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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 XTO ENERGY INC. FOR AN ORDER ESTABLISHING 160-ACRE (OR SUBSTANTIAL EQUIVALENT THEREOF) DRILLING AND SPACING UNITS FOR THE PRODUCTION OF GAS (INCLUDING BUT NOT LIMITED TO COALBED METHANE) FROM THE FERRON FORMATION IN SECTION 35, TOWNSHIP 16 SOUTH, RANGE 7 EAST, SLM, AND IN A PORTION OF SECTION 1 AND IN SECTION 2, TOWNSHIP 17 SOUTH, RANGE 7 EAST, SLM, EMERY COUNTY, UTAH

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

Docket No. 2006-003

Cause No. 245-04

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, April 26, 2006, at 10:00 a.m. The following Board members were present and participated at the hearing: Chairman J. James Peacock, Robert J. Bayer, Douglas E. Johnson, Kent R. Petersen, Samuel C. Quigley, Jean Semborski and Jake Y. Harouny. At the commencement of the hearing, Chairman Peacock advised that he was a royalty owner in wells operated by Petitioner XTO Energy Inc. ("XTO") located approximately 6 miles to the south of the lands which are the subject of this Cause, and offered to recuse himself if there were any objections to his participation as a consequence of those circumstances. No objections were voiced. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of XTO were Dan C. Foland – Division Landman, Lance Cook, P.G. – Manager of Geology, Rocky Mountain and Special Projects, and Leonard L. West,

P.E. – Manager of Special Projects. Frederick M. MacDonald, Esq., of and for Pruitt Gushee, a Professional Corporation, appeared as attorney for XTO.

Testifying on behalf of the Division of Oil, Gas and Mining (the “Division”) was Brad Hill, Oil & Gas Permitting Manager. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney on behalf of the Division. The Division expressed its support for the granting of the Request for Agency Action at the conclusion of its presentation.

At the conclusion of XTO’s and the Division’s presentation, Assad Raffoul, Petroleum Engineer, Utah State Office of the Bureau of Land Management, made an appearance and expressed his Agency’s support for the granting of the Request for Agency Action. No other party filed a response to XTO’s Request for Agency Action 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.

FINDINGS OF FACT

1. XTO is a Delaware corporation with its principal place of business in Fort Worth, Texas. XTO is duly qualified to conduct business in the State of Utah and is fully and appropriately bonded with all relevant Federal and State of Utah agencies.

2. The following described lands located in Emery County were, as of the date of the hearing, not subject to any spacing order of the Board:

Township 16 South, Range 7 East, SLM

Section 35: All

Township 17 South, Range 7 East, SLM

Section 1: Lots 3, (14.70), 4 (14.43),
5 (40), 6 (40), 11 (40) and
12 (40)

Section 2: Lots 1 (14.18), 2 (13.92),
3 (13.68), 4 (13.42), 5 (40),
6 (40), 7 (40), 8 (40), 9 (40),
10 (40), 11 (40) and 12 (40),
S $\frac{1}{2}$ [All]

(hereinafter the "Subject Lands").

3. The gas ownership and leasehold status of the Subject Lands are as follows:

<u>Lands</u>	<u>Gas Ownership</u>	<u>Lease No.</u>
Sec. 35: N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$	United States	UTU-73085
Sec. 35: S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$	United States	UTU-73872
Sec. 35: NW $\frac{1}{4}$	United States	UTU-75208
Sec. 1: Lots 3, 6, 11 and 12	United States	UTU-74822
Sec. 1: Lots 4 and 5	United States	UTU-74963

Sec. 2:	Lots 1-7 and 10-12, SW¼	United States	UTU-74822
Sec. 2:	Lots 8 and 9, SE¼	State of Utah	ML-48003.

XTO is the sole lessee and operating rights owner under each lease. Brad J. and Linda S. Hays, as joint tenants, Gundi B. Hays and Mary K. Hecker are overriding royalty interest owners in Lease UTU-73085. Other than the Federal and State royalty owners, there are no other production interest owners in said leases.

4. The Ferron formation for purposes of this Cause is defined as follows:

The stratigraphic equivalent of the interval between 4,191 feet (top of the Upper Ferron Sandstone) and 4,511 feet (base of the Lower Ferron Sandstone/Top of Tununk Shale) as seen on the gamma ray log track for the Utah Federal #16-7-35-21 Well, located in the NE¼NW¼ of Section 35, Township 16 South, Range 7 East, SLM, Emery County, Utah.

