

**STATE OF 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. 12589
ORDER NO. R-11603**

APPLICATION OF H. L. BROWN, JR. FOR COMPULSORY POOLING, A NON-STANDARD OIL SPACING UNIT, AND AN UNORTHODOX OIL WELL LOCATION, ROOSEVELT COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on February 8, 2001, at Santa Fe, New Mexico before Examiner Michael E. Stogner.

NOW, on this 13th day of June, 2001, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, H. L. Brown, Jr., seeks:

(a) an exception to Division Rule 104.B (1) to create a non-standard 160-acre oil spacing unit comprising the NE/4 of Section 8, Township 7 South, Range 36 East, NMPM, Roosevelt County, New Mexico, within the Devonian formation;

(b) approval to dedicate this non-standard 160-acre oil spacing unit to its proposed Robinson "8" Well No. 1 to be drilled at an unorthodox oil well location 1550 feet from the North line and 1400 feet from the East line (Unit G) of Section 8; and

(c) an order pooling all uncommitted mineral interests underlying the NE/4 of Section 8:

(i) within the Devonian formation to form the above-described non-standard 160-acre oil spacing unit; and

(ii) from the surface to the top of the Wolfcamp

formation to form a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within that vertical extent [see Division Rule 104.C (3)].

(3) This is a wildcat area with no Devonian pools within the immediate area; therefore, the Devonian interval will be subject to Division Rule 104.B (1) which requires 40-acre spacing units, each being a governmental quarter-quarter section, and for wells to be located no closer than 330 feet from the boundary of the 40-acre tract.

(4) Applicant has the right to develop and produce any hydrocarbons underlying the NE/4 of Section 8.

(5) As of January 16, 2001, the date this application was filed, the following unleased mineral owners in the above-described acreage have not agreed to pool their interests:

Mineral Owner and Last Known City of Residence	Net Acres Owned Within the NE/4 of Section 8 (Acres)	Interest Owned Within the NE/4 of Section 8 (Percentage)
George French Zephyr, Texas	1.904	1.19
Velma Keith Globe, Arizona	2.224	1.39
Irene French Braswell Natanga, Israel	1.904	1.19
Earl H. French Weatherford, Texas	0.634	0.395
Marvin Anthony Cauthron Sherwood, Arizona	0.18516	0.11573
Betty Jean Hockey Jacksonville, Florida	0.18516	0.11573
Grace Bible Fellowship Church Tangent, Oregon	0.05555	0.03472
Dorothy Jean Lander	1.666	1.04165
Total	8.75787	5.47283

(6) Division Rule 7.U defines a "*Unit of Proration for Oil*" as consisting of one 40-acre tract or such multiplies of 40-acre tracts as may be prescribed by special pool rules issued by the Division.

(7) Division Rule 104.H provides that "[i]n order to prevent waste, the Division may, after hearing, set different spacing requirements and require different acreage for drilling tracts in any defined oil or gas pool."

(8) The location of the applicant's proposed Robinson "8" Well No. 1, being only 80 feet from the east line and 230 feet from the north line of the SW/4 NE/4 (Unit G) of Section 8, is considered to be standard for the standard 160-acre gas spacing and proration unit [see Division Rule 104.C (3)].

(9) In accordance with Division Rule 1207.A (1), (2), and (3), the applicant submitted a sworn affidavit verifying that after a good faith search it attempted to provide to the best of its ability actual notice to each and every owner of mineral interests proposed to be pooled. Therefore, each affected party has been afforded a fair and reasonable opportunity to appear and participate. Further, H. L. Brown, Jr. has complied with Division notification rules by sending notice, certified mail, return receipt requested, to all of the interest owners in the NE/4 of Section 8.

(10) The applicant prepared and presented the following technical data:

- (a) seismic data including three seismic profile lines, a time depth map, and a time depth map converted to actual depth in feet;
- (b) integrated prior conventional geologic and geophysical interpretations of the Devonian formation within the surrounding area;
- (c) three 2-D seismic lines and well-log data from the only two wells that penetrated the Devonian within a 12-section area;
- (d) seismic data reprocessed to optimize its accuracy; and
- (e) available data from the North Bluit Siluro-Devonian Pool, which is the nearest Devonian oil pool some 8 miles to the southeast in Sections 27 and 28, Township 7 South, Range 37 East, NMPM, Roosevelt County, New Mexico.

(11) From this data, it is apparent that the applicant has identified a small Devonian structural feature at an depth in excess of 8,000 feet (herein referred to as the "North Todd Prospect") which is substantially contained within the NE/4 of Section 8 and is apportioned equally between the N/2 and S/2 of the quarter section. This structure has approximately 70 feet of closure and is bounded on the north by a fault and on the south by an oil/water contact.

