, May 24, 2017, at approximately 10:10 a.m., in the Vernal City Council Chambers in Vernal, Utah. The following Board members were present and participated at the hearing: Chairman Ruland J. Gill, Jr., Carl F. Kendell, Susan S. Davis, Chris D. Hansen and Michael R. Brown. Board members Gordon L. Moon and Richard K. Borden were unable to attend. The Board was represented by Meg Osswald, Esq., Assistant Attorney General.

Participating and testifying on behalf of Petitioner Wesco Operating, Inc. (“Wesco”) were Steven Degenfelder – Landman, Mike Bingle-Davis – Geologist, and Tom Kirkwood

– Petroleum Engineer. Messrs. Bingle-Davis and Kirkwood were recognized by the Board as experts in 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 Wesco.

The Division of Oil, Gas and Mining (the “Division”) did not file a staff memorandum in this Cause but participated in the hearing. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney for the Division. At the conclusion of Wesco’s presentation in chief, Mr. Alder expressed that the Division supported the granting of Wesco’s Request for Agency Action filed on April 5, 2017 (the “Request”), as conformed to the testimony and other evidence provided at the hearing.

By Letter filed with the Board on May 10, 2017, the United States Bureau of Land Management (“BLM”), Moab Field Office, expressed its support for the granting of the Request. However, no one from the BLM made an appearance at the hearing.

No other party filed a response to the 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. 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 following San Juan County, Utah lands:

Township 29 South, Range 21 East, SLM

Section 1: E $\frac{1}{2}$ SE $\frac{1}{4}$
Section 12: NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$

Township 29 South, Range 22 East, SLM

Section 6: Lots 6 (38.10) and 7 (38.14)
[W $\frac{1}{2}$ SW $\frac{1}{4}$]

(containing 396.24 acres)

(the “Subject Lands”), are owned by the United States of America, administered by the BLM, and subject to the following Federal oil and gas leases:

<u>Lease</u>	<u>Lands</u>
UTU-76349	Sec. 6: Lots 6 and 7 [W $\frac{1}{2}$ SW $\frac{1}{4}$]
UTU-76580	Sec. 1: E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 12: NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$

(the “Subject Leases”). The operating rights in the Subject Leases as relevant to the Cane Creek Shales, defined for the purpose of this Cause as follows:

the stratigraphic equivalent of the interval from 7,548 feet to 7,638 feet MD as identified on the Gamma Ray Log run on November 15, 2010 for the Three Mile 12-7 Well with a surface location in the NW¼SE¼ of Section 12, T29S, R21E, SLM,

(the “Subject Formation”), are owned by Kirkwood Oil & Gas LLC (“Kirkwood”), Nerd Gas Company LLC (“Nerd”), and Little Water Creek, LLC (“LWC”).

3. The Subject Lands and Subject Leases are effectively committed to the Threemile Federal Exploratory Unit (the “Unit”), approved by the BLM effective April 28, 2008. Wesco currently serves as Unit Operator.

4. The S½NE¼ and N½SE¼ of Section 12 are included within the Initial Cane Creek Participating Area “A” of the Unit, comprised of 474.63 acres and which formation equates to the Subject Formation.

5. The Subject Formation is comprised of interbedded gray shale, anhydrite and black, carbonaceous shale, which have low permeability with some natural fracturing. The geologic cross-section admitted into evidence as Exhibit “H” reflects the consistency of the Subject Formation through, in and around the Subject Lands, and that there are confining salt intervals above and below the Subject Formation. The Subject Formation constitutes a common source of supply of oil and associated gas and hydrocarbons.

6. Pursuant to an application to drill approved by both the BLM and the Division, Fidelity Exploration & Production Company, Wesco’s predecessor as operator

of the Unit and Kirkwood and Nerd's predecessor in title, spud the Threemile Unit 12-2-29-21 Well (the "Subject Well") on August 8, 2014 at a surface location 2,103 feet FSL and 1,924 feet FEL in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, and drilled it horizontally, with first intersection with the Subject Formation at 2,491 feet FSL and 1,782 feet FEL in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, and a terminus at 2,153 feet FSL and 10 feet FWL in Lot 6 [NW $\frac{1}{4}$ SW $\frac{1}{4}$] of Section 6. The Subject Well was completed on October 14, 2016 by Wesco as a producing oil well from the Subject Formation and with first production achieved on October 15, 2016. However, despite several months of testing and production, Wesco has determined, and the BLM, by Letter dated March 21, 2017, has agreed, that the Subject Well will not satisfy the "Unit Paying Quantities" criteria under the governing Unit Agreement, *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 is to be allocated on a wellbore basis.

