

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

| | | |
|---------------------------------------|---|------------------|
| IN THE MATTER OF SANCTIONS FOR |) | |
| VIOLATION OF RULE 318B BY THE DAY 32- |) | Cause No. _____ |
| 23 WELL, BUFFALO GRASS FIELD, YUMA |) | |
| COUNTY, COLORADO |) | Docket No. _____ |

Application of Petron Development Company

COMES NOW, Petron Development Company, by its undersigned attorneys, on behalf of its clients Warren Resources #1 LLC and Walker Energy LLC (collectively, "Applicant"),[♦] and petitions the Commission for an order sanctioning Augustus Energy Partners LLC ("Augustus") for operation of a well in violation of Commission Rule 318B, by requiring retroactive payment, with interest, under the Payment of Proceeds Act. C.R.S. §34-60-118.5.

In support whereof, Applicant avers as follows:

1. The Commission has jurisdiction over this matter under the Yuma/Phillips County Special Well Location Rule, wherein the Commission retains jurisdiction to address an abuse of correlative rights. Rule 318B.d

(a) In February, 2007, Berry Petroleum ("Berry"), the predecessor in interest to Augustus, drilled the Day 32-23 well (API # 05-125-10723) to the Niobrara Formation ("Day well"). The Day well is located in Township 4 North, Range 47 West, Section 23, SW1/4NE1/4, within the Yuma/Phillips County Special Well Location area. Rule 318B.a. The Day well is currently operated by Augustus.

(b) Rule 318B.a(4) requires that wells drilled to the Niobrara Formation be no less than 300 feet from quarter-section, unit or lease boundaries. According to Commission records, the Day well was drilled approximately 247 feet from the drilling unit boundary line, thereby encroaching upon Applicant's leasehold* in the SE1/4 of Section 23. Exhibit B. Applicant became aware of this situation in late 2011, when it was permitting its Lazy Day 4-24 well and was gathering offset location information.

(c) On 5/29/07, Berry filed for a well location variance, asserting that it had attempted to obtain waivers from all offset owners. However, to Applicant's information and belief, including examination of the attachments to Berry's variance request found in the Commission records, no such request was sent to Applicant, owners of an approximate 48% leasehold interest in the SE1/4 of Section 23.

[♦] Petron is a contract operator and manages the oil and gas interests owned by Warren Resources and Walker Energy.

^{*} This is a non-operated lease by Petron. The operator of the wells in the SE1/4 is Augustus.

(d) On 6/4/07, the Commission issued a NOAV to Berry, alleging a violation of Rule 318B.a(4), and requiring an explanation of how the violation occurred, the procedures to be instituted to prevent a re-occurrence, and approval of an exception location based on signed waivers from all encroached upon mineral owners. This NOAV was, apparently, informally resolved by Commission staff on 6/7/07, based on (inaccurate) representations supplied by Berry. Exhibit C.

2. Under the circumstances, Applicant does not seek an order to shut-in the Day 32-23 well, nor the imposition of a fine on Augustus. However, in order to redress the damage to its correlative rights, Applicant petitions the Commission for an order pursuant to the Payment of Proceeds Act, determining the amount of proceeds, plus interest, due and payable to Applicant. C.R.S. §34-60-118.5(5)

(a) Applicant asserts that such payment obligation should be imposed as of the date of first production from the Day well, and should extend for the life of the well.

(b) Applicant proposes that the proportion of the production from the Day well owed Applicant be calculated based on the area of the 300 foot radius circle that encroaches into the SE1/4 of Section 23. That is, the area of said circle subtended by the chord consisting of the quarter-section line (between the NE1/4 and the SE1/4), divided by the total area of the circle, times 48% (the mineral interest owned by Applicant).

(c) Applicant further requests that it be awarded interest on the amount determined hereunder as provided in C.R.S. §34-60-118.5(4).

3. On July 31, 2012, Applicant sent to Augustus, via certified mail, a notice of its claim under the Payment of Proceeds Act. C.R.S. 34-60-118.5(7). Exhibit D.