5. XTO has succeeded Texaco Exploration and Production Inc. and Chevron U.S.A. Inc. as operator of the following wells located on the Subject Lands and which currently produce from the Ferron formation as so defined:

<u>Well Name</u>	<u>Location</u>	<u>Date of First Production</u>
Federal "KK" 1-140	Sec. 1: Lot 11 (2708' FNL-412' FSL /1427' FWL)	10/18/02
Zions Federal 35-137	Sec. 35: NE¼SE¼ (2031' FSL/787' FEL)	9/9/03

Zions Federal 35-135R

Sec. 35: NE¹/₄SW¹/₄
(1326' FSL/1653' FWL)

9/12/03.

In addition, XTO drilled the following wells in 2005 which will be completed in the Ferron formation as so defined shortly following the lifting of winter lease stipulation restrictions for the 2005-2006 season:

<u>Well Name</u>	<u>Location</u>
Utah Federal 16-7-35-21	Sec. 35: NE ¹ / ₄ NW ¹ / ₄ (284' FNL/1654' FWL)
Utah Federal 16-7-35-32	Sec. 35: SW ¹ / ₄ NE ¹ / ₄ (2127' FNL/2414' FEL).

Each well was drilled in accordance with an application for permit to drill approved by the Division, including exception location approvals in accordance with Utah Admin. Code Rule R649-3-3. XTO also is in the process of permitting two wells to be drilled in anticipation of gas production from the Ferron formation as so defined in subject Section 2 during 2006.

6. XTO also operates the Huntington (Shallow) CBM Unit, located to the east of the Subject Lands, which currently contains 42 wells producing gas from the Ferron formation. Development of the Unit area has occurred, and continues to occur, based on a 160-acre well density pattern.

7. The Board, through orders entered in the series of Cause Nos. 137, 241, 243 and 245, has uniformly established 160-acre (or substantial equivalent thereof) drilling and

spacing units for gas (including coalbed methane) production from the Ferron formation throughout Carbon and Emery Counties which is commonly referred to as the Ferron Fairway.

8. The coals within the Ferron formation underlying the Subject Lands are of uniform content and rank with those underlying the lands within the Huntington Unit and other portions of the Ferron Fairway, and the Ferron formation, including all coal and surrounding sands, generally constitute a common source of gas in the Subject Lands and correlates with said formation as underlying the lands within the Huntington Unit and lands which are the subject of the Orders in the series of Cause Nos. 137, 241, 243 and 245.

9. Production data from XTO's wells reflect an approximate 72% recovery rate for wells producing gas from the Ferron formation drilled on a 160-acre density pattern. Furthermore, XTO's economic analyses reflect an optimum rate of return of approximately 43% for such wells based on a 160-acre density pattern. Therefore, one well producing gas from the Ferron formation as so defined will economically and efficiently drain approximately 160-acres, and the existing wells described in Paragraph 5 above are or should, based on the evidence presented, adequately drain the respective drilling and spacing unit established hereby upon which they are located.

10. Each such unit should be comprised of a governmental quarter section, except, given the irregular nature of Sections 1 and 2 the following units should instead be established for the following lands:

Section 1: Lots 3-6, 11 and 12

Section 2: Lots 1, 2 and 7-10

Section 2: Lots 3-6, 11 and 12.

To the extent no well exists on a unit so established, the authorized well for each such unit shall be drilled no closer than 460 feet from the outer boundary of said unit and shall be no closer than 920 feet from any other well drilling to or capable of producing gas from the Ferron formation as so defined, except as may otherwise be permitted by administrative action for topographic, cultural, archaeological, environmental or geologic reasons or other good cause shown in accordance with Utah Admin. Code Rule R643-3-3.

11. There are no communitization agreements currently approved and in effect covering any portion of the Subject Lands.

12. A copy of the Request for Agency Action was mailed certified, postage pre-paid and properly addressed to their last addresses as disclosed by the appropriate Federal, State and County realty records to, and received by, all royalty, overriding royalty and working interest owners within the Subject Lands.

13. Notice of the filing of XTO's Request for Agency Action and of the hearing thereon was duly published in the Salt Lake Tribune, Deseret Morning News and Emery County Progress.

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.

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 for Agency Action 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 matter 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(3)(b) and 40-6-6.

3. Because more than one lease covers the lands within the following units established hereby:

Section 35: NE $\frac{1}{4}$

Section 1: Lots 3-6, 11 and 12

Section 2: Lots 1, 2 and 7-10,

the entry of this Order is a prerequisite to execution and approval of the conforming communitization agreements necessary for protection of correlative rights of the owners of interests in the respective leases.

