MILLER STRATVERT P.A.
LAW OFFICES

RANNE B. MILLER
ALICE T. LORENZ
GREGORY W. CHASE
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
SETH V. BINGHAM
TIMOTHY R. BRIGGS
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THOMAS R. MACK

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KELSEY D. GREEN
MARCY BAYSINGER
DAVID J. MARTIN
CAROLINE BLANKENSHIP
MATTHEW S. RAPPAPORT

***licensed in Texas only

COUNSEL

WILLIAM K. STRATVERT
JAMES B. COLLINS

ALBUQUERQUE, NM

500 MARQUETTE NW, SUITE 1100
P.O. BOX 25687 (87125-0687)
ALBUQUERQUE, NM 87102
TELEPHONE: (505) 842-1950
(800) 424-7585
FACSIMILE: (505) 243-4408

SANTA FE, NM

150 WASHINGTON AVE., SUITE 300
P.O. BOX 1986 (87504-1986)
SANTA FE, NM 87501
TELEPHONE: (505) 989-9614
FACSIMILE: (505) 989-9857

FARMINGTON, NM

300 WEST ARRINGTON, SUITE 300
P.O. BOX 869 (87499-0869)
FARMINGTON, NM 87401
TELEPHONE: (505) 326-4521
FACSIMILE: (505) 325-5474

LAS CRUCES, NM

1125 SOUTH MAIN ST., SUITE B
P.O. BOX 1209 (88004-1209)
LAS CRUCES, NM 88005
TELEPHONE: (505) 523-2481
FACSIMILE: (505) 526-2215

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* NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN NATURAL RESOURCES - OIL & GAS LAW
** NEW MEXICO BOARD OF SPECIALIZATION RECOGNIZED SPECIALIST IN REAL ESTATE LAW

April 28, 2003

VIA FACSIMILE & HAND-DELIVERY

Mr. David Brooks
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico

Re: In the Matter of the Application of Devon Energy Production Company, L.P. for Compulsory Pooling, Lea County, New Mexico; Case No. 13048 Consolidated With In the Matter of the Application of EGL Resources, Inc. for Compulsory Pooling, Lea County, New Mexico; Case No. 13049

Dear Mr. Brooks:

Enclosed is a copy of the Proposed Order submitted on behalf of EGL Resources, Inc. and Robert Landreth in the above-referenced consolidated cases.

As was explained during the testimony at the hearing in this matter, Mr. Landreth owns a lease interest in the S/2 of the subject lands with an October 2003 expiration date. EGL Resources and Mr. Landreth are also in a position to take advantage of favorable drilling rates in the very near future. Accordingly, to the extent your schedule permits, we would appreciate your expedited consideration of this case.

Thank you for your consideration.

Very truly yours,

MILLER STRATVERT P. A.

J. Scott Hall

J. Scott Hall

JSH/glb
Enclosure
cc: Examiner David Catanach (Via Facsimile)
James Bruce (Via Facsimile)
W. Thomas Kellahin
Wes Perry
Bob Landreth

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

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

CASE NO. 13048

CONSOLIDATED WITH:

IN THE MATTER OF THE APPLICATION OF
EGL RESOURCES, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

CASE NO. 13049

ORDER NO. R-_____

ORDER OF THE DIVISION
(EGL Resources, Inc.'s and Robert Landreth's Proposed Order)

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on April 10, 2003 at Santa Fe, New Mexico, before Examiner David K. Brooks and Examiner David R. Catanach.

NOW, on this _____ day of April, 2003, the Division Director, having considered the testimony, the record and the recommendations of the Examiners, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, and the Division has jurisdiction of these cases and of the subject matter hereof.

(2) Division Case Nos. 13048 and 13049 were consolidated at the time of hearing for the purpose of testimony, and, as approval of one application would necessarily require denial of the other, one order should be entered for both cases.

30-025-34515

(3) The applicant in Case No. 13048, Devon Energy Production Company, L.P. (Devon), seeks an order pooling all mineral interests from the base of the Morrow formation to the base of the Devonian formation underlying the N/2 of Section 4, T-23-S, R-34-E, NMPM, Lea County, New Mexico to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320-acre spacing, including but not limited to the Antelope Ridge-Devonian Gas Pool.

Said units are to be dedicated to the Rio Blanco "4" Federal Well No. 1 (API No. 30-025-34515) located at a standard location in Unit F of Section 4. Devon proposes to re-enter the Rio Blanco "4" Federal Well No. 1, presently drilled to the Morrow formation and deepen the same by way of a sidetrack to the Devonian formation.

