

# BEFORE THE OIL & GAS COMMISSION

BASS ENERGY, INC.,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES  
MANAGEMENT,

Appellee,

and

DUCK CREEK ENERGY, INC. ,

Intervenor.

Appeal No. 815

Review of Chief's Order 2009-29  
(Beta Drive Unit #1 Well )

## FINDINGS, CONCLUSIONS AND ORDER OF THE COMMISSION

Appearances: Alan H. Coogan, Counsel for Appellant Bass Energy, Inc.; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; J. Richard Emens, Counsel for Intervenor Duck Creek Energy, Inc.

## BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Bass Energy, Inc. ["Bass Energy" or "Bass"] from Chief's Order 2009-29. Through Order 2009-29, the Chief of the Division of Mineral Resources Management [the "Division"] **approved** an application for mandatory pooling, associated with the drilling of a well to be known as the Beta Drive Unit #1 Well [the "Beta Drive Well"]. Duck Creek Energy, Inc. ["Duck Creek"] applied for mandatory pooling and intends to obtain a permit to drill and operate the Beta Drive Well. Bass Energy holds the oil & gas rights for the 2.16 acres affected by the pooling order issued in favor of Duck Creek.

Bass Energy filed its appeal of Chief's Order 2009-29 with the Commission on July 13, 2009. On August 10, 2009, Duck Creek moved for intervention into this action. On August 21, 2009, the Commission **granted** Duck Creek's request for intervention, and Duck Creek has participated in this appeal with full-party status. Duck Creek's position is adverse to Bass Energy's position. The Division's position is also adverse to Bass Energy.

On December 1, 3 and 9, 2009, this cause came on for hearing before the Oil & Gas Commission. Commission member Howard Petricoff **recused** himself from this matter, and did not participate. Commission member James Cameron attended the first day of hearing, but was unable to attend the second and third days. Mr. Cameron has **abstained** from any participation in the deliberations in this appeal. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

## ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in approving Duck Creek's application for mandatory pooling for the well to be known as the Beta Drive Unit #1 Well.**

## THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.24 provides:

The chief of the division of mineral resources management, with the approval of the technical advisory council on oil and gas . . . may adopt, amend, or rescind rules relative to minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled . . . for the purpose of conserving oil and gas reserves.

3. O.A.C. §1501:9-1-04 addresses the spacing of wells and provides:

(A) General spacing rules:

(1) The division of mineral resources management shall not issue a permit for the drilling of a new well . . . **unless the proposed well location and spacing substantially conform to the requirements of this rule.**

\* \* \*

- (4) A permit shall not be issued unless the proposed well satisfies the acreage requirements for the greatest depth anticipated.

\* \* \*

(B) Location of wells:

\* \* \*

- (3) No permit shall be issued to drill, deepen, reopen, or plug back a well for the production of the oil or gas from pools from two thousand to four thousand feet unless the proposed well is located:

- (a) Upon a tract or drilling unit containing not less than twenty (20) acres;
- (b) Not less than six hundred (600) feet from any well drilling to, producing from, or capable of producing from the same pool;
- (c) Not less than three hundred (300) feet from any boundary of the subject tract or drilling unit.

*(Emphasis added.)*

4. O.R.C. §1509.27 provides *inter alia*:

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of such tract may make application to the division of mineral resources management for a mandatory pooling order . . . the chief, if satisfied that the application is proper in form and that **mandatory pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas**, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable . . .

*(Emphasis added.)*

5. O.R.C. §1509.01(I) sets forth the definition of "correlative rights" in the following terms:

"Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

## FINDINGS OF FACT

1. Duck Creek is a registered oil & gas producer, operating in the State of Ohio. Duck Creek is seeking permission to drill an oil & gas well in the vicinity of Mayfield Village, in Mayfield Township, Cuyahoga County, Ohio. The well would be known as the Beta Drive Unit #1 Well.

2. The area in which Duck Creek proposes to drill the Beta Drive Well has been highly productive. Several oil & gas wells have been drilled around the location of the proposed Beta Drive Well, including the following wells:

Marconi Medical Systems #1 Well	owned by Bass Energy
Georgian Medical Art II #1 Well	owned by Bass Energy
Preformed Line #1 Well	owned by Bass Energy
Holiday Inn #1 Well	owned by Bass Energy
Alison Realty #1 Well	owned by Bass Energy
Kerek #1 Well	owned by Bass Energy
Alpha Park #1-D Well	owned by Bass Energy
Sovchen #1 Well	owned by Cutter Oil
Panzica #13 Well	owned by Great Plains Exploration
Alpha #13 Well	owned by John D. Oil & Gas

The listed wells are developed in the Clinton Sandstone, and draw oil & gas from that formation. The geology of this area is complicated by the existence of sub-surface faults and fractures. However, the Clinton Sandstone underlies the entire area. Three witnesses, qualified as experts in geology or petroleum engineering, Dr. Hlavin, Dr. Manus and Mr. Gibson<sup>1</sup>, confirmed the complexity of the geology in this area, yet also testified that the wells in this area draw oil & gas from the same pool.<sup>2</sup> (See attached Appendix A, which is a portion of Joint Exhibit 1, showing well locations.)

<sup>1</sup> Dr. Hlavin and Dr. Manus were qualified as experts in geology. Mr. Gibson was qualified as an expert in petroleum engineering.

<sup>2</sup> A "pool" is defined at O.R.C. §1509.01(E) as: "an underground reservoir containing a common accumulation of oil or gas, or both ... Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool."

3. In October 2008, Duck Creek drilled the Beta Drive Unit #1-D<sup>3</sup> Well. The Beta Drive Unit #1-D Well was a directional well, with the bottom of the well (the "target") being located 715 feet west of the surface location of the well. This well did not produce oil & gas in commercial quantities.

4. As the Beta Drive Unit #1-D Well was not commercially viable, Duck Creek proposed to partially plug the directional well, and to drill a new vertical well utilizing the same surface hole as was used for the directional well. As the new well, the Beta Drive Unit #1 Well (the well at issue in this appeal), is proposed to be drilled vertically, rather than directionally, the well's target has changed. Therefore, different spacing and set-back<sup>4</sup> requirements apply to the new, vertical, Beta Drive Well.

5. The Beta Drive Well is proposed to be drilled to a total depth of 3600 feet. The existing drilling unit<sup>5</sup> for this well consists of 21.83 acres, owned by three separate landowners. The oil & gas rights associated with these 21.83 acres are under lease to Duck Creek Energy. The majority of the drilling unit where the proposed Beta Drive Well could be located is a narrow tract, on which various buildings are located.

