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APR 11 2012

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

**SECRETARY, BOARD OF
OIL, GAS & MINING**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BILL BARRETT CORPORATION FOR AN ORDER MODIFYING THE BOARD'S ORDER IN CAUSE NO. 139-84 TO ALLOW A FIFTH WELL (HORIZONTAL) FOR THE PRODUCTION OF OIL, GAS AND ASSOCIATED HYDROCARBONS FROM THE LOWER GREEN RIVER - WASATCH FORMATION UPON THE DRILLING UNIT COMPRISED OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 6 WEST, USM, DUCHESNE COUNTY, UTAH

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

Docket No. 2012-009

Cause No. 139-88

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, March 28, 2012, at approximately 9:20 a.m., in the Commission Chambers of the Washington County Administration Building in St. George. The following Board members were present and participated at the hearing: Chairman James T. Jensen, Jean Semborski, Ruland J. Gill, Jr., Carl F. Kendel and Chris D. Hansen. Board Members Jake Y. Harouny and Kelly L. Payne were unable to attend. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Bill Barrett Corporation ("BBC") were David M. Watts - Landman, Jason G. Anderson - Asset Development Geologist, and Anna M. Young - Sr. Reservoir Engineer. Said witnesses were recognized by the Board as experts in petroleum land management, geology and petroleum engineering, respectively, for

purposes of this Cause. Frederick M. MacDonald, Esq., of and for Beatty & Wozniak, P.C., appeared as attorney for BBC.

The Division of Oil, Gas and Mining (the "Division") participated in the hearing and elected not to file a staff memorandum in this Cause. Dustin Doucet, Petroleum Engineer, asked questions on the Division's behalf. Steven F. Alder, Esq., Assistant Attorney General, appeared as attorney for the Division. At the conclusion of BBC's presentation-in-chief, the Division expressed its support for the granting of BBC's Request for Agency Action dated February 9, 2012 (the "Request"), as conformed to the testimony and other evidence provided at the hearing.

On March 21, 2012, the Vernal District Office of the United States Bureau of Land Management, acting in its trust capacity on behalf of the Ute Indian Tribe, filed a letter with the Board secretary expressing its support for the granting of the Request.

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. BBC is a Delaware corporation with its principal place of business in Denver, Colorado. BBC is duly qualified to conduct business in the State of Utah, and is

fully and appropriately bonded with all relevant Federal, Indian and State of Utah agencies.

2. The oil, gas and associated hydrocarbons underlying Lots 3 and 4 [N $\frac{1}{2}$ NW $\frac{1}{4}$], SE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ of captioned Section 1 are Tribally owned and subject to an Exploration and Development Agreement between the Ute Indian Tribe, Ute Distribution Corporation and BBC, approved by the United States Bureau of Indian Affairs. The oil, gas and associated hydrocarbons underlying Lots 1 and 2 [N $\frac{1}{2}$ NE $\frac{1}{4}$], SW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of captioned Section 1 are owned in fee, with the majority of interests under lease to BBC and Ute Energy Upstream Holdings, LLC (“Ute Energy”) or to El Paso E&P Company LP (“El Paso”). There is an existing operating agreement by and between BBC, as Operator, and Ute Energy, as Non-Operator. BBC and El Paso have reached a tentative agreement as to the participation in the wells proposed for captioned Section 1 outlined in the Request. The remaining interests in said lands are unleased, but several of unleased owners have executed a joint operating agreement naming BBC as Operator of the Section 1 drilling unit. BBC continues its efforts to either lease or solicit the participation of the remaining unleased owners.

3. By Order entered on September 20, 1972 in Cause No. 139-8 (the “139-8 Order”), the Board established captioned Section 1 (640.32 acres) as a drilling unit for the production of oil, gas and associated hydrocarbons from the Lower Green River – Wasatch formations, defined as follows:

the interval from the top of the Lower Green River formation (TGR₃ marker) to the base of the Green River-Wasatch formations (top of Cretaceous), which base is defined as the stratigraphic equivalent of the Dual Induction Log depths of 16,720 feet in the Shell-Ute 1-18B5 well located in the S½NE¼ of Section 18, Township 2 South, Range 5 West, U.S.M., and 16,970 feet in the Shell-Brotherson 1-11B4 well located in the S½NE¼ of Section 11, Township 2 South, Range 4 West, U.S.M.

(the "Spaced Formations"), originally allowing only one producing well on said drilling unit.