4. Applicant states that, within 7 days of the filing hereof, it will provide a copy of this application to Augustus, as the interested party herein

WHEREFORE, Applicant respectfully requests that this matter be set for hearing in October, 2012, notice be given as provided by law, and that upon such hearing the Commission enter its order consistent with Applicant's request:

A. Determining the amount of proceeds, plus interest, due and payable for the Day well, commencing on the date of first production;

B. Requiring retroactive payment of such amount, as well as requiring future timely payment of proceeds for the Day well; and,

C. For such other findings and provisions as the Commission may deem advisable in this matter.

Dated: August 1, 2012.

Respectfully submitted:

PETRON DEVELOPMENT COMPANY

By: 

Kenneth A. Wonstolen
Beatty & Wozniak, P.C.
Attorneys for Applicant
216 16th Street, Suite 1100
Denver, Colorado 80202
(303) 407-4499

Applicant's Address:

Jim Walker
Petron Development Company
1899 W. Littleton Blvd.
Littleton, CO 80120

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

Jim Walker, Secretary/Treasurer for Petron Development Company, upon oath deposes and says that he has read the foregoing Application and that the statements contained therein are true to the best of his knowledge, information and belief.

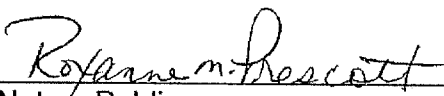
PETRON DEVELOPMENT COMPANY

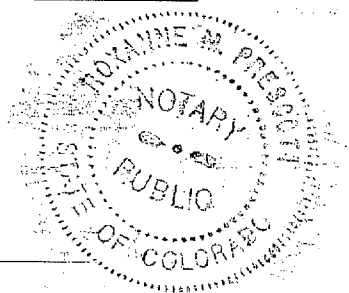
By: 
Jim Walker, Secretary/Treasurer

Subscribed and sworn to before me this 31st day of July, 2012, by Jim Walker.

Witness my hand and official seal.

My commission expires: 1/27/2014


Notary Public



BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

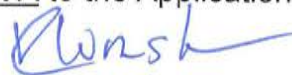
IN THE MATTER OF SANCTIONS FOR)
VIOLATION OF RULE 318B BY THE DAY 32-) Cause No. _____
23 WELL, BUFFALO GRASS FIELD, YUMA)
COUNTY, COLORADO) Docket No. _____

AFFIDAVIT OF MAILING

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Kenneth A. Wonstolen of lawful age, and being first duly sworn upon his oath, states and declares:

That he is the attorney for Petron Development Company, that on or before August 1, 2012, he caused a copy of the attached Application to be deposited in the United States Mail, postage prepaid, addressed to the parties listed on Exhibit A to the Application.



Kenneth A. Wonstolen

Subscribed and sworn to before me on August 1, 2012.

Witness my hand and official seal.

My commission expires: 10-04-13.





Notary Public

EXHIBIT A
INTERESTED PARTIES

Mr. Stephen Durrett
Augustus Energy Partners LLC
2016 Grand Avenue, Suite A
Billings, MT 59102

EXHIBIT B

DAY 32-23

THE ACCOMPANYING DRAWING IS AN ACCURATE REPRESENTATION SHOWING THE LOCATION OF A PROPOSED WELL. THIS LOCATION MAY BE DESCRIBED AS A POINT 2364.2 FEET SOUTH OF THE NORTH LINE AND 1658.8 FEET WEST OF THE EAST LINE OF SECTION 23, TOWNSHIP 4 NORTH, RANGE 47 WEST OF THE 6TH P.M., YUMA COUNTY, COLORADO.