6. Due to the narrow shape of the property, and the fact that buildings are located thereon, the proposed Beta Drive Well could not be moved any farther north. Thus, to comply with the set-back requirements for the proposed Beta Drive Well drilling unit, a 2.16-acre area of land, not under lease to Duck Creek, but located within the 300-foot radius of the proposed well's bottom-hole target would need to be included in the drilling unit for this proposed well. This 2.16-acre area is located directly south of the tract under lease to Duck Creek and is owned by AIK Beta Drive, LLC ["AIK"]. The oil & gas rights associated with these 2.16 acres were previously leased by AIK to Bass Energy.

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<sup>3</sup> The designation of a well as a "-D" well indicates that the well is drilled "directionally," or at an angle, as opposed to a vertical well.

<sup>4</sup> As will be discussed *infra*, Ohio's oil & gas laws sets forth certain minimum acreage and spacing requirements for the siting of oil & gas wells. Specifically, the law requires that a well operator hold leases to the oil & gas reserves on a tract of land sufficient to support the well, both in terms of size and set-backs. The law also requires that a proposed well be separated from other wells by a certain minimum distance. Based upon the proposed depth of the Beta Drive Well, Duck Creek's tract for this well would need to be at least 20 acres in size and would need to include all properties located within a 300-foot radius of the well target (bottom of the well). The proposed Beta Drive Well would also have to be located at least 600 feet from any other well, which is producing, or capable of producing, oil and/or gas. *See O.A.C. §1501:9-1-04*. Wells must also be located at least 100 feet from any buildings, and 75 feet from any property line. The 300-foot set-back requirement (from the well target to the drilling unit boundary) is at issue in this appeal.

<sup>5</sup> A "drilling unit" is defined at O.R.C. §1509.01(G) as: "the minimum acreage on which one well may be drilled."

7. Bass Energy is a registered oil & gas producer, operating in the State of Ohio. Bass Energy operates the Holiday Inn Unit #1 Well [the "Holiday Inn Well"], which is located 1140 feet south of the proposed Beta Drive Well. The drilling units for the Holiday Inn Well and the proposed Beta Drive Well are immediately adjacent and adjoining. The 2.16 acres, which would be necessary to create a drilling unit for the proposed Beta Drive Well, are under lease to Bass Energy, and are included in the drilling unit for Bass Energy's Holiday Inn Well. Bass Energy's lease allows for partial assignment (or "farm out") of acres under lease.

8. The 21.83-acre tract of land proposed as the drilling unit for the Beta Drive Well consists of three separate parcels owned by: (1) Highland Land Co., (2) 700 Beta Drive, and (3) Duck Creek Energy. The oil & gas rights for these properties are held by the landowners, and are under lease to Duck Creek Energy. The 21.83-acre tract is surrounded, on three sides, by producing Bass Energy oil & gas wells. Three expert witnesses, Dr. Hlavin, Dr. Manus and Mr. Gibson, testified that, based upon the geology and the nature of the oil & gas reservoir in this area, the oil & gas reserves beneath the 21.83-acre tract (owned by Highland, 700 Beta Drive and Duck Creek), is currently being produced through these surrounding wells, and that the recoverable reserves under the 21.83-acre tract will ultimately be drained by these surrounding wells. The owners, or the lessee, of the oil & gas rights associated with these 21.83 acres are not receiving royalties, or any other benefit, from oil & gas being drained from beneath their properties and produced through the surrounding wells.

9. Between December 22, 2008 and March 31, 2009, Duck Creek approached Bass Energy, and inquired about a partial assignment of acreage (also known as a "farm-out"), for the 2.16 acres, which Duck Creek would need in order to meet the 300-foot set back requirement for the proposed Beta Drive Well. Duck Creek's efforts consisted of:

December 22, 2008	Letter
January 21, 2009	Letter with copy of plat
January 23, 2009	E-mail with plat revisions
February 19, 2009	Personal contact
March 2, 2009	Letter
March 9, 2009	Letter, with AFE cost estimate options offered
March 11, 2009	Personal contact, Duck Creek unable to meet Bass Energy's demands, mandatory pooling discussed
March 17, 2009	Letter with revised plat and revised AFE cost estimate
March 31, 2009	Letter, indicating intention to apply for mandatory pooling

10. Ultimately, Duck Creek's offer to Bass Energy included:

- \$10,000 payment for the farm out,
- 33% participation right in the Beta Drive #1 Well<sup>6</sup>,
- landowner royalty to AIK of 15%<sup>7</sup> for the farmed-out acreage,
- 1/32<sup>nd</sup> of 8/8<sup>ths</sup> override, and
- an option to farm out either the minimum 2.16 acres or as many as 4.14 acres.<sup>8</sup>

This offer was rejected by Bass Energy. Bass Energy made no attempt to negotiate any portion of the offer with Duck Creek. In testimony, Dr. Hlavin, the owner of Bass Energy, made it clear that Duck Creek could make no offer which would persuade him to assign the oil & gas rights to the 2.16 acres in question to Duck Creek.

11. On April 1, 2009, Duck Creek filed an application with the Division for a mandatory pooling order. The application for mandatory pooling, requested that the 2.16 acres of property owned by AIK, under lease to Bass Energy, and included in Bass Energy's Holiday Inn Well drilling unit, be mandatorily pooled into the proposed Beta Drive Well drilling unit. No surface equipment associated with the Beta Drive Well is proposed to be located on the AIK property.

12. Duck Creek's application for mandatory pooling was referred to the Technical Advisory Council ["TAC"].<sup>9</sup> On May 13, 2009, the TAC conducted a hearing upon this application. Bass Energy was notified of this hearing, and appeared with counsel before the TAC to oppose the mandatory pooling of the 2.16 acres at issue. The TAC, by a vote of five to one, recommended that the Division Chief approve Duck Creek's application for the mandatory pooling of the 2.16 acres in question.

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<sup>6</sup> Dr. Hlavin, owner of Bass Energy, testified at hearing that he considered the offer of 33% participation to be "not an insignificant offer."

<sup>7</sup> The customary landowner royalty rate is 12.5%. AIK currently receives 15% royalty rate for the 2.16 acres as part of the Holiday Inn Well.

<sup>8</sup> The difference is the number of acres subject to the farm-out agreement would alter the proportionate share of royalty paid to the three landowners in the Holiday Inn #1 Well drilling unit.