(4) The applicant in Case No. 13049, EGL Resources, Inc., supported by Robert Landreth, (EGL/Landreth), seeks an order pooling all mineral interests from the base of the Morrow formation to the base of the Devonian formation underlying the entirety of Section 4, T-23-S, R-34-E, NMPM, Lea County, New Mexico, to form a 640-acre spacing and proration unit from the base of the Morrow formation to the base of the Devonian formation pursuant to the pool rules for the undesignated North Bell Lake-Devonian Gas Pool (71840). EGL also proposes to re-enter the Rio Blanco "4" Federal No. 1 Well and deepen the same to the Devonian formation by way a sidetrack procedure.

(5) At the hearing it was established that the proposed spacing units for the Rio Blanco "4" Federal Well No. 1 are one mile from the outer boundary of the North Bell Lake-Devonian Gas Pool, "a defined pool" with special pool rules which require 640-acre spacing for Devonian gas wells.

(6) Prior to the hearing, on April 7, 2003, EGL and Landreth filed a Motion to Dismiss Case No. 13048 for the reason that Devon's proposed 320-acre unit in the N/2 of Section 4 violated the gas well acreage requirements under Rule 19.15.3.104A of the Division's rules and regulations governing well spacing and location. Subsequently, Devon filed its Motion to Dismiss Case No. 13049. In its motion, Devon asserted that "Division Rule 104 provides that if the spacing unit for a well is one mile or more from the pool, then the well is a wildcat and must be dedicated to a 320-acre spacing unit." The parties are in agreement, and the evidence at hearing established, that the outer boundary of the spacing unit for the Rio Blanco "4" Well No. 1 is exactly one mile from the outer boundary of the North Bell Lake-Devonian Gas Pool.

(7) The North Bell Lake-Devonian Gas Pool was established by the Commission pursuant to Order No. R-2187 issued on March 1, 1962 following the completion of the Continental Oil Company (Conoco) Bell Lake Unit No. 6 discovery well located in Unit O of Section 6, T-23-S, R-34-E. The Bell Lake Unit No. 6 discovery

well was completed as a producing gas well in the Devonian formation on June 8, 1960 with perforation tops at 14,568'. Subsequently, on August 4, 1980, the Division issued Order No. R-6424 extending the boundaries of the North Bell Lake-Devonian Gas Pool to include the entirety of Section 6, along with Sections 7 and 18, all in T-23-S, R-34-E. Order No. R-6424 also established special pool rules for the North Bell Lake-Devonian Gas Pool which require 640-acre spacing for development in that pool.

(8) The Antelope Ridge Gas Pool (70400), the pool referenced in the Devon application, was established on January 1, 1964 pursuant to Order No. R-2623, as amended on June 1, 1986 by Order No. R-8233 (pool extension). Order No. R-2623 established temporary pool rules for the Antelope Ridge Devonian Gas Pool which provided for 640-acre spacing. Those temporary rules were made permanent in 1966 by Order No. R-2623-A. Currently the horizontal limits of the Antelope Ridge Devonian Gas Pool encompass all of Sections 27, 33 and 34 in T-23-S, R-34-E, as well as all of Section 4 in T-24-S, R-34-E. The outer boundaries of the Antelope Ridge Devonian Gas Pool are 3-1/2 miles away from the 320-acre spacing and proration unit that Devon proposes to dedicate to the Rio Blanco "4" Federal Well No. 1, and Devon has since acknowledged those rules are inapplicable.

(9) Devon asserts that the because the Rio Blanco "4" Federal Well No. 1 wellbore is not located within one mile of the North Bell Lake-Devonian Gas Pool, it is a "wildcat" Devonian well and that accordingly 320-acre spacing applies under the Division's statewide rules. EGL and Landreth assert that the spacing unit for the Rio Blanco "4" Federal Well No. 1 is one mile from the outer boundary of the North Bell Lake-Devonian Gas Pool, and therefore the Rio Blanco well is a "development well" in the undesignated North Bell Lake-Devonian Gas Pool under the Division's rules and regulations.