NOTE THIS IS NOT A LAND SURVEY PLAT

BASIS OF LATITUDE/LONGITUDE AND ELEVATION VALUES ARE DERIVED FROM GEODETIC SURVEY MONUMENT DESIGNATED BALDY PID LK0564 LOCATED APPROXIMATELY 7.4 MILES NORTHEAST OF PROPOSED WELL LOCATION

BASIS OF BEARING IS THE NORTH LINE OF SECTION 23 TOWNSHIP 4N RANGE 47W OF THE 6TH P.M. WHICH IS ASSUMED TO BEAR N 88°04'08" E

THERE ARE NO VISIBLE IMPROVEMENTS WITHIN 200'

RECEIVED
APR 13 07
COGCC

NW CORNER OF SECTION 23-4N-47W
FOUND 3 1/4" ALUM CAP STAMPED "MCCORMICK CO PLS 26602"

COUNTY ROAD 51

N 88°04'08" E A-5327.14'

NE CORNER OF SECTION 23-4N-47W
FOUND 3 1/4" ALUM CAP STAMPED "MCCORMICK CO PLS 26602"

GPS OPERATOR E. JOHNSON
PDOP 2.2

This is where the well was actually drilled - making it the exception location

IRRIGATED FIELD

2364.2'

1658.8'

COUNTY ROAD N
S 01°36'56" E A-5217.17'

SCALE 1" = 1000'

LEGEND

- ✕ FOUND ALIQUOT CORNER
- ✕ PROPOSED WELL LOCATION
- A- ACTUAL DISTANCE

ALL DISTANCES SHOWN ARE GROUND DISTANCES AND ARE FIELD MEASURED. THE PROPOSED WELL LOCATION DISTANCES ARE AT RIGHT ANGLES FROM THE NEAREST NORTH/SOUTH AND EAST/WEST SECTION LINES. ALL GPS DATA IS CORRECTED USING A SOKKIA GSR 2600 BASE STATION AT THE STATED GEODETIC MONUMENT

PROVIDED COORDINATES:
COLORADO STATE PLANE NORTH
NAD 83 DATUM
NORTHING: 1365744.44
EASTING: 3811188.81

NAD 83 DATUM
LAT: 40.30084 N
LONG: 102.59113 W

ELEV. 3957'

IRRIGATED FIELD

S 87°53'02" W A-5330.70'

COUNTY ROAD 50

SW CORNER OF SECTION 23-4N-47W
FOUND #5 REBAR

SE CORNER OF SECTION 23-4N-47W
FOUND #6 REBAR



| | |
|--|------------------------------------|
| DATE OF FIELD WORK 30 NOVEMBER 2006 | DATE OF DRAWING 5 DECEMBER 2006 |
| WELL NUMBER: DAY 32-23 4N 47W YUMA COUNTY, COLORADO | |
| LOCATION: NE 1/4 SEC 23 T4N R47W | BERRY PETROLEUM COMPANY |
| THREE CORNERS SURVEYING AND MAPPING, LLC PO Box 463 312 Main Street Wray, CO 80758 970-332-4133 3cornerssurveying@centurytel.net | |

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT, UNDER MY PERSONAL SUPERVISION, THIS WELL LOCATION DRAWING WAS PREPARED FROM AN ACTUAL SURVEY AND THE DATA HEREON IS CORRECT TO THE BEST OF MY KNOWLEDGE

RYAN E DICKINSON
COLORADO PROFESSIONAL SURVEYOR
P.L.S. 36571

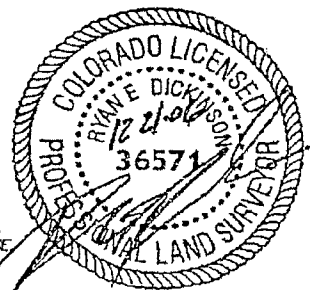


EXHIBIT CFORM
NOAV
Rev 5/99State of Colorado
Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801, Denver, Colorado 80203 (303) 894-2100 Fax: (303) 894-2109

FOR OGCC USE ONLY

6/4/2007

200112362

*** NOTICE OF ALLEGED VIOLATION ***

OGCC Operator Number 10091
Name of Operator BERRY PETROLEUM COMPANY
Address PO BOX 250
City WRAY State CO Zip 80758
Company Representative LONI DAVIS