<sup>9</sup> The TAC is created under O.R.C. §1509.38, and is authorized to advise the Division Chief on matters relating to spacing requirements and on specific requests relating to the size and shape of drilling units. The TAC conducts public hearings on applications for mandatory pooling, and advises the Chief on such applications. *See O.R.C. §1509.24, §1509.25 and §1509.27.*

13. On June 18, 2009, following the TAC hearing, and pursuant to the advice and recommendation of the TAC, the Division Chief issued Chief's Order 2009-29, which mandated the inclusion of the 2.16 acres (owned by AIK, under lease to Bass Energy, and previously included in the drilling unit for Bass Energy's Holiday Inn Well) into the drilling unit for the proposed Beta Drive Well. Chief's Order 2009-29 held in part:

1) The drilling unit owned by the applicant [Duck Creek] is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in Section 1509.24 of the Ohio Revised Code, and the applicant [Duck Creek] has been unable to form a drilling unit under agreement as provided in Section 1509.26 of the Ohio Revised Code on a just and equitable basis.

\* \* \*

4) After having given due consideration to all testimony presented at the hearing [before the TAC] and all facts filed by the applicant [Duck Creek], a determination has been made that the application is proper in form and that mandatory pooling is necessary to protect correlative rights<sup>10</sup> and to provide for the effective development, use and conservation of oil and gas.

Chief's Order 2009-29 contained the following order:

5) In the event that the Beta Drive Unit #1 should be dry or otherwise non-productive, the acreage pooled under this Order shall revert to BASS Energy, Inc. upon the plugging of the Beta Drive Unit #1 and Duck Creek Energy Inc. shall provide the Division of Mineral Resources Management with a revised survey plat that places the mandatory pooled acreage back into the Holiday Inn Unit #1 drilling unit.

14. On July 13, 2009, Bass Energy filed with this Commission, a notice of appeal from Chief's Order 2009-29. The order under appeal mandates the pooling of the 2.16 acres of land, under lease to Bass Energy in support of its Holiday Inn Well, into the drilling unit for the proposed Beta Drive Well.

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<sup>10</sup> "Correlative rights" is defined at O.R.C. §1509.01(I) as: "the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract of tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense."

15. At hearing, and in its written closing arguments, Duck Creek stated that Duck Creek will pay the proportionate share of any royalties that would have accrued to the benefit of the owner of the 2.16 acres for production from the Holiday Inn Well to the landowner, until such time as the Beta Drive Well is fully installed and producing. In this regard, Duck Creek's written closing argument summarized the testimony of Mr. Mansbery (the owner of Duck Creek) at hearing, in the following terms:

Even though not required, and even though Duck Creek's previous offers more than satisfied the just and equitable requirement, Mr. Mansbery has committed that Duck Creek, at such time as the AIK Beta Drive, LLC 2.16 acres is included in the Duck Creek Beta Drive Unit #1, and the drilling permit is issued, will pay the property owners of the AIK Beta Drive, LLC 2.16 acres whatever they would have received from the Holiday Inn well until such time as the Beta Drive #1 well is completed. Thus, not only will the AIK Beta Drive property owners benefit from the mandatory pooling because of having a larger royalty, and the opportunity to participate in two wells, but they will also suffer no loss during the short drilling period. And if the Duck Creek well is non-productive, the AIK Beta Drive 2.16 acres will revert back to the Holiday Inn Unit pursuant to paragraph 5 of the Chief's Order 2009-29 so there can be no loss to landowner AIK Beta Drive, LLC, but only the opportunity for gain. *(Duck Creek's written closing arguments, p. 6, reflecting the testimony of David Mansbery.)*

## CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief, if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.27 requires the Division Chief to order the mandatory pooling of properties where: (1) a tract of land is of insufficient size or shape to meet the spacing requirements of the law, (2) the Chief finds that the owner of the proposed well has been unable to form a drilling unit under voluntary agreement on a just and equitable basis, and (3) mandatory pooling is necessary to protect correlative rights or to provide effective development, use or conservation of oil & gas resources.

3. The existing drilling unit for the proposed Beta Drive Well is of insufficient size or shape, and fails to meet the spacing requirements of O.A.C. §1501:9-1-04.

4. Duck Creek attempted to enter into a voluntary pooling agreement with Bass Energy, in order to meet the minimum drilling unit set-back requirements of law. Duck Creek's offers to Bass Energy were just and equitable, and considered the correlative rights of AIK/Bass Energy. Duck Creek has been unable to form a drilling unit of sufficient size or shape through voluntary agreement.

5. Duck Creek's application for the mandatory pooling of 2.16 acres of land was proper in form and contained all required information.

6. The mandatory pooling of 2.16 acres into the drilling unit for the proposed Beta Drive Well is necessary to protect correlative rights of the owners of the land associated with the proposed drilling unit for the Beta Drive Well.

7. Chief's Order 2009-29, mandating the pooling of 2.16 acres of AIK's property into the Beta Drive Well drilling unit, is both lawful and reasonable.

## **DISCUSSION**

Ohio's oil & gas law is designed to protect both the public's interest in the conservation and efficient development of oil & gas resources, and the private property interests of citizens who own land, which overlie deposits of oil & gas.

Before proceeding to a discussion of the issues properly presented to the Commission in this appeal, the Commission must identify certain issues which are outside the Commission's jurisdiction, and thus beyond our authority to consider. The Commission is a creature of statute, created under Chapter 1509 of the Ohio Revised Code. As a creature of statute, the Commission possesses only those powers, which have been expressly conferred by the General Assembly, or those powers necessarily implied. *See State ex rel. Stoer v. Raschig*, 141 Ohio Sts. 477, 49 N.E.2d 56 (1943); *State ex rel. Byrd v. Sherwood*, 140 Ohio St. 173, 42 N.E.2d 889 (1942). Thus, the powers and authority of this Commission are limited by the terms of Chapter 1509.

Appellant Bass Energy has raised issues relating to the following: (1) property rights,<sup>11</sup> (2) the constitutionality of the mandatory pooling provisions of O.R.C. §1509.27, (3) whether the mandatory pooling of property constitutes a "taking" of property, and (4) whether the Technical Advisory Council acted in violation of Ohio's Sunshine Laws.

Chapter 1509 of the Ohio Revised Code does not authorize the Commission to consider or adjudicate property rights issues.<sup>12</sup> Similarly, Bass Energy's contention that O.R.C. §1509.27 is unconstitutional, or that the approval of a mandatory pooling order infringes upon constitutionally protected rights, must be taken up before a court of competent jurisdiction, rather than before this Commission. Likewise, this Commission is not the proper forum in which to litigate issues relating to whether another council, created by statute, has violated the Sunshine Laws. The Commission makes no determination as to the validity of any of these contentions, and finds only that consideration of such issues is beyond the scope of this Commission's jurisdiction and authority.