(10) Rule 104 of the Division's rules and regulations sets forth the definitions of wildcat wells and development wells. Rule 104.A.1.B is the wildcat well definition applicable in Lea County:

> *"(b) in all counties except San Juan, Rio Arriba, Sandoval, and McKinley, a wildcat well is any well to be drilled the spacing unit of which is a distance of one mile or more from: (i) the outer boundary of any defined pool that has produced oil or gas from the formation to which the well is projected to be drilled; and (ii) any well that has produced oil or gas from the formation to which the proposed well is projected."*

(11) Development wells are defined in Division Rule 104.A.2:

> *(2) Development Well.*

> *(a) Any well that is not a wildcat well shall be classified as a development well for the nearest pool that has developed oil or gas from the formation to which the well is projected to be drilled. Such development well shall be spaced, drilled, operated, and produced in accordance with the rules in effect for that pool, provided the well is completed in that pool.*

(12) Rule 104.C also establishes the acreage and well location requirements for gas wells and makes clear that each development well for a defined gas pool is to be spaced as provided in "Special Pool Orders".

(13) Rule 104.A.1.B(ii) of the Division's rule defining a "wildcat" well as a well the spacing unit for which must be "a distance of one mile or more from" the outer boundary of any established pool, is susceptible to two constructions. Accordingly, the Division's previous interpretations of its own rules in similar circumstances, and industry's reliance thereon should be accorded significant weight. (Order No. R-11133-A, Findings 21, 22 and 24, *Application of Pendragon Energy Partners, Inc. To Confirm Production From Appropriate Common Source Of Supply*, Case No. 11996 *de novo*).

(14) In support of its Motion to Dismiss, Devon submitted a BLM Sundry Notice form reflecting that the BLM had approved the APD for the Rio Blanco "4" Federal No. 1 Well as a wildcat well on January 27, 2003. (Devon Motion to Dismiss, Exhibit B-1). However, at the hearing on the consolidated applications, Devon introduced into evidence a copy of a BLM Sundry Notice submitted on behalf of EGL showing that the BLM had approved EGL's APD for the Rio Blanco "4" Federal Well No. 1 on February 27, 2003 as being located in the "Bell Lake: Devonian, North (Gas)" pool.

(15) At the hearing, EGL's expert geology witness, James Brezina, testified that before his association with EGL, he was employed as a geologist for Pacific Enterprises Oil Company (USA). Mr. Brezina further testified that while with Pacific Enterprises Oil Company he participated in the presentation of testimony and the preparation of exhibits in Case No. 10267 which was heard by the Division's Examiner on April 18, 1991. (*Application of Pacific Enterprises Oil Company USA for Compulsory Pooling, Lea County, New Mexico*). In Case No. 10267, Pacific Enterprises sought an order pooling, among other things, mineral interests in the Devonian formation underlying Section 4, T-23-S, R-34-E, the same lands that are the subject of this proceeding. The evidence here establishes that on April 30, 1991, the Division issued Order No. R-9493 granting Pacific Enterprises' application to pool "all of Section 4 to form a 639.52-acre gas spacing and proration unit for the undesignated North Bell Lake-Devonian Gas Pool which is spaced on 640 acres". At EGL's request, the Division's Examiners in this case have taken administrative notice of Order No. R-9493.

(16) At the hearing on these consolidated applications, EGL and Landreth presented testimony and exhibits establishing that Devonian formation wells in the vicinity of the Rio Blanco "4" Federal Well No. 1 are capable of draining areas far larger than 320 acres. By material balance methodology, it was established that Conoco's Bell Lake Unit No. 6 Well, now depleted, would have to have drained 824 acres based n its actual cumulative gas recovery of 31,143 MMcf and reservoir parameters determined from log analysis and drill stem test information. Devon questioned the estimated 90% recovery of gas in place used by EGL/Landreth, but using a lower percentage recovery of gas in place would result simply in a proportionately larger drainage are being assigned to this well.

(17) EGL and Landreth also presented testimony establishing that BTA Oil Producers 7909 JV-P Well No. 1 located in Section 18, T-23-S, R-34-E was completed in 1980 in a common source of supply in the Devonian formation with the Conoco Bell Lake Unit No. 6 Well and should have recovered a significant amount of gas. However, while the North Bell Lake Federal Unit Well No. 6 produced in excess of 31 Bcf of gas, total recovery for the BTA 7909 JV-P well in Section 18 prior to abandonment was only 0.859 Bcf of gas, establishing that, as a reasonable probability Devonian formation gas reserves underlying Section 18 had been drained by and produced from the Continental Bell Lake Unit Well No. 6 in Section 6.