4. The establishment of drilling and spacing units for the production of gas from the Ferron formation as so defined for the Subject Lands and with the offset limitations set forth in Findings of Fact No. 10 above will be in furtherance of the public policies of this State to promote greater recovery of gas without waste and with protection of the correlative rights of all affected owners, will allow for the orderly development of the Subject Lands, is consistent with other drilling and spacing units established by the Board for gas production from the Ferron formation, and is just and reasonable under the circumstances.

5. The declaration of the five existing wells described in Findings of Fact No. 5 above to be at lawful locations notwithstanding the consequences of the relief granted herein, and to be the authorized well for the respective drilling and spacing unit established hereby upon which they are located, is just and reasonable under the circumstances.

6. XTO has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of its 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:

1. The Request for Agency Action in this cause is granted.
2. Drilling and spacing units for the production of gas, including but not limited to

coalbed methane, from the Ferron formation defined as follows:

the stratigraphic equivalent of the interval between 4,191 feet (top of the Upper Ferron Sandstone) and 4,511 feet (base of the Lower Ferron Sandstone/Top of Tununk Shale) as seen on the gamma ray log track for the Utah Federal #16-7-35-21 Well, located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, Township 16 South, Range 7 East, SLM, Emery County, Utah,

including all coals and surrounding sands, are hereby established for the Subject Lands as follows:

Township 16 South, Range 7 East, SLM

Section 35: NE $\frac{1}{4}$
Section 35: NW $\frac{1}{4}$
Section 35: SE $\frac{1}{4}$
Section 35: SW $\frac{1}{4}$

Township 17 South, Range 7 East, SLM

Section 1: Lots 3-6, 11 and 12
Section 2: Lots 1, 2 and 7-10
Section 2: Lots 3-6, 11 and 12
Section 2: SE $\frac{1}{4}$
Section 2: SW $\frac{1}{4}$.

3. The following wells are hereby declared to be drilled at lawful locations notwithstanding the consequences of the relief granted hereby and as the authorized well for

production of gas from the Ferron formation as so defined for the following units respectively:

<u>Well Name</u>	<u>Unit</u>
Zions Federal 35-135R	Sec. 35: SW¼
Zions Federal 35-137	Sec. 35: SE¼
Utah Federal 16-7-35-21	Sec. 35: NW¼
Utah Federal 16-7-35-32	Sec. 35: NE¼
Federal "KK" 1-140	Sec. 1: Lots 3-6, 11 and 12.

4. To the extent no well has yet been drilled on a unit so established, the permitted well for each such unit shall be drilled no closer than 460 feet from the outer boundary of said unit and be no closer than 920 feet from any other well drilling to or capable of producing gas from the Ferron formation as so defined, except as may otherwise be permitted by administrative action for topographic, cultural archaeological, environmental or geologic reasons or other good cause pursuant to Utah Admin. Code Rule R649-3-3.

5. 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.

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

7. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 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.

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 17th day of May, 2006.

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

By: 
J. James Peacock, 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. 2006-003, Cause No. 245-04 to be mailed with postage prepaid, this 17th day of May, 2006, to the following:

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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 XTO ENERGY INC. FOR AN ORDER ESTABLISHING 160-ACRE (OR SUBSTANTIAL EQUIVALENT THEREOF) DRILLING AND SPACING UNITS FOR THE PRODUCTION OF GAS (INCLUDING BUT NOT LIMITED TO COALBED METHANE) FROM THE FERRON FORMATION IN SECTION 35, TOWNSHIP 16 SOUTH, RANGE 7 EAST, SLM, AND IN A PORTION OF SECTION 1 AND IN SECTION 2, TOWNSHIP 17 SOUTH, RANGE 7 EAST, SLM, EMBRY COUNTY, UTAH

**ORDER GRANTING LEAVE TO
FILE ADDITIONAL EXHIBITS**

Docket No. 2006-003

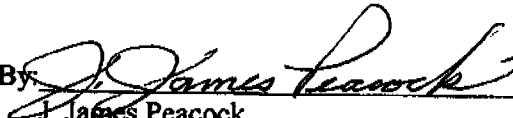
Cause No. 245-04

The Board of Oil, Gas and Mining, having fully considered XTO Energy Inc.'s ("XTO's") Motion for Leave to File Additional Exhibits filed April 14, 2006, and finding good cause therefore, hereby grants said Motion and authorizes the filing and acceptance of Exhibits "M," "N" and "O" attached to XTO's Motion.

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 18th day of April, 2006.

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

By: 
J. James Peacock
Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "Order Granting Leave to File Additional Exhibits" for Docket No. 2006-003, Cause No. 245-04 to be mailed with postage prepaid, this 19th day of April, 2006, to the following:

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