

APR 12 2004

SECRETARY, BOARD OF OIL, GAS & MINING

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

Original

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF WESTPORT OIL AND GAS COMPANY, L.P. FOR AN ORDER VACATING IN PART, AND MODIFYING IN PART, THE SPACING ORDER IN CAUSE NO. 210-1 TO PROVIDE FOR THE DRILLING OF ADDITIONAL WELLS TO ACHIEVE A WELL DENSITY EQUIVALENT TO 40-ACRE WELL SPACING, FOR DEVELOPMENT OF THE EXISTING COMMUNITIZED AREA IN THE E 1/2 OF SECTION 4, AND TO PROTECT CORRELATIVE RIGHTS PERTAINING TO CERTAIN IDENTIFIED SMALL LOTS, FOR THE PRODUCTION OF GAS AND ASSOCIATED HYDROCARBONS FROM THE TOP OF THE WASATCH FORMATION DOWN THROUGH THE BASE OF THE MESA VERDE GROUP TO INCLUDE THE SEGO SANDSTONE, CASTLEGATE SANDSTONE AND BLACK HAWK FORMATIONS IN OR NEAR THE BITTER CREEK FIELD AREA, COMPRISING SECTIONS 1-6 AND 8-17 IN TOWNSHIP 11 SOUTH, RANGE 22 EAST, S1.M, UTAH COUNTY, UTAH

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Docket No. 2004-001

Cause No. 210-04

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, February 25, 2004, at the hour of 10:00 a.m. The following Board members were present and participated at the hearing: Chairman W. Allan Mashburn, Robert J. Bayer, Stephanie Cartwright, Douglas E. Johnson, J. James Peacock, and Kent R. Petersen. The Board was represented by Stephen G. Schwendiman, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Westport Oil and Gas Company, L.P. ("Westport") were: Bruce E. Johnston, Land Manager-Western Division; David B. Koval, Geologist-Western Division; and Gary D. Davis, Geologist and Exploration Manager-Western Division. Frederick M. MacDonald, Esq., of and for Pruitt, Gushee & Bachtell, appeared as attorney for Westport.

Testifying on behalf of the Division of Oil, Gas and Mining (the "Division") was Dustin K. Doucet - Petroleum Engineer. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney on behalf of the Division.

Attending and participating on behalf of the Bureau of Land Management ("BLM") was Assad Raffoul - Petroleum Engineer.

One letter from Logan MacMillan purportedly concerning this cause was received by the Board on February 18, 2004. In the letter, Mr. MacMillan acknowledged that he "is not a party in the legal context to this matter." Neither Mr. MacMillan nor any other party appeared or participated at the hearing.

At the conclusion of the Division's presentation, Westport and the Division stipulated that Westport would provide to the Division type logs from which stratigraphic definitions of the top of the Wasatch formation and the base of the Mesaverde Group would be derived. Those definitions, subject to the Division's concurrence, would then be utilized in the final order of the Board, presuming the Request for Agency Action was granted. With the Stipulation, the Division expressed its support for the Request for Agency Action. The BLM also expressed its support for the Request for Agency Action.

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

1. Westport is a Delaware limited partnership in good standing and authorized to conduct business in the State of Utah. It is duly bonded with all appropriate State of Utah and Federal agencies relative to this cause.

2. By the Order entered in Cause No. 210-1 on July 26, 1984 (the "1984 Order"), the Board established 320-acre vertical drilling units, comprised of the E½ and W½ of each section, for the development and production of gas and associated hydrocarbons from the Wasatch, Mesaverde, Sego and Castle Gate formations in the following described Uintah County, Utah lands:

Township 11 South, Range 22 East, SLM

Section 1: All (701.28 acres)
Section 2: All (700.60 acres)
Section 3: All (701.24 acres)
Section 4: All (700.56 acres)
Section 5: All (699.12 acres)
Section 6: All (614.64 acres)
Section 8: All (640.00 acres)
Section 9: All (640.00 acres)
Section 10: All (640.00 acres)
Section 11: All (640.00 acres)
Section 12: All (640.00 acres)
Section 13: All (640.00 acres)
Section 14: All (640.00 acres)
Section 15: All (640.00 acres)
Section 16: All (640.00 acres)
Section 17: All (640.00 acres)

(hereinafter the "Subject Lands"), and authorized one well in each such unit.