(18) EGL and Landreth further requested the Division's Examiners take administrative notice of Findings 5 and 6 in Order No. R-6424 (NMOCD Case No. 6962; Application of BTA Oil Producers for Special Pool Rules and Pool Extension, Lea County, New Mexico). In those findings, the Division found in 1980 that both the Bell Lake Unit Well No. 6 and the BTA 7909 JV-P Well No. 1, one and one-half miles away, were producing from a single common source of supply in the Devonian formation and that one well in the North Bell Lake-Devonian Gas Pool is capable of draining 640 acres.

(19) At the hearing, Devon introduced geophysical testimony and exhibits in support of its position that the gas pool underlying Section 4 was not a single common source of supply with the North Bell Lake-Devonian Gas Pool in Section 6 due to the existence of a northwest to southeast trending fault bisecting the intervening Section 5. According to the expert testimony of Devon's geophysical witness, the displacement of the fault in Section 5 was from between 50 to 100 feet. EGL and Landreth presented geologic testimony and exhibits based both on well data and the interpretation of geophysical data also establishing the existence of the fault in Section 5. According to Landreth, the fault displacement was not more than 140 feet. Landreth's testimony and evidence further established that based on the known thickness of the original gas column in the Conoco well in Section 6 and the original gas/water contact for this reservoir from DST data on the Conoco well, that the fault displacement of between 50 to 140 feet is insufficient to establish the existence of complete separation between the Devonian

formation underlying Section 4 and the North Bell Lake-Devonian Gas Pool in Section 6. Devon and EGL, through their respective exhibits, were in close agreement with their figures for both the original gas column thickness and the original gas/water contact. However, Devon's Exhibit A-2 shows the original 387' gas column (measured from the Conoco well to Devon's gas/water contact) closing against a fault with only 100' of maximum displacement, which is not possible.

(20) The geological and geophysical evidence establish that the fault in question accomplishes only a partial separation of a portion of the original reservoir which was and is common to both Section 4 and Section 6. Devon's geology does not indicate that the Devonian reservoir underlying Section 4 is separate from the same reservoir in Section 6. Rather, a preponderance of the evidence established that it is more likely than not that the Devonian reservoir underlying Section 4, T-23-S, R-34-E, has always been a single common source of supply with the North Bell Lake-Devonian Gas Pool underlying Section 6 in that same township.

(21) The evidence at hearing further established that Devon has plans to drill another Devonian formation gas well in the S/2 of Section 33. The well will be located 990' from the common boundary between Sections 4 and 33 under 320-acre spacing rules. In addition, the evidence establishes that under 320-acre spacing, the Rio Blanco "4" Federal No. 1 Well could be offset by another Devonian well drilled in the S/2 of Section 4, as well as by two additional Devonian wells located each in the N/2 and the S/2 of Section 5, T-23-S, R-34-E. These well densities and well locations would not be permissible under the special pool rules for the North Bell Lake Devonian Gas Pool.

(22) The testimony presented by EGL and Landreth establishes that the Devonian formation gas reserves underlying Section 4 can be efficiently and economically produced by the single Rio Blanco "4" Federal Well No. 1 at an approximate cost of $1,000,000.00. Moreover, the evidence established that the costs of drilling and completing a new, straight hole Devonian well is approximately $3,500,000.00. A preponderance of the evidence establishes that the development of Section 4 under 320-acre spacing rules would likely result in the drilling of an additional Devonian formation gas well in the S/2 of Section 4 but that there would be no incremental recovery of additional reserves by a second well on the Section. Consequently, the drilling of a second well would result in economic waste and is otherwise inconsistent with the interests of conservation.

(23) In view of the prior determination by the Division in Order No. R-9493 that Section 4 should be developed on 640-acre spacing under the special pool rules for the North Bell Lake-Devonian Gas Pool, and, when placed in the context of the Division's overall statutory duties to promote the interests of conservation, prevent waste, including economic waste and the drilling of unnecessary wells, it is the more appropriate

interpretation of Rule 104A.1B that the Rio Blanco "4" Federal Well No. 1 should be classified as a "development gas well" within the meaning of that Rule and therefore the Special Pool Rules for the North Bell Lake-Devonian Gas Pool should apply. Accordingly, the Motion to Dismiss filed by EGL Resources, Inc. and Robert Landreth in Case No. 13048 should be granted, while the Motion to Dismiss Case No. 13049 filed on behalf of Devon should be denied.

