

**BEFORE THE
NEW MEXICO ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING CALLED BY
THE OIL CONSERVATION DIVISION FOR THE
PURPOSE OF CONSIDERING:**

CASE NO. 13335

2009 AUG 24 PM 4:13

**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY, L.P., FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

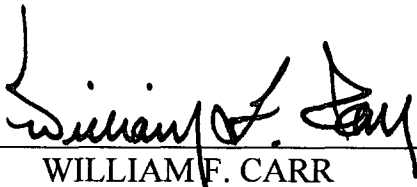
ENTRY OF APPEARANCE

COMES NOW HOLLAND & HART LLP and hereby enters its appearance in the
above referenced case on behalf of Marbob Energy Corporation and Pitch Energy
Corporation.

2009
8/24/09

Respectfully submitted,

HOLLAND & HART LLP

By: 
WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504
Telephone: (505) 988-4421

ATTORNEYS FOR MARBOB ENERGY
CORPORATION AND PITCH ENERGY
CORPORATION

CERTIFICATE OF SERVICE

I certify that on August 24, 2004 I served a copy of the foregoing document to the following by

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☒ Fax
- ☐ Electronic Service by LexisNexis File & Serve

James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87504-1056
505-982-2151 (facsimile)


WILLIAM F. CARR

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August 24, 2004

VIA HAND DELIVERY

Mr. Mark E. Fesmire, P. E.
Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

2004 AUG 24 PM 4 13

**Re: Case No. 13335: Application of Devon Energy Production Company, L.P.
for compulsory pooling, Eddy County, New Mexico.**

Dear Mr. Fesmire:

Enclosed for filing in this case is the Motion To Dismiss of Marbob Energy Corporation and Pitch Energy Corporation. A copy of this letter and motion have been served on James Bruce, Esq., attorney for Devon Energy Production Company, L.P.

Handwritten note: x of 13/18

You attention to this matter is appreciated.

Very truly yours,

William F. Carr

cc: Gail MacQuesten, Esq.
Oil Conservation Division

Raye Miller
Marbob Energy Corporation

James G. Bruce, Esq.
Devon Energy Production Company, L.C.

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.**

CASE NO. 13335

**MARBOB ENERGY CORPORATION'S
AND PITCH ENERGY CORPORATION'S
MOTION TO DISMISS**

COME NOW, MARBOB ENERGY CORPORATION, ("Marbob") and PITCH ENERGY CORPORATION ("Pitch"), through their undersigned attorneys, hereby move the Division for an order dismissing them from the compulsory pooling application filed in this case by Devon Energy Production Company, L.P. ("Devon") and in support of their motion state:

1. Marbob and Pitch are working interest owners in the W/2 of Section 3, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico. They are parties to a Joint Operating Agreement covering these lands that is dated November 4, 1968.

2. In this case Devon seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the W/2 of Section 3 for the drilling of its proposed Esperanza 3E Fee Well No. 2 located 1980 feet from the North line and 890 feet from the West line of said section. Devon has named Marbob and Pitch as the owners of interests subject to pooling.

3. In a letter to Working Interest Owners in the W/2 of Section 3 dated August 13, 2004, Devon:

- (a) proposed that Marbob and Pitch, as interest owners who are subject to that certain Joint Operating Agreement dated November 4, 1968, ratify and adopt the March 1, 2001 Joint Operating Agreement that had been executed by other owners in the well;
- (b) stated that it is not a party to the November 4, 1968 Joint Operating Agreement

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and that it is not proposing the Esperanza 3E Fee Well No. 2 under this agreement; and

- (c) contends that if Marbob and Pitch do not accept and ratify a subsequent Joint

Operating Agreement dated March 1, 2001, Devon may pool their interests.

A copy of this letter is attached hereto as Exhibit A.

4. Neither Marbob nor Pitch have adopted the March 1, 2001 Joint Operating Agreement proposed by Devon.

5. The Esperanza 3E Fee Well No. 2 is the second well Devon has drilled on this spacing unit. In 2001, Devon drilled the Esperanza 3N Fee Well No. 1 located well 660 feet from the South line and 1980 feet from the West line of Section 2. The W/2 of the section is also dedicated to this well.