3. The gas and associated hydrocarbons underlying Section 2 and 16 of the Subject Lands are owned by the State of Utah and are administered by the Utah School and Institutional Trust Lands Administration, while the gas and associated hydrocarbons are underlying the remainder of the Subject Lands are owned by the United States and administered by the BLM. All of the Subject Lands are subject to State and Federal oil and gas leases, many of which Westport is the owner of the record title and operating rights.

4. Geologic and engineering data obtained from existing gas wells drilled directly north of the Subject Lands on a 40 acre density pattern, and from existing gas wells drilled on the Subject Lands, indicates the Wasatch sands are not correlative from well to well due to sea level fluctuations in the depositional environment. This indicates that additional productive sands may be encountered in every wellbore drilled on the Subject Lands, even if on a 40 acre density pattern.

5. Although less technical data has been generated with respect to the Mesaverde Group, which includes the Sege Sandstone, Castlegate Sandstone and Black Hawk formations, it nevertheless appears that the characteristics of the Mesaverde Group are similar to the Wasatch sands.

6. There is a probability that, if development of the Wasatch and Mesaverde Group does not occur on a 40 acre density pattern, valuable resources will not be recovered.

7. As evidenced by the submittal of this Findings of Fact, Conclusions of Law and Order (this "Order"), Westport and the Division have stipulated that the top of the Wasatch formation is defined as the stratigraphic equivalent of 3,790 feet as shown on the electric log of the Willow Creek Unit #1 well located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, Township 11 South, Range 21 East, SLM, and as the stratigraphic equivalent of 5,552 feet as shown on the electric log of the Ouray #34-79 well located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 8 South, Range 21 East, SLM, and the base of the Mesaverde Group is defined as the stratigraphic equivalent of approximately 9,550 feet in said Willow Creek Unit #1 well (a stratigraphic equivalent which lies approximately 20 feet below the base of the electric log for said well), and as the stratigraphic equivalent of 11,718 feet as shown on the electric log of the said Ouray #34-79 well. The interval from the top of the Wasatch formation to the base of the Mesaverde Group as so defined is hereinafter referred to as the "Subject Interval."

8. The Subject Interval constitutes a common source of supply of gas and associated hydrocarbons for the Subject Lands.

9. A density pattern of one well per 40 acres (or lot or lots substantially equivalent thereto) for the Subject Lands will effectively and economically drain the Subject Interval.

10. There is an existing communitization agreement (UTU-80666) covering Lots 1, 2, 7 and 8, the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ [E $\frac{1}{2}$] of Section 4, entered into in part based on the 1984 Order. To avoid interference with the contractual rights of the parties under said agreement, modification (rather than vacation) of the 1984 Order, to allow up to

eight (8) wells for the production of gas and associated hydrocarbons from the Subject Interval, is appropriate.

11. Lots 3 (15.05 acres) and 4 (14.85 acres) of Section 4 and Lots 1 (14.76 acres), 2 (14.78 acres) 3 (14.78 acres) and 4 (14.80 acres) of Section 5 (hereinafter referred to as the "Orphan Lots") are covered by separate Federal leases and cannot, with any practicality, be independently developed.

12. A copy of the Request for Agency Action was mailed to the royalty, overriding royalty, working interest, and other production interest owners within the Subject Lands as disclosed by the appropriate Federal, State and County realty records.

13. Notice was duly published in the Salt Lake Tribune, Deseret Morning News and Vernal Express, as required by Utah Admin. Code Rule R641-106-100.

14. 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.

CONCLUSION OF LAW

1. Due and regular notice of the time, place, and purpose of the hearing was properly given to all interested parties 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 for Agency Action 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 and 40-6-6.