Under Ohio law, an oil & gas drilling permit will not be issued, unless certain setback, spacing and acreage requirements are met to qualify as a drilling unit. *See O.R.C. §1509.24*. These requirements are designed to protect adjacent landowners from having oil & gas produced through a neighbor's well, and also to ensure efficient mineral production by protecting the oil & gas reservoir from being over-produced through excessive drilling. *See Johnson v. Kell, 68 Ohio App.3d 623 (1993)*. The spacing requirements are stated in terms of minimum distances.

The evidence presented in this case revealed that the Beta Drive Well is proposed to be drilled to a depth of 3600 feet. For a well of this proposed depth, O.R.C. §1509.24 and O.A.C. §1501:9-1-04 require a 20-acre drilling unit and require that the drilling unit include all property located within a 300-foot radius of the proposed bottom-hole well target.

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<sup>11</sup> The jurisdiction of the Commission regarding property rights issues was addressed through a Motion in Limine. The Commission granted this motion, in an attempt to clarify the Commission's jurisdiction and to limit the introduction of evidence not relevant to matters properly before the Commission.

<sup>12</sup> Steve Opritza, witness for the Division, testified that where property right issues are raised, the Division will take action to assure that an operator possesses adequate property rights to support an application to drill a well. However, the Division will not adjudicate property rights issues. The Commission believes that the property rights issues raised by the Appellant in this case are beyond the authority of the Division and the Commission to consider.

Duck Creek formed a 21.83-acre drilling unit to support the proposed Beta Drive Well. The drilling unit is a narrow tract, on which buildings are located. While the drilling unit for the proposed Beta Drive Well contains sufficient acreage to support this proposed well, and achieved all of the other set-back requirements of law, Duck Creek does not hold the oil & gas lease associated with the property located to the south of the proposed well, which lies within the required 300-foot radius of the well's proposed target.

Therefore, Duck Creek attempted to voluntarily pool a small portion of the AIK property into the drilling unit for the Beta Drive Well. This small area, consisting of 2.16 acres, was needed to comply with the 300-foot set-back requirement for the proposed Beta Drive Well. However, the 2.16 acres in question were already under lease to another oil & gas operator, Bass Energy, and were part of the drilling unit for an existing well, known as the Holiday Inn Well.

Based upon the dimensions of the proposed Beta Drive Well drilling unit, and because of the legal requirement that wells be located at least 100 feet from any buildings, there were no options available for the siting of this proposed well, which would eliminate the pooling of some amount of acreage.

Where spacing requirements are not met, a potential well owner must first attempt to create a drilling unit through the voluntary participation of landowners, or lease holders. See O.R.C. §1509.26. If an adequately-sized drilling unit cannot be established by voluntary participation, the owner of the proposed well may apply to the Division Chief for the mandatory pooling of lands into the drilling unit. See O.R.C. §1509.27. Mandatory pooling will not be ordered unless the conditions set forth in O.R.C. §1509.27 are met.

Mandatory pooling is designed to permit mineral development of a property of insufficient size and/or shape to meet the requirements of state spacing laws. It is used only when sufficient size and shape cannot be achieved, and is considered a tool of last resort. See Chodkiewicz v. Division & Ohio Valley Energy, Mark Scoville and Jerry Esker, #788 (Oil & Gas Commission, October 31, 2008, quoting from an article written by Tom Stewart, Executive Vice President of the Ohio Oil & Gas Association, printed in the Association's March 2008 Bulletin).

Under Ohio's mandatory pooling statute, three conditions must be met before a mandatory pooling order will be issued. If these three conditions are met, the statute directs that the Division Chief "... shall issue a ... mandatory pooling order ..." *See O.R.C. §1509.27 (emphasis added)*. Specific to this appeal, the following conditions must be met:

- (1) The tract of land on which the Beta Drive Well is proposed to be located must be of insufficient size or shape to meet the requirements of a drilling unit for this well.
- (2) Duck Creek must be unable to form a voluntary drilling unit on a just and equitable basis.
- (3) Mandatory pooling must be necessary to protect correlative rights or to provide effective development, use or conservation of oil & gas resources.

### **Sufficiency of the size or shape of the proposed drilling unit:**

There does not appear to be a dispute regarding the fact that the drilling unit for the proposed Beta Drive Well is of insufficient shape to meet the requirements of law. Specifically, all properties within a 300-foot radius of the well's bottom-hole target must be included within the drilling unit. Without the inclusion of the 2.16 acres at issue, the proposed Beta Drive Well will not meet this prerequisite of law. Significantly, based upon the dimensions of the proposed drilling unit, and the existence of certain surface structures, Duck Creek is severely limited in locating the proposed well. The location identified by Duck Creek is, indeed, the only possible option.

The Commission **finds** that, without the inclusion of additional acreage, the proposed Beta Drive Well drilling unit is of insufficient size or shape to comply with the requirements of Ohio oil & gas law.

### **Inability to voluntarily form a drilling unit on a just and equitable basis:**

To establish the right to a mandatory pooling order, an operator must also be able to demonstrate that attempts to form a voluntary drilling unit, on a just and equitable basis, were unsuccessful.

Duck Creek, as the applicant for mandatory pooling, has the burden of demonstrating that its efforts to form a drilling unit, under agreement of all necessary leaseholders, were just and equitable.

To determine whether Duck Creek's efforts to voluntarily pool the AIK/Bass Energy property were "just and equitable," the Commission must examine what efforts were made to form this drilling unit. In evaluating the efforts made by Duck Creek to voluntarily pool the AIK/Bass Energy property, the Commission is guided by prior decisions of this Commission and the Ohio courts.

The standard for "just and equitable" efforts has been addressed by this Commission in past cases. In *Jerry Moore, Inc. v. State of Ohio*, (*appeal no. 1, July 1, 1966*), *cited in Johnson v. Kell* (*appeal 370, November 30, 1990, affirmed in Johnson v. Kell, 89 Ohio App. 3d, 623 [Franklin County Court of Appeals, 1993]*), the Commission held:

... unless the parties themselves so agree, the Chief of the Division [of Mineral Resources Management] shall determine, preferably after advice from the Technical Advisory Council, whether the owner-applicant has been unable to form such drilling unit under voluntary pooling agreement provided in Section 1509.26, Ohio Revised Code, and whether such owner-applicant has used **all reasonable efforts** to enter into a voluntary pooling agreement. Using "all reasonable efforts" **contemplates both a reasonable offer and sufficient efforts** to advise the other owner or owners of the same.