(24) EGL/Landreth presented testimony showing that the Devonian reservoir underlying Sections 4 and 6 is a very active water drive reservoir, as evidenced by the minimal reduction in reservoir pressure measured after 42 years of production and recovery of 31 bcf of gas from the Conoco well in Section 6.

(25) The evidence established that there is a reasonable likelihood that the more Devonian wells drilled down-structure from the favorably located re-entry location, the higher the probability that intense competition for the gas reserves in place will result in water coning and the premature abandonment of wells with a resulting waste of otherwise recoverable gas reserves. The likelihood of such an occurrence should be a paramount consideration here. Such a situation contrasts with the orderly, systematic recovery of reserves at reasonable rates of production in the Conoco well, which resulted in no reported water for the first 14 years of its life, as evidenced by the production history curve presented at the hearing.

(26) Both EGL and Devon have the right to drill within the proposed spacing units and both seek to be named operator of the Rio Blanco "4" Federal Well No. 1 and the subject proration unit for purposes of conducting relative similar reentry and sidetracking operations.

(27) Devon was previously the operator of the Rio Blanco well pursuant to an Operating Agreement limited to rights from surface to the base of the Morrow formation and a Communitization Agreement consolidating mineral interests for purposes of production from the Morrow and Atoka formations. The Rio Blanco well last produced Morrow formation gas in March of 2000. A subsequent effort to recomplete the well in the Atoka formation in June 2000 was unsuccessful. As a consequence of the production cessation in 2000, the Communitization Agreement and Operating Agreement have expired by their own terms. EGL consequently has the right to utilize the well bore for the Rio Blanco "4" Federal Well No. 1 as a tenant in common, a matter that is undisputed by Devon.

(28) EGL and Landreth on the one hand, and Devon on the other, have conducted negotiations prior to the hearing but have been unable to reach a voluntary agreement as to which company will drill and operate the well within the spacing units proposed by each.

(29) According to the applications, evidence and testimony presented by all parties, the primary objective for the well bore is the Devonian formation. No secondary objectives are contemplated by either operator.

(30) Both EGL and Devon are in agreement that a sidetrack operation in the Rio Blanco "4" Federal COM No. 1 well bore, which is at a standard gas well location is the best way to develop the Devonian reservoir.

(31) Both EGL and Devon submitted AFEs for the re-entry and re-drilling of the Rio Blanco well. The AFEs are not substantially different and neither party contested the propriety of any cost item under the other's AFE.

(32) Both EGL and Devon proposed overhead rates of $5,000.00 per month while drilling and $500.00 per month while producing subject to standard escalation provisions.

(33) Both parties propose that a risk penalty of 200% be assessed against those interest owners who do not participate in the drilling of the well within the subject spacing unit.

(34) The current ownership of a 640-acre spacing and proration unit consisting of the entirety of Section 4 is summarized as follows:

Robert E. Landreth	62.50%
EGL Resources, Inc.	25.00%
Devon Energy Production Company, L.P.	6.25%
Southwestern Energy Production Company	6.25%.

(35) The current ownership of a 320-acre spacing and proration unit consisting of the N/2 of Section 4 is summarized as follows:

Robert E. Landreth	50.00%
EGL Resources, Inc.	25.00%
Devon Energy Production Company, L.P.	12.50%
Southwestern Energy Production Company	12.50%.

(36) A brief description of the chronology of events leading up to the hearing in these cases is summarized as follows:

(a) EGL's partner in this proceeding, Robert E. Landreth, began acquiring leases in this section in 1994.

(b) EGL first began its geologic investigation of the Devonian formation in Section 4 in 1998. Based on that evaluation, EGL began efforts to acquire lease interest in Section 4, which culminated in the acquisition of an undivided 50% leasehold interest in the NE/4 and SW/4 of Section 4 on March 1, 2001.

(c) In May 1999, Robert E. Landreth sent a formal well proposal for a Devonian well, with the option to continue to the Ellenburger, to the other interest owners in Section 4, including Devon's predecessor, Santa Fe Snyder Corp.

(d) In August 2000, Devon acquired its working interest ownership interest in Section 4 through its acquisition of Santa Fe Snyder Corporation.

(e) In May of 2001 Robert Landreth sent to Devon a package of information consisting of geologic interpretation, leasehold ownership and proposed participation terms, in an effort to induce Devon to acquire additional interests from Landreth in order to re-enter the Rio Blanco well or to drill a new well to test the Devonian in Section 4. Devon subsequently advised Landreth in writing that it had no interest in pursuing the prospect.