(12) With respect to the proposed location of the Robinson "8" Well No. 1, the applicant's technical evidence indicates that:

- (a) there are no standard oil well locations within any of the four 40-acre tracts comprising the NE/4 of Section 8 that are geologically superior to the proposed unorthodox well location;

(b) this location represents the optimum geophysical position on the North Todd Prospect; a move either east or west serves to increase the risk of drilling a dry hole;

(c) any location further north is too close to the north fault line and any location further south moves down structure toward the oil/water contact;

(d) the proposed unorthodox oil well location is the optimum location at which to drill this well in order to use a single wellbore to test the Devonian formation within this small, localized structural feature; and

(e) approval of this unorthodox oil well location will increase the likelihood of intersecting commercial grade oil-bearing zones within the Devonian formation.

(13) The applicant's technical evidence justifies this non-standard 160-acre oil spacing unit. While the Robinson "8" Well No. 1 would be located in the SW/4 SE/4 (Unit G) of Section 8, each of the four 40-acre tracts in the NE/4 of Section 8 would contribute Devonian oil reserves to the well.

(14) The geophysical and reservoir data presented further indicate that: (i) the North Todd Prospect contains approximately 300,000 barrels of recoverable oil; (ii) the location of the well as proposed will be capable of recovering these reserves; and (iii) economic waste would be caused by drilling more than one well because one well is likely to drain the entire pool and the economics preclude the drilling of two wells at standard well locations.

(15) The applicant's petroleum/mineral land evidence indicates that:

(a) the NE/4 of Section 8 consists of two fee tracts, each consisting of 80 acres, with differing ownership between the N/2 and the S/2;

(b) the S/2 NE/4 of Section 8 has five different owners all of whom have issued leases to H. L. Brown, Jr.;

(c) the N/2 NE/4 of Section 8 has in excess of 60 different owners with H. L. Brown, Jr. holding leases from 57 of these owners each of which is subject to a 12.5% (1/8th) royalty;

(d) since 1989, Brown has been attempting to consolidate these leases in the NE/4 of Section 8 on a voluntary basis;

(e) on December 8, 2000, H. L. Brown, Jr. proposed the Robinson "8" Well No. 1 at this location and the subject 160-acre spacing unit to all interest owners within the NE/4 of Section 8;

(f) the proposed well when completed is estimated to cost approximately \$580,800.00;

(g) the only uncommitted interest owners are located within the N/2 NE/4 of Section 8 and have a total interest of 5.47283% in the proposed 160-acre non-standard spacing unit;

(h) H. L. Brown, Jr. has obtained voluntary agreement of the owners of the remaining 94.52717 % of the interest in the proposed 160-acre spacing unit.

(16) No interest owner appeared to object to this proposal.

(17) The testimony presented demonstrates that:

(a) the applicant has proposed the subject well and its appropriate spacing units to the uncommitted owners in the spacing units as identified in Finding No. (4) above;

(b) despite its good faith efforts, applicant has been unable to obtain a written voluntarily agreement to pool their interests from these uncommitted owners;

(c) while the unorthodox location is superior to the closest standard location, it does not reduce the risk to less than the maximum 200%;

(d) since the risk of an unsuccessful completion is very high, the risk penalty to be applied to the compulsory-pooled parties who elect to be carried should be set at 200% of their proportionate share of actual total completed well costs; and

(e) based on the geologic risk, including the absence of commercial Devonian production within eight miles, the maximum statutory risk penalty pursuant to NMSA 1978, § 70-2-17 (c) (1977) of 200 % is justified.

(18) It is the Division's practice to require a well to be drilled pursuant to statewide spacing and well location requirements and then after a discovery is made and a pool is established, to consider special pool rules concerning well spacing and location requirements.

(19) However, this application presents unique circumstances as described in Findings No. (10) through (17) that require establishing a special procedure to prevent waste and protect correlative rights as follows:

- (a) a special non-standard 160-acre oil spacing unit consisting of the NE/4 of Section 8 within the Devonian formation should be established at this time;
- (b) a compulsory pooling order should be entered pooling the interests of all eight uncommitted mineral interest owners [as described above in Finding Paragraph No. (4) in the NE/4 of Section 8] in the following manner:
 - (i) within the Devonian formation to form the proposed 160-acre non-standard oil spacing unit; and
 - (ii) from the surface to the top of the Wolfcamp formation to form a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within that vertical extent;
- (c) H. L. Brown, Jr. should be authorized to drill the Robinson "8" Well No. 1 at the requested location;
- (d) the proposed 160-acre unit is to be dedicated to this well;
- (e) in accordance with Division Rule 505.A the non-standard 160-acre oil spacing and proration unit should be assigned a top depth bracket oil allowable of 470 barrels of oil per day;
- (f) no additional well may be drilled to the Devonian formation within the 160-acre non-standard spacing unit, except after notice and hearing; and
- (g) within 6 months after the date of first production, the operator of the well and unit should file an application with the Division for creation of a new pool and for adoption of special rules and regulations.