*(Emphasis added.)*

The evidence in the immediate case revealed that Duck Creek communicated with Bass Energy about a leasing (or "farm out") agreement covering the 2.16 acres at issue, on at least nine occasions over a three-month period (from December 2008 through March 2009). The offer made by Duck Creek to Bass Energy was generous in comparison to typical arrangements in this industry and in comparison to arrangements that Bass Energy had offered to landowners participating in existing wells located in the immediate vicinity of the proposed Beta Drive Well. Although, the statute does not require negotiation or counteroffers, this Commission has held:

The burden of going forward in making efforts to voluntarily pool is on the party who wishes to drill the well, and, **if so made, the other party must make reasonable efforts to negotiate in good faith.**

*Nils Johnson v. Division of Oil & Gas, appeal no. 370 (November 30, 1990). (Emphasis added.)*

It is notable that Bass Energy refused to engage in any negotiation of the offer proposed by Duck Creek. Indeed, Dr. Hlavin, the owner of Bass Energy, candidly testified that there was no offer which he would find acceptable and that he had no interest in a "farm out" agreement, which would ultimately support a competing well. While the rationale behind Dr. Hlavin's reluctance to "aid" a potential competing operator is understandable, that does not alter the Division's statutory obligation to protect the correlative rights of landowners interested in developing their oil & gas resources.

The Commission and the courts have addressed the situation where mandatory pooling could negatively impact the correlative rights of the forced participant. In this regard, the correlative rights of AIK/Bass Energy should be considered, as well as the correlative rights of the landowners hoping to develop the Beta Drive Well. *See Johnson v. Kell, 89 Ohio App.3d 623 (1993).*

The offer made by Duck Creek to Bass Energy was generous by industry standards, and appeared to acknowledge that Duck Creek was asking AIK/Bass Energy to transfer its correlative rights to the 2.16 acres at issue from a known and productive well to a yet undeveloped and untested well.

The Commission **finds** that Duck Creek's offer to voluntarily pool the 2.16 acres took the correlative rights of AIK/Bass Energy into consideration. The Commission further **finds** that, based upon industry standards, the offer made by Duck Creek to AIK/Bass Energy was reasonable, just and equitable, and that Duck Creek made sufficient efforts to voluntarily join the owner and the lessee of the 2.16 acres at issue into the drilling unit for the proposed Beta Drive Well.

### **Protection of correlative rights, or effective development of resource:**

Finally, the pooling of the 2.16 acres must be determined to be necessary to protect the correlative rights of the owners of the resources or must be found to be necessary to ensure the development, use or conservation of the resource.

One important purpose of the mandatory pooling statute is the protection of correlative rights. Correlative rights are defined as:

"Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

*See O.R.C. §1509.01(I).*

The importance of considering the correlative rights of landowners interested in developing the mineral resources under their property has been considered by this Commission previously:

A consideration of correlative rights is vital in examining mandatory pooling as mandatory pooling, by definition, forces a party who is the owner or lessee of property to use that property with another lessee and/or for a purpose or price not acceptable to him.

*See Jerry Moore, Inc. v. State of Ohio, (appeal no. 1, July 1, 1966).*

In this appeal, an example of "correlative rights," is the right of the landowners who have joined together to form the drilling unit for the proposed Beta Drive Well. The drilling of the Beta Drive Well gives these landowners the opportunity to receive the benefit and value of the oil & gas reserves beneath their properties, including the royalties associated with their mineral interests.

Another purpose of the mandatory pooling statute is to assure the effective development, use or conservation of oil & gas resources within the State of Ohio. In this regard, all witnesses at hearing, including three qualified experts, agreed that the oil & gas contained in the reservoir found beneath this entire area will be developed and produced. In fact, three wells, directly adjacent and adjoining the proposed Beta Drive Well, are currently being operated by Bass Energy. The wells in this immediate area have been highly productive and effective in extracting oil & gas from the Clinton Sandstone formation. The experts testified to the nature of the Clinton Sandstone and the complexity of some of the geology in this area. The experts agreed that geological structures, including fractures and faults, may exist in this area, which could impact the movement of oil & gas through the formation. Indeed, there are many unknowns about the oil & gas resources beneath this area and exactly how gas moves through the Clinton Sandstone. As expert geologist Dr. Hlavin testified: "...we are about half way up the learning curve for this area," in respect to our understanding of this geology.

While there may be many unknowns about the geology of this area, what is known about the oil & gas reserves in this location, is that these reserves can support productive wells. And, several operators have, therefore, drilled into this formation. The witnesses likened the wells drilled into the Clinton Sandstone formation to "several straws" stuck into the same soda pop." Because wells in this area have been so highly productive, the witnesses also likened the drilling in this area to a "horse race," with operators attempting to drill wells as quickly as possible, and then producing and draining as much oil & gas as they can from the common Clinton Sandstone pool, and doing so as quickly as they can.

It is also known that the oil & gas reserves in this area are finite. The proposed Beta Drive Well drilling unit is directly bounded on three sides by operating well units owned by Bass Energy. Dr. Hlavin, Dr. Manus and Mr. Gibson, three experts, all agreed that the reserves beneath the properties, which have joined together to form the proposed Beta Drive Well drilling unit, will be drained. The question becomes: who will receive the benefit from the production of these resources.

The landowners of the proposed Beta Drive Well drilling unit possess correlative rights to receive a benefit from the production of the reserves which they own. If the Beta Drive Well is not drilled, the owners of these particular reserves will never receive any benefit from the production of the oil & gas beneath their properties. Rather some neighboring landowner, whose property is part of a nearby drilling unit associated with another well, will receive the benefit from the production of the oil & gas located beneath the properties currently committed to the proposed Beta Drive Well.

Notably, when Bass Energy was developing the nearby Holiday Inn Well, 700 Beta Drive LLC (one of the three landowners for the proposed Beta Drive Well) approached Bass Energy and inquired about being included in the drilling unit for the Holiday Inn Well. Although indicating a desire to develop the oil & gas resources associated with the 700 Beta Drive LLC property and an interest in protecting its correlative rights, Bass Energy declined to include this landowner in the Holiday Inn Well drilling unit, leaving the landowner to look elsewhere for an opportunity to develop the resources beneath its property. The landowner then joined with others to create its own drilling unit, and appropriately utilized the mandatory pooling provisions of O.R.C. §1509.27 to facilitate the development of a well, which would extract the oil & gas beneath this property, and protect this landowner's correlative rights.

Under the facts of this case, the 2.16 acres subject to mandatory pooling are already under lease to Bass Energy, and they are part of an active drilling unit for Bass Energy's Holiday Inn Well. Through the mandatory pooling order, the Chief has effectively transferred 2.16 acres from a drilling unit associated with an operating and productive well to the drilling unit of a proposed well, which has not yet been drilled or placed into production. The Appellant in this action is Bass Energy, which holds the oil & gas lease for this 2.16-acre area, and which operates the adjacent and adjoining Holiday Inn Well, to which these 2.16 acres were initially committed as part of that drilling unit.