Date Notice Issued:

6/4/2007

Well Name DAY Well Number 32-23 4N47W Facility Number 289296
Location (Qtr, Sec, Twp, Rng, Meridian) SWNE 23 4N 47W 6 County YUMA
API Number 05 125 10723 00 Lease Number

COGCC Representative AHLSTRAND DENNIS Phone Number 303 894-2100 X116

THE FOLLOWING ALLEGED VIOLATION WAS FOUND BY THE COGCC REPRESENTATIVE FOR THE SITE LISTED

Date of Alleged Violation 3/16/2007 Approximate Time of Violation 11:00AM
Description of Alleged Violation
VIOLATION OF RULE 318B a(4) FAILURE TO LOCATE WELL 300 FEET FROM OUTER BOUNDARY OF QUARTER SECTIONAct, Order, Regulation, Permit Conditions Cited
RULE 318B a(4)RECEIVED
JUN - 7 - 07
COGCC

Abatement or Corrective Action Required to be Performed by Operator *

EXPLAIN WHY THIS VIOLATION OCCURRED AND WHAT PROCEDURES WILL BE IMPLEMENTED TO PREVENT THIS FROM HAPPENING IN THE FUTURE. SUBMIT A SUNDRY NOTICE REQUESTING APPROVAL OF AN EXCEPTION LOCATION TO RULE 318B AS WELL AS A REQUEST LETTER TO THE DIRECTOR AND SIGNED WAIVERS FROM ENCROACHED UPON MINERAL OWNERS

Abatement or Corrective Action to be Completed by (date) 6/15/2007

* Proper and timely abatement does not necessarily preclude the assessment of penalties and an Order Finding Violation

TO BE COMPLETED BY OPERATOR - When alleged violation is corrected, sign this notice and return to above address.

Company Representative Name Loni J. Davis Title Operations Accty & Regulatory
Signature Loni J. Davis Date 6/6/07
Company Comments

See attached

*** THIS NOTICE CONSTITUTES A SEPARATE NOTICE OF ALLEGED VIOLATION FOR EACH VIOLATION LISTED ***

WARNING

Abatement and reporting time frames for Notices of Alleged Violation begin upon receipt of the Notice or five days after the date it is mailed, whichever is earlier. Each violation must be abated within the prescribed time upon receipt of this Notice, reported to the Colorado Oil and Gas Conservation Commission at the address shown above, and postmarked no later than the next business day after the prescribed time for abatement. Should abatement or corrective action fail to occur, the Director may make application to the Commission for an Order Finding Violation. Proper and timely abatement does not necessarily preclude the assessment of penalties and an Order Finding Violation.

PENALTY PROPOSED BY THE DIRECTOR PER RULE 523

The Director may propose a penalty as listed in the table below, not to exceed a maximum of \$1,000.00 per day per violation. Such proposed penalty amount will be limited to \$10,000.00 per violation if the violation does not result in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on public health, safety, or welfare. Such proposed penalty amount may be increased if aggravating factors indicate the violation was intentional or reckless, had, or threatened to have, a significant negative impact on public health, safety, or welfare, resulted in significant waste of oil and gas resources, had a significant negative impact on correlative rights of other parties, resulted in, or threatened to result in, significant loss or damage to public or private property, involved recalcitrance or recidivism upon the part of the violator, involved intentional false reporting or record keeping, resulted in economic benefit to the violator. Such proposed penalty amount may be decreased if aggravating factors indicate the violator self-reported, promptly, effectively and prudently responded to the violation, cooperated with the Commission or other agencies with respect to the violation, could not reasonably control, or be responsible for, the cause of the violation, made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation, had any economic benefit reduced or eliminated due to the cost of correcting the violation, has demonstrated a history of compliance with Commission rules, regulations, and orders. The Commission has final authority over the penalty amount assessed. The Commission or other agencies with respect to the violation, could not reasonably control, or be responsible for, the cause of the violation, made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation, had any economic benefit reduced or eliminated due to the cost of correcting the violation, has demonstrated a history of compliance with Commission rules, regulations, and orders. The Commission has final authority over the penalty amount assessed.