6. When Devon drilled the original well on this spacing unit it was required by statute to "to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands..." NMSA 1978, § 70-2-18 (1969). Marbob and Pitch did not ratify the March 1, 2001 Joint operating Agreement for the well and Devon did not seek a pooling order because none was needed. Instead, **the first well on this W/2 unit was drilled and completed by Devon pursuant to the Joint Operating Agreement dated November 4, 1968.** See Devon's letter to Pitch dated October 5, 2001 attached hereto as Exhibit B.

7. In 2001, Devon combined the lands in the W/2 of this section for the original well on this spacing unit by recognizing the November 4, 1968 Joint Operating Agreement that covers the interests of Marbob and Pitch in the W/2 of this section. Devon cannot have it both ways. Just because Devon may desire different terms than those contained in the earlier agreement, it cannot now reject or ignore the very Joint Operating Agreement upon which it relied to combine the lands in this unit for the original well it drilled on this spacing unit in 2001.

8. The Oil and Gas Act authorizes compulsory pooling only when specific statutory conditions pre-conditions are met. These conditions are set out as follows:

“When two or more separately owned tracts of land are embraced within a single spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. **Where, however, such owner of owners have not agreed to pool their interests**, and where one such interest owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.” NMSA 1978, § 70-2-13.C (1978).

9. Marbob seeks an order of the Division dismissing the interests of Marbob and Pitch from this application because these interests are voluntarily committed this well by a Joint Operating Agreement covering these properties dated November 4, 1968.

10. Since a voluntary agreement has been reached for the development of these lands, pooling of these interests is not authorized by the Oil and Gas Act and Devon’s well must be drilled pursuant to the terms of the Joint Operating Agreement that it used to combine the interests in this W/2 unit for the original well it drilled thereon.

WHEREFORE, MARBOB ENERGY CORPORATION and PITCH ENERGY CORPORATION move the Division for an order dismissing them from Devon’s application for the pooling of the uncommitted interests in the W/2 of Section 3, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico.

Respectfully submitted,

HOLLAND & HART LLP

By: 

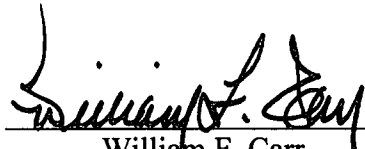
William F. Carr
Post Office Box 2208
Santa Fe, NM 87504
Telephone: (505) 988-4421

ATTORNEYS FOR MARBOB ENERGY
CORPORATION

CERTIFICATE OF SERVICE

I certify that on August 24, 2004 I served a copy of the foregoing document to the following by Facsimile to:

Devon Energy Production Company, L.P.
c/o James Bruce, Esq.
369 Montezuma, No. 213
Santa Fe, New Mexico 87501
Fax No. (505) 982-2151


William F. Carr

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devon

Devon Energy Corporation
20 North Broadway
Oklahoma City, Oklahoma 73102-8260
Fax 405-562-8113

August 13, 2004

AUG 16 2004

To Working Interest Owners
Address List Attached

Re: Esperanza 3E Fee #2
1980' FNL & 890' FWL
Section 3-T22S-R27E
Eddy County, New Mexico

Gentlemen:

By letter dated July 8, 2004, Devon Energy Production Company, L.P. ("Devon") proposed the drilling of the referenced well as a 12,000' Morrow test. Additionally, Devon proposed that the Carlsbad Drilling Block interest owners who are subject to that certain Joint Operating Agreement dated November 4, 1968 ratify and adopt the March 1, 2001 Joint Operating Agreement which has been executed and/or ratified by certain interest owners whose combined interest is in excess of 81.25% of the spacing unit. To date, the following parties have not responded to Devon's prior correspondence with regard to such proposal or have elected to participate or be a non-consenting party under the November 4, 1968 Carlsbad Drilling Block Joint Operating Agreement:

Magnum Hunter Production, Inc.
Marbob Energy Corporation
BK Exploration Corporation
T.J. & Mary R. Sivley Irrevocable Trust
Pozo Rico Partners, Ltd.
Pitch Energy Corporation
Wadi Petroleum, Inc.
Tex-Ok Energy Ltd. Partnership
Cody Energy, Inc.
James L. Pierce

In order to clarify Devon's proposal with respect to the above mentioned interest owners, please be advised that Devon is not a party to the aforementioned November 4, 1968 Agreement and is not proposing the Esperanza 3E Fee #2 under such agreement. Devon intends to file a Compulsory Pooling Application before the New Mexico Oil Conservation Division to be heard on September 2, 2004. Such application will seek to pool all interest owners who have not reached a voluntary agreement with respect to Devon's well proposal. You should receive notice of such application in the next few days. In the event you wish to participate in the drilling of the referenced well as

EXHIBIT A


Working Interest Owners
August 13, 2004
Page Two

proposed, please execute (1) one copy of the Authority for Expenditure and (1) one copy of the letter agreement ratifying and adopting the March 1, 2001 Joint Operating Agreement, both of which have been furnished to you previously, and return to the undersigned at your earliest convenience.

Feel free to contact me at (405) 552-4633 if there are any questions or if additional information is required.

Yours very truly,

DEVON ENERGY PRODUCTION COMPANY, L.P.


Ken Gray
Senior Land Advisor

KG:\esperanza#2followupltr

Esperanza 3E Fee #2
Working Interest Owners

Magnum Hunter Production, Inc.
3500 William D. Tate Avenue, Suite 200
Grapevine, Texas 76051

Marbob Energy Corporation
P. O. Box 227
Artesia, NM 88211-0227

BK Exploration Corporation
810 S. Cincinnati, Suite 208
Tulsa, OK 74119-1635

T. J. & Mary R. Sivley Irrevocable Trust
c/o Nations Bank, N.A.
P. O. Box 832407
Dallas, TX 75283-2407

Pozo Rico Partners, Ltd.
900 N. E. Loop 419, Suite D-202
San Antonio, TX 78209

Pitch Energy Corporation
P. O. Box 304
Artesia, NM 88210-0304

Wadi Petroleum, Inc.
14405 Walters Road, Suite 400
Houston, TX 77014-1320

Tex-Ok Energy Ltd. Partnership
P. O. Box 3010
Cody, WY 82414-5915

Cody Energy, Inc.
P. O. Box 3010
Cody, WY 82414-5915

James L. Pierce
2607 Ward Street
Midland, TX 79705-7328

devon**ENERGY PRODUCTION COMPANY, L.P.**20 North Broadway, Suite 1500
Oklahoma City, Oklahoma 73102-8260Telephone: (405) 235-3611
Fax: (405) 552-8113

October 5, 2001

OCT 10 2001

VIA FACSIMILETo All Working Interest Owners
See List AttachedRe: Esperanza 3N Fee #1
660' FSL & 1980' FWL
Section 3-T22S-R27E
Eddy County, New Mexico
DEC #49848-001

Gentlemen:

Devon Energy Production Company, L.P. ("Devon") as operator has drilled the captioned well to an authorized depth of 11,910'. All necessary tests and logging have been completed and all pertinent data is being furnished to all working interest owners.

Accordingly, Devon proposes to set casing to total depth and attempt completion in the Morrow formation.

Pursuant to those certain Joint Operating Agreements dated November 4, 1968 and, March 1, 2001, please advise within forty-eight (48) hours after receipt of the above mentioned data as to your casing point election by signing, dating and returning one copy of this letter to the undersigned.

Feel free to contact the undersigned if there are any questions.

Yours very truly,

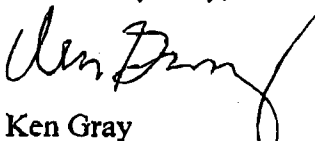

Ken Gray
Senior Land AdvisorKG:da\esperanza3N.cas
Enclosures☒ We hereby elect to set casing and participate in the Morrow completion attempt.☐ We hereby elect not to set casing and participate in the Morrow completion attempt.Company/Individual: Pitch EnergyBy: Raye MillerTitle: Attorney-in-factDate: 10/6/2001

EXHIBIT B