3. Westport has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of its Request for Agency Action.

4. Vacating the 1984 Order as to all of the Subject Lands except Lots 1, 2, 7 and 8, S½NE¼ and SE¼ [E½] of Section 4, to allow future drilling on a 40 acre density pattern by default under the general well siting rule codified at Utah Code Rule R649-3-2, will result in the orderly development and greatest recovery of gas and associated hydrocarbons, prevent waste, adequately protect the correlative rights of all affected parties, and is just and reasonable under the circumstances.

5. Modifying the 1984 Order as to Lots 1, 2, 7 and 8, S½NE¼ and SE¼ [E½] of Section 4, to allow up to eight (8) wells on the drilling unit comprised of said land for the production of gas and associated hydrocarbons from the Subject Interval, with the proviso that the permitted additional wells shall be located no closer than 920 feet from other wells completed in and producing gas and associated hydrocarbons from the Subject Interval and no closer than 460 feet from the exterior boundary of the drilling unit without approval as provided in Utah Admin. Code Rule R649-3-3, will result in the orderly development and greatest recovery of said resources from said lands, prevent waste, adequately protect the contractual rights of the parties to Communitization Agreement UTU-80666 and correlative rights of all affected parties, and is just and reasonable under the circumstances.

6. Westport's request for "authority" from the Board for the owners of the Orphan Lots to participate and share in costs/revenue with the owners of the lots immediately adjacent to the south of each respective Orphan Lot is accomplished through the establishment of drilling and spacing units. Thus, the establishment of the following

drilling and spacing units for the production of gas and associated hydrocarbons from the Subject Interval:

- a) Lots 3 and 6 and Lots 4 and 5 of Section 4, respectively; and
- b) Lots 1 and 8, Lots 2 and 7, Lots 3 and 6, and Lots 4 and 5 of Section 5 respectively,

with the authorization of one well per such unit and the proviso that said well shall be located no closer than 920 feet from other wells completed in and producing gas and associated hydrocarbons from the Subject Interval and no closer than 460 feet from the exterior of the drilling unit without approval as provided in Utah Admin. Code Rule R649-3-3, will result in the orderly development and greatest recovery of gas and associated hydrocarbons from said lands, prevent waste, adequately protect the correlative rights of all affected parties, and is just and reasonable under the circumstances.

7. All existing wells located on the Subject Lands and producing gas and associated hydrocarbons for the Subject Interval are deemed to be located at lawful locations, notwithstanding the consequences of the relief granted herein.

8. Mr. MacMillan is not an "interested party" to this cause and, in any event, his response is deemed tardy. His letter is not required to be considered by the Board in rendering its decision.

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:

1. The Request for Agency Action in this cause is granted.

2. The Board's Order entered in Cause No. 210-1 on July 26, 1984 is hereby vacated insofar and only insofar as it pertains to the following lands:

Township 11 South, Range 22 East, SLM

Sections 1 through 3: All

Section 4: W $\frac{1}{2}$

Sections 5 and 6: All

Sections 8 through 17: All.

3. The Board's Order in Cause No. 210-1 on July 26, 1984 still remains in effect insofar and only insofar as it pertains to the following lands:

Township 11 South, Range 22 East, SLM

Section 4: Lots 1, 2, 7, and 8, S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ [E $\frac{1}{2}$],

but is hereby modified to allow up to eight (8) wells on said unit for the production of gas and associated hydrocarbons for the Subject Interval; provided, however, that the permitted additional wells shall be located no fewer than 920 feet from other wells completed in and producing gas and associated hydrocarbons from the said interval, and no closer than 460 feet from the exterior boundary of the drilling unit without approval as provided in Utah Admin. Code R649-3-3.