Significantly, there is no prohibition in Ohio's mandatory pooling law, which would preclude the transfer of acreage already under lease. Indeed, mandatory pooling laws exist in many other states. Yet, the Appellant did not produce information associated with any of these other jurisdictions, which would suggest that the transfer of leased acreage under a mandatory pooling order is not lawful.

The Commission **finds** that the correlative rights of the owners of the oil & gas reserves committed to the proposed Beta Drive Well can only be protected if this well is allowed to be drilled.

### **The statutory conditions precedent:**

Under Ohio's mandatory pooling law, an applicant must establish three conditions precedent to the granting of a mandatory pooling application. If these conditions are met, the statute requires the Chief to grant the pooling application. *See O.R.C. §1509.27.*

The Commission **FINDS** that Duck Creek was unable to form a drilling unit of sufficient size and shape to support its proposed Beta Drive Well. The Commission also **FINDS** that Duck Creek's attempts to join AIK/Bass Energy into the drilling unit for the Beta Drive Well were undertaken in a just and equitable manner, that all reasonable efforts were taken to form a voluntary drilling unit for the Beta Drive Well, and that the correlative rights of the forced participant were considered. The Commission further **FINDS** that mandatory pooling is necessary under the site-specific facts of this case, to protect the correlative rights of the owners of the oil & gas resources associated with the proposed Beta Drive Well.

Thus, all of the statutory conditions precedent to the granting of the mandatory pooling application have been met in this case. Pursuant to O.R.C. §1509.27, where all of the statutory conditions are met, the Chief shall grant a request for mandatory pooling. Therefore, the Commission **FINDS** that Chief's Order 2009-29, requiring the mandatory pooling of 2.16 acres owned by AIK, on lease to Bass Energy, and initially included in the drilling unit for Bass Energy's Holiday Inn Well, was reasonable and lawful.

## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2009-29. Consistent with the representations of Duck Creek, the Commission expects that Duck Creek will pay to AIK a sum, equal to the royalties, which AIK would have earned from the production of the Holiday Inn Well, until such time as the Beta Drive Well is installed and producing. Consistent with the order of the Division Chief contained in Chief's Order 2009-29, the Commission expects that, if it is determined that the Beta Drive Well does not produce oil or gas in commercial quantities, the 2.16 acres mandatorily pooled into the Beta Drive Well drilling unit, will revert back to the drilling unit for the Holiday Inn Well. Furthermore, in light of the "tightness" of the proposed Beta Drive Well drilling unit, and the unique nature of the partial plugging of the Beta Drive Unit #1D Well and the subsequent new drilling of the vertical Beta Drive Well using the same surface location, the Commission asks the Division Chief to consider some condition on any proposed drilling permit for this site, which would provide some assurance that, if completed, the proposed Beta Drive Well's bottom-hole location is within an acceptable distance, by industry standards, from the projected target as proposed in the permit.

Date Issued: Jan. 29, 2010

  
TIMOTHY C. McNUTT, Acting Chair

  
KAREN FRYER

ABSTAINED  
JAMES H. CAMERON

RECUSED  
M. HOWARD PETRICOFF, Secretary

  
ROBERT CHASE

**INSTRUCTIONS FOR APPEAL**

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

**DISTRIBUTION:**

Alan H. Coogan (Via e-mail [acoogan2000@hotmail.com] & Certified Mail #: 91 7108 2133 3936 6684 7724)

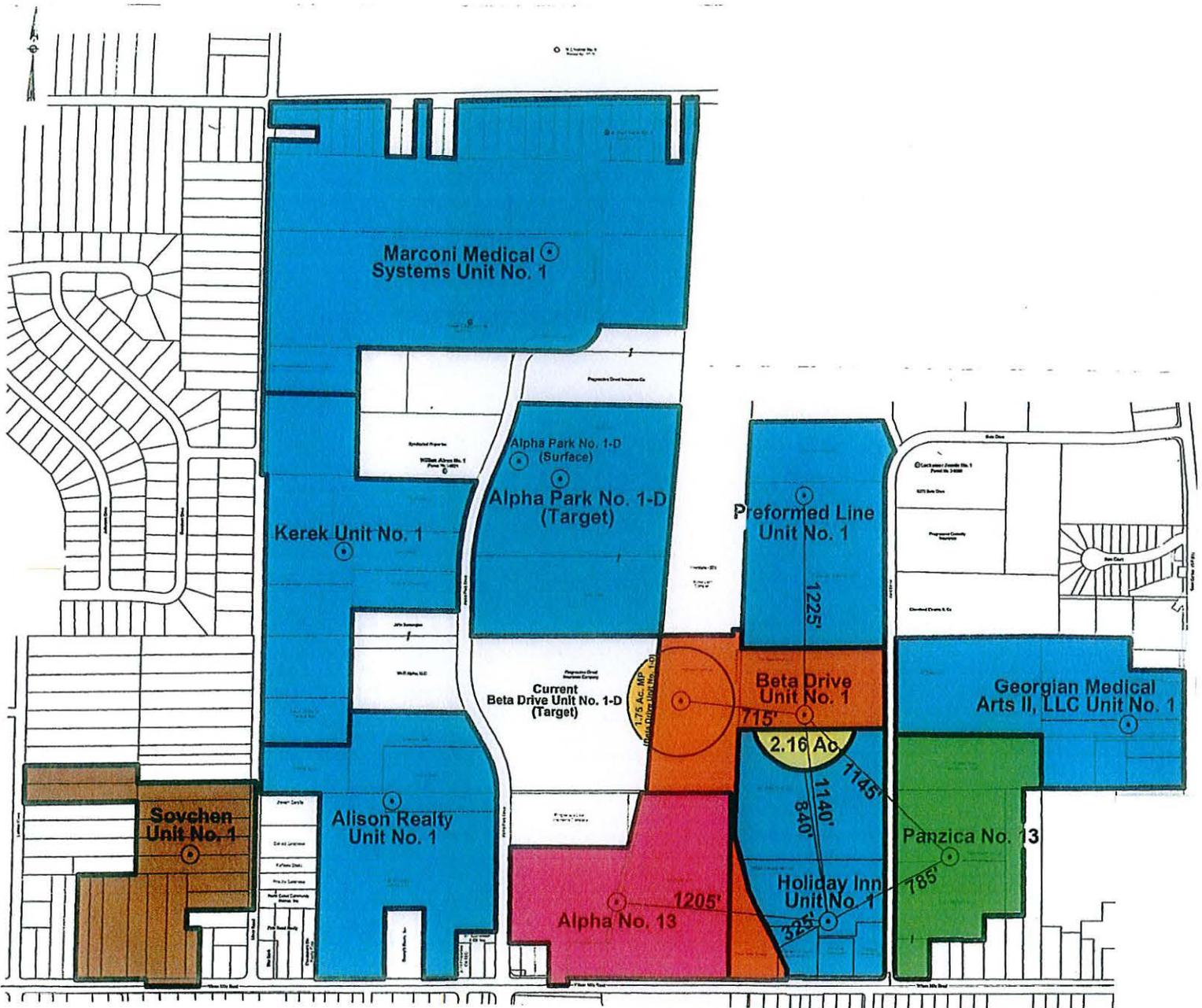
Mark G. Bonaventura (Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6552)