4. By Order entered December 31 2008 in Cause No. 139-84 ("the "139-84 Order"), the Board modified the 139-8 Order, among other orders, to allow up to four (4) producing wells upon the drilling unit comprised of captioned Section 1 to be drilled at the option of the operator and with the operator's full discretion as to the development of the hydrocarbon resources; provided, that each additional well shall be no closer than 1,320 feet from an existing unit well completed in and production from the formations and no closer than 660 feet from the drilling unit boundary. The 139-84 Order does not specify whether the authorized wells may be all vertical, all horizontal or a combination of both.

5. There currently are no producing wells upon captioned Section 1. BBC has filed for and received the approval of the following applications for permit to drill ("APD's") for wells to be vertically and/or directionally drilled upon captioned Section 1 and targeting production for the Spaced Formation:

<u>Well</u>	<u>Location</u>	<u>Division Approval Date</u>
14-1-46 BTR	SE $\frac{1}{4}$ SW $\frac{1}{4}$	10/15/08; extended through 10/15/12
16-1D-46 BTR	SHL – SE $\frac{1}{4}$ SE $\frac{1}{4}$ (472' FSL/1305' FEL) BHL – SE $\frac{1}{4}$ SE $\frac{1}{4}$ (660' FSL/660' FSL)	4/18/11
3-1-46 BTR	Lot 3 [NE $\frac{1}{4}$ NW $\frac{1}{4}$] 759'FNL/1779' FWL	11/21/11

These three wells are all currently authorized under the 139-84 Order.

6. BBC also desires to concurrently drill two horizontal wells upon captioned Section 1, both targeting production from the Spaced Formations, but each targeting a different member thereof, as follows:

<u>Well</u>	<u>SHL</u>	<u>CSL</u>	<u>Terminus</u>	<u>Targeted Members</u>
5H-1-46 BTR UB	<u>T4S, R5W, USM</u> (2650' FNL/254' FWL)	SE $\frac{1}{4}$ NE $\frac{1}{4}$ (2422' FNL/714' FEL)	SW $\frac{1}{4}$ NW $\frac{1}{4}$ (1980' FNL/700' FWL)	Uteland Butte member of Lower Green River formation
5H-1-46 BTR TW	<u>T4S, R5W, USM</u> (2666' FNL/286' FWL)	SE $\frac{1}{4}$ NE $\frac{1}{4}$ (1964' FNL.721' FEL)	SW $\frac{1}{2}$ NW $\frac{1}{4}$ (1980' FNL/700' FWL)	Wasatch

The relative thickness and continuity of the targeted portions of the Uteland Butte member and of the Wasatch Formation across captioned Section 1 make them attractive for horizontal exploration and exploitation. While there have been several horizontal wells drilled into the Uteland Butte member of the Lower Green River Formation in the greater Altamont/Bluebell field, the proposed horizontal well for the Wasatch Formation will be one of the first so drilled. The thickness and continuity of said Formation across

Section 1, along with the fact there has been no other Wasatch Formation production to date, makes Section 1 an attractive test for a Wasatch horizontal well. BBC has negotiated and is in the process of finalizing the requisite surface and subsurface easements for the specified surface hole locations.

7. The Uteland Butte member of the Lower Green River formation and the Wasatch Formation are isolated from each other by several laterally continuous lower permeable shales extending over 850 vertical feet. The shales will, in all likelihood, prevent communication between the proposed horizontal wells.

8. In its Order entered on March 22, 1990 in Cause No. 131-86, the Board previously recognized two wells producing from separate distinct members of the Lower Green River and Wasatch Formations as essentially "one well" for purposes of the existing authorized spacing of said Formations in the sectional drilling unit upon which both wells were located (albeit, both were vertical wells); provided, however, that each well was limited to producing from the respective member only without further Board approval.

9. BBC represented to the Board that it will not plug back the 5H-1-46 BTR TW well to produce for the Uteland Butte member of the Lower Green River unless the 5H-1-46 BTR UB Well no longer produces therefrom or without seeking further approval from the Board.

10. It appears allowing the two proposed horizontal wells will allow recovery of resources that may not otherwise be recovered.

11. Adequate evidence was presented to reflect both horizontal wells are expected to be economically viable based on the anticipated production from each horizontal well.

12. A copy of the Request was mailed, postage pre-paid, certified with return receipt requested, and properly addressed to all mineral, leasehold and production interest owners in captioned Section 1, and to the Bureau of Indian Affairs (Uintah and Ouray Agency) and to the Utah State and Vernal Field Offices of the Bureau of Land Management. The mailings were sent to said parties at their last addresses disclosed by the relevant BIA and Duchesne County realty records. Proof of receipt by all such parties was evidenced by Exhibit "D," as supplemented, which was admitted into evidence.