(20) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owner of each interest in the units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbon production in any pool resulting from this order, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within these units.

- (21) H. L. Brown, Jr. should be designated the operator of the subject well and units.
- (22) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.
- (23) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.
- (24) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs, but actual well costs should be adopted as the reasonable well costs in the absence of such objection.
- (25) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.
- (26) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,500.00 per month while drilling and \$550.00 per month while producing, provided that this rate should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.
- (27) All proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.
- (28) If the operator of the pooled units fails to commence drilling the well to which the units are dedicated on or before September 15, 2001, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.
- (29) The operator may request from the Division Director an extension of the September 15, 2001 deadline for good cause.
- (30) The operator of the well and units should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

- (1) Pursuant to the application of H. L. Brown, Jr. all uncommitted mineral interests,

whatever they may be, from the surface to the base of the Devonian formation underlying the NE/4 of Section 8, Township 7 South, Range 25 East, NMPM, Roosevelt County, New Mexico, are hereby pooled, in the following manner:

- (a) within the Devonian formation to form a non-standard 160-acre oil spacing unit; and
 - (b) from the surface to the top of the Wolfcamp formation to form a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within that vertical extent [see Division Rule 104.C (3)].
- (2) These units will be dedicated to the proposed Robinson "8" Well No. 1, which the applicant is hereby authorized to drill within the NE/4 of Section 8 at a location 1550 feet from the North line and 1400 feet from the East line (Unit G) of Section 8 (considered to be a standard gas well location but an unorthodox oil well location).
- (3) The 160-acre non-standard Devonian oil spacing unit comprising the NE/4 of Section 8 herein established shall be subject to the following:
 - (a) a top depth bracket allowable pursuant to Division Rule 505 of not more than 470 barrels of oil per day is hereby assigned;
 - (b) no additional wells may be drilled to the Devonian formation except after notice and hearing; and
 - (c) within 6 months after the date of first production, the operator shall file an application with the Division for the creation of a new Devonian oil pool and for the adoption of special rules and regulations.
- (4) The operator of the units shall commence drilling the well on or before September 15, 2001, and shall thereafter continue drilling the well with due diligence to a depth sufficient to test the Devonian formation; PROVIDED HOWEVER THAT, in the event the operator does not commence drilling the well on or before September 15, 2001, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

PROVIDED FURTHER THAT, should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.
- (5) H. L. Brown, Jr. is hereby designated the operator of the subject well and units.
- (6) After pooling, uncommitted working interest owners shall be referred to as "non-consenting working interest owners." After the effective date of this order and within 90 days prior

to commencing the well, the operator shall furnish each known non-consenting working interest owner in the units and the Division an itemized schedule of estimated well costs.

(7) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(8) The operator shall furnish each known non-consenting working interest owner and the Division an itemized schedule of actual well costs within 90 days following completion of the well. If no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and
- (b) as a charge for the risk involved in drilling the well, 200 percent of the above costs.

(11) The operator shall distribute the costs and charges withheld from production to the parties who advanced the well costs.

(12) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,500.00 per month while drilling and \$550.00 per month while producing, provided that this rate shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is hereby authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(13) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8)-royalty interest for the purpose of allocating costs and charges under this order.

(14) Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

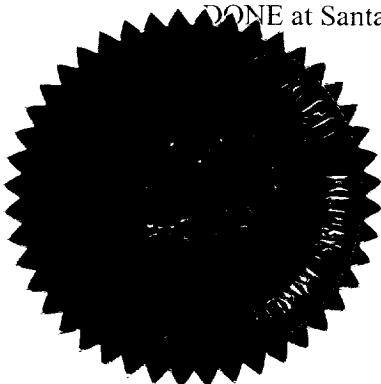
(15) All proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Roosevelt County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, that portion of this order authorizing compulsory pooling shall thereafter be of no further effect.

(17) The operator of the well and units shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

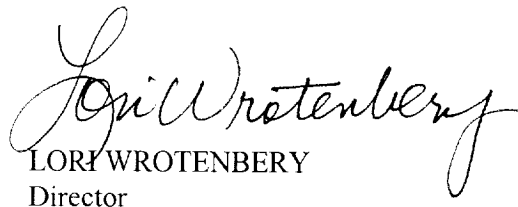
(18) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



S E A L

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director