BASE FINE \$250.00 PER DAY PER VIOLATION: RULES 210, 307, 311, 312, 313, 314A, 315, 403, 405, 603, 604
BASE FINE \$500.00 PER DAY PER VIOLATION: RULES 205, 206, 207, 208, 302, 305, 306, 310, 316A, 321, 322, 323, 329, 330, 331, 332, 404
BASE FINE \$750.00 PER DAY PER VIOLATION: RULES 605, 606A, 606B, 607
BASE FINE \$1,000.00 PER DAY PER VIOLATION: RULES 209, 301, 303, 305, 306, 316B, 317, 317A, 318, 319, 320, 323, 324, 325, 326, 327, 333, 404, 602, 603, 604, 703, 704, 705, 706, 707, 708, 709, 711, 802, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 1002, 1003, 1004, 1101, 1102, 1103

In accordance with Rule 523 a. (4) fines for violations for which no base fine is listed shall be determined by the Commission at its discretion.

Signature of COGCC Representative

Date 6/4/2007

Time 2:00PM

Resolution Approved by

Date 6/7/2007

EXHIBIT D

BEATTY & WOZNIAK, P.C.

ATTORNEYS AT LAW

216 SIXTEENTH STREET, SUITE 1100
DENVER, COLORADO 80202-5115
TELEPHONE (303) 407-4499
FACSIMILE (303) 407-4494
www.bwenergylaw.com

CASPER

CHEYENNE

DENVER

SALT LAKE CITY

SANTA FE

KENNETH A. WONSTOLEN

DIRECT: (303) 407-4491

E-MAIL: KWONSTOLEN@BWENERGYLAW.COM

July 31, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Stephen Durrett
Augustus Energy Partners LLC
2016 Grand Avenue, Suite A
Billings, MT 59102

Re: Notice of Claim under C.R.S. §34-60-118.5 (Payment of Proceeds Act)

Dear Mr. Durrett:

We have been retained by Petron Development Company, on behalf of its mineral owner clients Warren Resources #1 LLC and Walker Energy LLC (collectively "Petron"), to address the damage to Petron's correlative rights due to the encroachment of the Day 32-23 well (API # 05-125-10723) on its leasehold interests in the SE1/4 of Section 23, T4N, R47W, Yuma County.

This well was drilled by Berry Petroleum, your predecessor in interest, in February, 2007, at a location that violates Rule 318B of the Colorado Oil & Gas Conservation Commission. That rule requires that wells drilled to the Niobrara Formation be offset from lease, quarter section or drilling unit boundary lines by a minimum of 300 feet. According to COGCC records, the well was drilled 247 feet from the quarter section line dividing the NE1/4 and the SE1/4 of Section 23. In other words, the well is short of the required setback by 53 feet. Please see the enclosed well location certificate.

In June 2007, the Commission issued a Notice of Alleged Violation to Berry, alleging a violation of Rule 318B.a(4), and requiring an explanation of how the violation occurred, the procedures to be instituted to prevent a re-occurrence, and approval of an exception location based on signed waivers from all encroached-upon mineral owners. This NOAV was, apparently, informally resolved by Commission staff, based on the (inaccurate) representation of Berry that all offset mineral owners had been sent exception location waiver requests. In fact, examination of the COGCC records indicates

BEATTY & WOZNIAK, P.C.

Mr. Stephen Durrett
July 31, 2012
Page 2

that no such waiver request was sent to Petron (or its clients), which own an approximate 48% leasehold interest in the SE1/4.