4. The following drilling and spacing units are established for the production of gas and associated hydrocarbons from the Subject Interval:

Township 11 South, Range 22 East, SLM

- Section 4: Lots 3 (15.05) and 6 (40)
- Section 4: Lots 4 (14.85) and 5 (40)
- Section 5: Lots 1 (14.76) and 8 (40)
- Section 5: Lots 2 (14.78) and 7 (40)
- Section 5: Lots 3 (14.78) and 6 (40)
- Section 5: Lots 4 (14.80) and 5 (40).

One well per unit is authorized; provided, however, that no well shall be located fewer than 920 feet from another well completed in and producing gas and associated hydrocarbons for the said interval, and no closer than 460 feet from the exterior boundary of the drilling unit without approval as provided in Utah Admin. Code Rule R649-3-3.

5. All existing wells located in the Subject Lands and producing gas and associated hydrocarbons from the Subject Interval shall, notwithstanding the consequences of the Orders set forth above, be deemed to be located at lawful locations.

6. 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.

7. 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. § 63-46b-10 and Utah Administrative Code Rule R641-109.

8. 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.

9. 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.

10. 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 12th day of April, 2004.

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

By: W. Allan Mashburn
W. Allan Mashburn, 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. 2004-001, Cause No. 210-04 to be mailed with postage prepaid, this 14th day of April, 2004, to the following:

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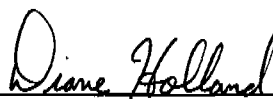
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FILED

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

JAN 14 2004

SECRETARY, BOARD OF
OIL, GAS & MINING

IN THE MATTER OF THE REQUEST FOR AGENCY)
ACTION OF WESTPORT OIL AND GAS COMPANY,)
L.P. FOR AN ORDER VACATING IN PART, AND)
MODIFYING IN PART, THE SPACING ORDER IN)
CAUSE NO. 210-1 TO PROVIDE FOR THE DRILLING)
OF ADDITIONAL WELLS TO ACHIEVE A WELL)
DENSITY EQUIVALENT TO 40-ACRE WELL)
SPACING, FOR DEVELOPMENT OF THE EXISTING)
COMMUNITIZED AREA IN THE E1/2 OF SECTION 4,)
AND TO PROTECT CORRELATIVE RIGHTS)
PERTAINING TO CERTAIN IDENTIFIED SMALL)
LOTS, FOR THE PRODUCTION OF GAS AND)
ASSOCIATED HYDROCARBONS FROM THE TOP OF)
THE WASATCH FORMATION DOWN THROUGH)
THE BASE OF THE MESAVERDE GROUP TO)
INCLUDE THE SEGO SANDSTONE, CASTLEGATE)
SANDSTONE AND BLACK HAWK FORMATIONS IN)
OR NEAR THE BITTER CREEK FIELD AREA,)
COMPRISING SECTIONS 1-6 AND 8-17 IN)
TOWNSHIP 11 SOUTH, RANGE 22 EAST, SLM,)
UINTAH COUNTY, UTAH)

**ORDER GRANTING MOTION
FOR CONTINUANCE**

Docket No. 2004-001

Cause No. 210-04

The Board of Oil, Gas and Mining having considered the motion of Westport Oil and Gas Company, L.P. ("Westport") for an order continuing the hearing on this matter to the regularly scheduled February 25, 2004 hearing date and to continue until January 26, 2004 the date for filing exhibits and responses herein; and being fully advised in the premises

IT IS HEREBY ORDERED this matter is continued to the regularly scheduled hearing on February 25, 2004 and all interested parties are granted leave until January 26, 2004 to file their motions, responses and exhibits.

ENTERED this 14th day of January, 2004.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


ALLAN MASHBURN, CHAIRMAN

IT IS HEREBY ORDERED this matter is continued to the regularly scheduled hearing on February 25, 2004 and all interested parties are granted leave until January 26, 2004 to file their motions, responses and exhibits.

ENTERED this _____ day of January, 2004.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

ALLAN MASHBURN, CHAIRMAN

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Order Granting Motion of Continuance** for Docket No. 2004-001, Cause No. 210-04 to be mailed with postage prepaid, this 14 day of January, 2004, to the following:

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