13. 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 March 4, 2012, the Uintah Basin Standard on March 6, 2012, in Vernal Express on March 7, 2012.

14. The vote of the Board members present and participating in the hearing on 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 and Utah Admin. Code Rule R649-3-2(10).

3. By virtue of the 139-8 Order, the Board made legal determination and declared the Spaced Formations to constitute on “pool” or “common source of supply” of oil, gas and associated hydrocarbons as relating to captioned Section 1.

4. Utah Admin. Code Rules R649-3-2(3) through 7 govern the drilling of horizontal wells in the absence of special orders of the Board. Under these rules:

- no productive interval of the horizontal well may be closer than 660 feet to a drilling unit boundary or boundary of a lease not committed to the drilling of such a horizontal well;
- the surface location of the horizontal well may be located anywhere on the lease;
- the horizontal interval may not be closer than 1,320 feet to any vertical well completed in the same formation. However, vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the Board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein;
- a temporary 640-acre drilling unit, comprised of the section in which the horizontal well is located, is established. Under Utah Admin. Code Rule R649-1-1, a “temporary drilling unit” is defined as a specified area of land designated by the Board for the purposes of determining well location and density. It is not a “drilling unit” as provided for in Utah Code Ann. §40-6-6, and does not provide a basis for pooling as does a “drilling unit” established under said statute; and
- notice of the filing of the application for permit to drill the horizontal well must be provided by certified mail to all “owners” [as that term is defined in Utah Admin.

Code Rule R649-1-1] within the boundaries of the designated temporary spacing unit.

Utah Admin. Code Rule R649-3-2(9) provides exceptions to any of the foregoing may be administratively granted by the Division upon proper application made pursuant to Utah Admin. Code Rule R649-3-3. Finally, Utah Admin. Code Rule R649-3-2(10) provides that additional horizontal wells may be approved by order of the Board upon filing of a request for agency action and hearing thereupon.

5. The fact that the 139-84 Order does not specifically address horizontal wells, combined with the requirements of the horizontal well regulations cited in (4) above, create a potential conflict as to whether BBC may drill the two horizontal wells without further Board action. The Request resolves the conflict by expressly requesting Board approval.

6. The Tribal oil and gas ownership in Section 1 mandates the execution and approval of a communitization agreement to create a conforming proration unit. Because the definition of "temporary spacing units" contained in Utah Admin. Code Rule R649-3-1 expressly provides that "[a] temporary spacing unit shall not be a drilling unit as provided for in U.C.A. 40-6-6, Drilling Units, and does not provide a basis for pooling the interest therein as does a drilling unit," an order establishing Section 1 as a "permanent" drilling unit for the Spaced Formations is required to allow conforming communitization as relating to the horizontal wells in accordance with Federal regulations, guidelines and practice and to protect correlative rights.

7. The relief granted hereby will result in consistent and orderly development and the greatest recovery of oil, gas and associated hydrocarbons from the Lower Green River-Wasatch formations underlying captioned Section 1 without waste, will adequately protect the correlative rights of all affected parties, and is just and reasonable under the circumstances.

8. BBC 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 evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Request in this cause, as conformed to the testimony and other evidence provided at hearing, is granted.

2. The 139-84 Order is hereby modified to authorize the concurrent drilling of the two horizontal wells as outlined in the Request and herein upon approval of conforming APD's by the Division.

3. Captioned Section 1 is hereby declared as a permanent drilling unit for said horizontal wells pursuant to Utah Code Ann. §40-6-6 to allow proper communitization of the production interests in all wells producing from the Spaced Formations.

4. The Wasatch horizontal well authorized hereunder may not be plugged back and produce from the Uteland Butte member concurrent with the Uteland Butte

horizontal well authorized hereunder without first seeking further approval from the Board.

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 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. §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 11th day of April, 2012.

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

By: James T. Jensen
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. 2012-009, Cause No. 139-88 to be mailed with postage prepaid, this 12th day of April, 2012, to the following:

Frederick M. MacDonald
Beatty & Wozniak, P.C.
7440 South Creek Road, Suite 300
Sandy, UT 84093

Bureau of Land Management
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Ute Distribution Corporation
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[Via Email]

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[Via Email]

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U.S. Bank, N.A.
Attn: Justin M. Alexander
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Denver, CO 80202

Bureau of Land Management
Utah State Office
Attn: Roger L. Bankert
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Salt Lake City, UT 84145-0155

El Paso E&P Company, L.P.
Attn: Altamont (Utah) Business Area
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Bureau of Indian Affairs
Uintah & Ouray Reservation
P.O. Box 130
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Croff Enterprises, Inc.
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[Address updated 2/28/2012]

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