7. The lateral and perforated intervals of the Subject Well extend over portions of both of the Subject Leases and the existing Unit participating area. As a consequence, the BLM has requested Wesco to obtain an order from 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. Under the terms of that communitization agreement, production from the Subject Well shall be

allocated on a pro-rata acreage basis to the production interest owners in the Subject Leases (as to the lands outside the Unit participating area), and to all of the production interest owners in the Unit participating area (as to the lands within the Unit). However, LWC affirmatively elected not to participate in the drilling of the Subject Well.

8. Wesco's volumetric calculations, as depicted on Exhibits "K" and "L," with Mr. Kirkwood's supporting testimony and with the BLM's concurrence, reflect that the Subject Well will not drain more than the Subject Lands through its existing perforated intervals. Consequently, the Subject Lands are not smaller than the maximum area that can be effectively and economically drained by the Subject Well.

9. The testimony presented supports that a 400-ft. set back between the Subject Well and the productive intervals of any new well drilled in accordance with an annual plan of Unit development adopted by the BLM pursuant to the governing Unit Agreement and producing from the Subject Formation should prevent any communication between the wells, 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 all of the Subject Lands are otherwise included within the Unit and a Unit participating area, Wesco desires that the requested drilling unit be suspended, the conforming communitization agreement be terminated, and the terms of the Threemile Unit Agreement then govern, particularly

the participating area allocation provisions set forth therein. Said suspension is to become effective as of the effective date of the BLM's approval of the inclusion of all of the Subject Lands into a Unit participating area.

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 San Juan County records, and based on Wesco's internal records, to all production interest owners in the Subject Leases covering, and to both the State and Field Offices of the BLM, the governmental agency owning the oil and gas and having jurisdiction over said minerals underlying, the Subject Lands, and additionally to all production interest owners in the Unit participating area. Copies of the return receipts, evidencing receipt of such mailings, or of the returned mailings 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 and admitted into evidence by the Board as Exhibit "Z" as supplemented.

12. Notice of the filing of the Request and of the hearing thereon was duly published in the San Juan Record on May 3, 2017, the Moab Times-Independent on May 4, 2017, and in the Salt Lake Tribune and Deseret Morning News on May 7, 2017.

13. The vote of the Board members present in the hearing and participating in this Cause was unanimous (5-0) 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 matters 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) and (8).

3. Wesco has sustained its burden of proof, demonstrated good cause and satisfied all legal requirements for the granting of the Request as conformed to the testimony and other evidence provided at the hearing.

4. Creation of a special drilling unit for the Subject Well for production from the Subject Formation and comprised of the Subject Lands, retroactively to October 15, 2016, its date of first production, is required for the protection of the correlative rights of the parties owning interests in the Subject Leases, and the Unit participating area, 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. The Board has the authority to create a drilling unit retroactive to the date of first production upon proper notice of the Board's proceedings and if no objections are received pursuant to Utah Code Ann. §40-6-6(8) (eff. 5/9/17).

5. Suspension of said drilling unit upon the BLM's approval of inclusion of all of the Subject Lands within the Unit and a Unit participating area is fair, reasonable and justified under the circumstances.

6. Adoption of the 400-foot set back, between the Subject Well and the productive intervals of any new well drilled in accordance with an annual plan of Unit development adopted by the BLM pursuant to the governing Unit Agreement and producing from the Subject Formation, as requested by Wesco, 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 oil and associated gas and hydrocarbons from the Subject Formation 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 as conformed to the testimony and other evidence provided at the hearing is granted.

2. A special drilling unit for the Subject Well for the production of oil and associated gas and hydrocarbons from the Subject Formation comprised of the Subject Lands is hereby established, retroactive to October 15, 2016, the date of first production from said Well.

3. No productive intervals of any new well drilled in accordance with an annual plan of Unit development adopted by the BLM pursuant to the governing Unit Agreement and producing from the Subject Formation may be located closer than 400 feet from the Subject Well 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 without further order of the Board as of the effective date of the BLM's approval of the inclusion of all of the drilling unit lands in the Unit and a Unit participating area. Wesco, 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. 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.

6. 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.

7. 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

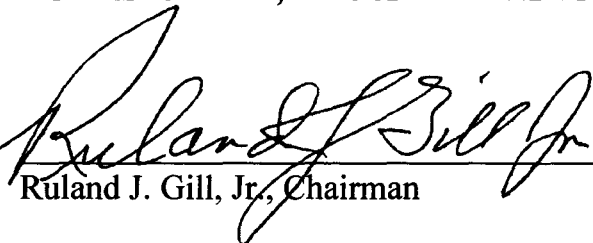
matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

8. 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.

9. 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 7th day of June, 2017.

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

By: 
Ruland J. Gill, Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2017, I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** for Docket No. 2017-012, Cause No. 166-09, to be mailed with postage prepaid, via E-mail, Certified Mail, or First Class Mail, to the following:

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