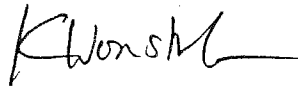
Petron believes that Augustus, as current operator of the well, is liable under the Colorado Payment of Proceeds Act referenced above for the damage to Petron's correlative rights. Petron is filing an application with the COGCC for an order granting it a retroactive payment of proceeds proportional to the area of encroachment (based on the area of the 300' radius circle that extends into the SE1/4). The Act also provides for the award of interest.

This Notice of Claim is being sent to you as required by the Act. Should you desire to resolve this matter without going through the Commission proceeding, please make an offer of settlement to Petron, through me.

Thank you for your attention to this matter.

Very truly yours,

BEATTY & WOZNIAK, P.C.

A handwritten signature in black ink, appearing to read 'KWonstolen', with a stylized flourish at the end.

Kenneth A. Wonstolen
Jamie L. Jost
Attorneys for Petron Development Company

Enclosures

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THERE ARE NO VISIBLE IMPROVEMENTS WITHIN 200'

NW CORNER OF SECTION 23-4N-47W
FOUND 3 1/4" ALUM CAP STAMPED
"MCCORMICK CO PLS 26602"

COUNTY ROAD 51

N 88°04'08" E A-5327.14'

NE CORNER OF SECTION 23-4N-47W
FOUND 3 1/4" ALUM CAP
STAMPED "MCCORMICK CO PLS 26602"

GPS OPERATOR E. JOHNSON
POOP 22

This is where the well was actually drilled - making it the exception location

N 01°34'40" W A-5234.40'
COUNTY ROAD 10

IRRIGATED FIELD

2364.2'

1658.8'

ELEV. 3957'

PROVIDED COORDINATES:
COLORADO STATE PLANE NORTH
NAD 83 DATUM
NORTHING: 1365744.44
EASTING: 3811188.81

NAD 83 DATUM.
LAT 40.30084 N
LONG 102.59113 W

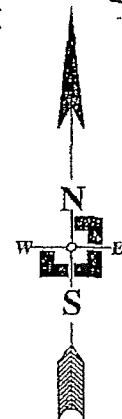
IRRIGATED FIELD

S 87°53'02" W A-5330.70'
COUNTY ROAD 50

SW CORNER OF SECTION 23-4N-47W
FOUND #5 REBAR

SE CORNER OF SECTION 23-4N-47W
FOUND #4 REBAR

RECEIVED
APR 13 07
COGCC

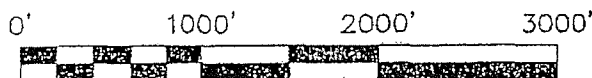


SCALE 1" = 1000'

LEGEND

- ✠ FOUND ALUMINUM CORNER
- ✕ PROPOSED WELL LOCATION
- A- ACTUAL DISTANCE

ALL DISTANCES SHOWN ARE GROUND DISTANCES AND ARE FIELD MEASURED. THE PROPOSED WELL LOCATION DISTANCES ARE AT RIGHT ANGLES FROM THE NEAREST NORTH/SOUTH AND EAST/WEST SECTION LINES. ALL GPS DATA IS CORRECTED USING A SOKKIA GSR 2600 BASE STATION AT THE STATED GEODETIC MONUMENT



| | |
|--|--|
| DATE OF FIELD WORK 30 NOVEMBER 2006 | DATE OF DELIVERANCE 5 DECEMBER 2006 |
| WELL NUMBER DAY 32-23 4N 47W YUMA COUNTY, COLORADO | |
| LOCATION NE 1/4 SEC 23 T4N R47W | BERRY PETROLEUM COMPANY |
| THREE CORNERS SURVEYING AND MAPPING, LLC PO Box 463 312 Main Street Wray, CO 80758 970-332-4133 3cornersurveying@centurytel.net | |

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT, UNDER MY PERSONAL SUPERVISION, THIS WELL LOCATION DRAWING WAS PREPARED FROM AN ACTUAL SURVEY AND THE DATA HEREON IS CORRECT TO THE BEST OF MY KNOWLEDGE

RYAN E. DICKINSON
COLORADO PROFESSIONAL SURVEYOR
P.L.S. 36571