J. Richard Emens (Via Fax [614-414-0898] & Certified Mail #: 91 7108 2133 3936 6684 7717)

# **APPENDIX A**

## **Overview of Well Locations**

### **based upon Joint Exhibit 1**



Overview of Beta Drive Unit No. 1

# BEFORE THE OIL & GAS COMMISSION

BASS ENERGY, INC.,	:	
	:	Appeal No. 815
Appellant,	:	
	:	
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	Review of Chief's Order 2009-29
MANAGEMENT,	:	(Beta Drive Unit #1 Well )
	:	
Appellee,	:	
	:	
and	:	
	:	<b><u>INDEX OF EVIDENCE</u></b>
DUCK CREEK ENERGY, INC. ,	:	<b><u>PRESENTED AT HEARING</u></b>
	:	
Intervenor.	:	

**Before:** Timothy C. McNutt

**In Attendance:** Robert Chase, Karen Fryer, James Cameron (one day only, has abstained)

**Appearances:** Alan H. Coogan, Counsel for Appellant Bass Energy, Inc.; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; J. Richard Emens, Counsel for Intervenor Duck Creek Energy, Inc.

## **WITNESS INDEX**

### **Appellant's Witnesses:**

Dr. William Hlavin	Direct Examination; Cross Examination; Rebuttal
David Watson	Direct Examination; Cross Examination
David Hollister	Direct Examination; Cross Examination
Dr. Ronald Manus	Direct Examination; Cross Examination
John Husted	Cross Examination
Ronald Gibson	Direct Examination; Cross Examination

**Intervenor's Witnesses:**

David Bodo	Direct Examination; Cross Examination
David Mansbery	Direct Examination; Cross Examination
James Oberle	Direct Examination; Cross Examination

**Appellee's Witnesses:**

Steve Opritza	Direct Examination; Cross Examination
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**EXHIBIT INDEX**

**Joint Exhibits:**

NO.	DESCRIPTION	also marked as	STATUS
1	14" X 22" Map, Overview of Beta Drive Unit #1; (dated November 17, 2009) (with no markings by witnesses)	similar to Intervenor's Exhibit 2	admitted

**Appellant Bass Energy's Exhibits:**

NO.	DESCRIPTION	also marked as	STATUS
2.0	Board Display Map; Beta Dr. Mayfield Clinton Pool Area, (8 ½ " X 11") (dated 2009)		admitted
3.2	Structure Map; Top of "Big Lime" (dated 2009)		admitted
3.3	Map, Showing Structural Contours on Top of Big Lime (above SL), Beta Pool Area (dated 2009)		admitted, with Division noting that Marconi Well is slightly misplaced
3.4	Topographic Map, with Well Locations Spotted; Mayfield Village Area (dated 2009)		admitted, with Division noting that Marconi Well is slightly misplaced
3.5	Oil & Gas Well Spot Map (Annotated), Showing Lines of Cross Sections (dated 2009)		admitted, with Division noting that Marconi Well is slightly misplaced

3.5A	Stratigraphy of Wells in Area of Proposed Beta Drive #1 Well (undated)		admitted
3.6	Well Completion Record; Georgian Medical Arts II, LLC Unit #1 (completion date January 15, 2007)		admitted
3.61	Second Page of Well Completion Record; Georgian Medical Art II, LLC Unit #1; Well Log (completion date January 15, 2007)		admitted
3.7	Well Completion Record; Preformed Line Unit #1 (completion date December 7, 2007)		admitted
3.71	Second Page of Well Completion Record; Preformed Line Unit #1; Well Log (completion date December 7, 2007)		admitted
3.8	Well Completion Record; Holiday Inn Unit #1 (completion date August 20, 2008)		admitted
3.81	Second Page of Well Completion Record; Holiday Inn Unit #1; Well Log (completion date August 20, 2008)		admitted
3.9	Well Completion Record; Alpha Well Unit #13 (completion date October 20, 2008)		admitted
3.91	Second Page of Well Completion Record; Alpha Well Unit #13; Well Log (completion date October 20, 2008)		admitted
3.10	Geophysical Log; Alison Well (undated)		admitted
3.11	Well Completion Record; Panzica Well Unit #13 (completion date August 9, 2008)		admitted
3.12	Well Log for Beta Drive #1-D Well (dated November 18, 2008)		admitted
3.12A 3.12B 3.12C	Second, Third and Fourth Pages of Well Log for Beta Drive #1-D Well; Gamma Ray CCL VDL Bond (dated November 18, 2008)		admitted
3.13	Well Completion Record; Beta Drive Unit #1-D (completion date October 26, 2008)	included in Appellee's Exhibit 6; corrected version is Intervenor's Exhibit 8	admitted
3.13A	Second Page of Well Completion Record; Beta Drive Unit #1-D; Well Log (completion date October 26, 2008)	included in Appellee's Exhibit 6; corrected version is Intervenor's Exhibit 8	admitted
3.14	Summary, Frac Rates (undated)		admitted, over objection by Duck Creek
3.15	Four Photographs, Beta #1-D Wellhead; Facing North, West, East and South (undated)	included in Appellee's Exhibit 2	admitted
3.15A	One Photograph, Beta #1-D Wellhead (taken October 18, 2009)		admitted

4.3 4.31	Authorization for Expenditure; "A" Re-Drilling of the Beta Clinton Sandstone Directionally (dated March 8, 2009)	included in Appellee's Exhibit 2	admitted
4.4 4.41	Authorization for Expenditure; "B" Re-Drilling of the Beta Clinton Sandstone Directionally (dated March 8, 2009)	included in Appellee's Exhibit 2	admitted
4.7	Letter, from Hlavin to Commission, Summary Statement of Dr. William Hlavin (dated November 30, 2009) (two pages)		admitted, over objection by Duck Creek & Division
5.0	Letter, from Watson to Commission, re: Mandatory Pooling of Holiday Inn #1 (dated November 30, 2009) (two pages)		admitted, over objection by Duck Creek & Division
5.0A	Letter, from Manus to Commission, re: Mandatory Pooling Request, Duck Creek Energy (dated November 22, 2009)		admitted, over objection by Duck Creek & Division
5.1	Letter, from Hollister to Technical Advisory Council, re: Duck Creek 05/13 TAC Hearing (dated May 6, 2009)		admitted
5.11	E-Mail, from Hollister to Coogan, re: Commission Hearing (dated November 23, 2009)		admitted, over objection by Duck Creek & Division
5.3	Letter, from Manus on behalf of Celtic Resources - Ohio, LLC to Technical Advisory Council, re: Mandatory Pooling Request, Duck Creek Energy (dated May 4, 2009)		admitted
6.0	Letter, from Gibson to Hlavin, re: Mayfield Gas Field Study, Mayfield Twp. Cuyahoga Co., Ohio (dated May 11, 2009)		admitted
6.1	Letter, from Gibson to Hlavin, re: Mayfield Gas Field Study, Mayfield Twp. Cuyahoga Co., Ohio (dated November 27, 2009) (5 pages)		admitted, over objection by Duck Creek
8.3	Letter, from Klotzman to Husted, re: Beta Drive Unit #1D Drilling Permit Application (dated August 22, 2008)		admitted for limited purpose, over objection by Duck Creek, proffered as to any content relating to property title

8.4	Letter, from Klotzman to Husted, re: Beta Drive Unit #1D Drilling Permit Application (dated September 8, 2008)		admitted for limited purpose, over objection by Duck Creek, proffered as to any content relating to property title
8.5 8.51 8.52 8.53	Letter, from Attorney Greggo to Klotzman, re: title examination (dated September 4, 2008) (four pages)		proffered
8.6	Letter, from Opritza to Klotzman, re: Beta Drive Unit #1D Permit Application (dated October 2, 2008)		admitted
8.7	Mayfield Village Plat, with markings and ownership notations		proffered
8.8 8.81	Assignment and Bill of Sale, Stevensons and Vitek to Duck Creek Energy Inc. (dated May 15, 2008)		proffered
8.9 8.91	Deed, Stevenson to Paris (dated August 5, 1969, recorded August 14, 1969)		proffered
9.0	Well Completion Report, Beta Drive Unit #1D, with directional survey report, by Nevis Energy Services, Inc. (dated November 12, 2008) (three pages)		admitted
10.0	Gamma Ray CCL Neutron Report, Beta Drive #1-D Well, Perforation Log (dated October 27, 2008 to November 3, 2008) (two pages)		admitted
11	Report from Ronald Gibson, addressed to Hlavin (dated December 2, 2009); with attached (1) Gibson Resume, (2) Monthly Production History for Producing Bass Energy Wells in the Beta Pool, (3) Production Decline Curves with Posted EUR's for Bass Energy Wells in the Beta Pool, (4) Recent Flowing Casing Pressure and Rate Information for Bass Energy Wells in Beta Pool, (5) Volumetric Analysis Spreadsheet with Log Analysis and OGIP/Acre Results, (6) Bottomhole Pressure and Temperature Survey Information Summary, (7) Gas Material Balance Spreadsheet with Data and OGIP Results, and (8) Gas Material Balance Plots (sixteen pages)		admitted
12	Cumulative Production List, Georgian Medical Arts II, LLC Unit #1, Preformed Line Products Unit #1 and Holiday Inn Unit #1 (dated December 2, 2009)		admitted
13	Resume of Dr. William J. Hlavin		admitted
Not marked	Affidavit of Thomas R. Wood, P.G. (dated December 8, 2009)		proffered

## Intervenor Duck Creek Energy's Exhibits:

NO.	DESCRIPTION	also marked as	STATUS
1	Resume of Dave Bodo, Jr.		admitted
2	Oversized Map (poster sized); Overview of Beta Drive Unit No. 1; (dated November 17, 2009; with markings by witness Ronald Gibson)	similar to Joint Exhibit 1	admitted, over objection by Bass Energy
3	#1 Beta Drive Unit – A Just and Equitable Offer to Bass Energy (undated)		admitted
4	AIK Beta Drive Landowner Royalty Analysis, Before/After Mandatory Pooling (undated)		admitted
5	Photograph, Location of Tank Battery (undated)		admitted
6	Resume of James J. Oberle		admitted
7	Ohio Revised Code 1509.27		admitted
8	Revised Well Completion Record; Beta Drive Unit #1-D (completion date October 26, 2008, revision date December 4, 2009) (two pages)	revision of Appellee's Exhibit 6 & Appellant's Exhibits 3.13 & 3.13A	admitted
9	List of States that Currently Have Compulsory Pooling Statutes (as of December 1, 2009)		admitted
10	Ohio Administrative Code Section 1501:9-1-01(A)(25)		admitted
11	Ohio Revised Code 1509.01(I)		admitted
12	Universal Fracturing Services, Field Ticket #114789, Beta Drive #1-D Well (dated November 4, 2008) (three pages)		admitted

## Appellee Division's Exhibits:

NO.	DESCRIPTION	also marked as	STATUS
1	Letter, from Hlavin to Technical Advisory Committee; re: Mandatory Pooling Application by Duck Creek Energy, Inc. for the Beta #1 Unit Well (dated May 12, 2009)		admitted
2	Application Package, Application for Permit under Mandatory Pooling 1509.26 and 1509.27, from Mansbery (Duck Creek Energy) to Husted (Division) (dated March 31, 2009, time stamped April 1, 2009) with several attachments	contains Appellant's Exhibits 3.15, 4.1, 4.11, 4.3, 4.31, 4.4 & 4.41	admitted

3	Transcript of Proceedings before Technical Advisory Council, with certain corrections marked (recorded May 13, 2009)		admitted
4	Chief's Order 2009-29 (under appeal), with attachments (dated June 18, 2009)	corrected versions of attachments Exhibit B & C are Appellee's Exhibits 8 & 9	admitted
5	24" X 18" Oversized Aerial Photograph of General Well Location, Google (dated June 2007)		admitted
6	Well Completion Record; Beta Drive Unit #1-D (completion date October 26, 2008) (two pages)	contains Appellant's Exhibits 3.13 & 3.13A; corrected version is Intervenor's Exhibit 8	admitted
7	Plat Showing Location of Well, Beta Drive Unit # 1-D (revision date July 16, 2008, dated August 6, 2008, time stamped August 12, 2008)		admitted
8	Exhibit B (attachment to Chief's Order 2009-29), corrected (correction date December 2, 2009)	uncorrected version attached to Appellee's Exhibit 4	admitted
9	Exhibit C (attachment to Chief's Order 2009-29), corrected (dated March 17, 2009, corrected December 2009)	uncorrected version attached to Appellee's Exhibit 4	admitted
10	Clinton Wells Drilled in the Mayfield Pool (undated)		admitted