(f) On March 15, 2002 EGL sent its first formal well proposal letter and AFE to the other working interest owners in Section 4 for a 640-acre Devonian formation unit. Devon and Southwestern Energy did not respond to EGL's proposal.

(g) On September 20, 2002 Robert Landreth wrote to Devon in a further effort to obtain Devon's voluntary participation in the re-entry or the drilling of a new well to test the Devonian formation, making specific reference to a 640-acre spacing unit.

(h) In October 2002 Landreth and Devon engaged in verbal negotiating for the development of Section 4. At the same time it was negotiation with Landreth, Devon acquired the 50% lease interest in the S/2 NW/4 of Section 4 owned by First Roswell Corporation. Also during this time, Devon had the results of its 3-D seismic study of the area.

(i) On November 4, 2002 Devon made its first written proposal for a farm-out a portion of Landreth's lease interest and to form a 640-acre working interest unit. From November 2002 through January 2003, Landreth, EGL and Devon engaged in extensive negotiations to develop Section 4. At the same time, Devon began acquiring leasehold interest in the adjoining sections, including Section 33 to the north.

(j) On February 7, 2003 Devon made a last proposal to farm-in the Landreth interests to form a 640-acre working interest unit. The parties engaged in additional verbal negotiations.

(k) On February 17, 2003 EGL Resources, Inc. filed a Sundry Notice with the Bureau of Land Management seeking approval for the re-entry of the Rio Blanco "4" Federal Well No. 1 to test the Devonian formation in the North Bell Lake-Devonian Gas Pool.

(l) On February 27, 2003 the BLM approved EGL's Sundry Notice to re-enter the Rio Blanco "4" Federal Well No. 1 in the North Bell Lake-Devonian Gas Pool. Subsequently, at the request of Devon Energy Production Company's petroleum engineer, Bill Greenlees, the BLM rescinded its previous approval of EGL's Sundry Notice for the reason that a notice of change of operator for the well was not on file.

(m) On February 27, 2003 EGL Resources sent its second formal proposal for the re-entry and deepening of the Rio Blanco well to the Devonian formation to all the working interest owners in Section 4. An AFE and Operating Agreement were included with EGL's proposal.

(n) On February 28, 2003 Devon sent to the other working interest owners its formal re-entry proposal, along with an AFE, but without an operating agreement, and indicated that if no favorable response was received by March 13, 2003 it would initiate compulsory pooling proceedings. Devon's February 28, 2003 proposal was the first indication that it sought to develop Section 4 on 320-acre spacing.

(o) On March 7, 2003 Devon filed its application for compulsory pooling in Case No. 13048.

(p) On March 13, 2002 Devon advised EGL and Landreth that it proposed to drill a Devonian formation well located 990' from the south line of Section 33.

(q) On March 18, 2003 EGL Resources, Inc. filed its application for compulsory pooling in Case No. 13049.

(37) EGL and Landreth contend that EGL should be named operator of the proposed well and spacing unit for the reason that their combined interests in a 640-acre unit constitutes 87.5% of the working interest and that they will be bearing 87.5% of the

costs and the risks of the re-entry under EGL's re-entry proposal. Even under Devon's proposal, EGL and Landreth own 75% of the combined working interest.

(38) EGL and Landreth further contend that Devon should not be named operator of the proposed well for the reasons, among others, that Devon owns only 6.25% in a 640-acre unit and would bear a disproportionately smaller share of well costs and risks.

(39) Additionally, EGL and Landreth contend that Devon would utilize the results from the re-entry to "prove-up" its interests in the adjoining sections, including Section 33, in which Devon owns 50% of the working interest.

(40) Robert Landreth further objects to the formation of a 320-acre spacing and proration unit for the reason that his participation in the well will be reduced by 12.50%, and will further require Landreth to immediately drill an otherwise unnecessary protection well in the S/2 to preserve a lease that expires in October of 2003.

(41) Both applicants are in agreement that the well should be deepened from its present location 1980 feet from the North line and 1980 feet from the West line of Section 4.

(42) The testimony and evidence offered by the parties at the hearing bearing on the factors the Division deems relevant to the issue of pooling and operator appointment establish that:

(a) some negotiations have taken place between the applicants;

(b) the "adjusted working interest control" (as such term is used by the Oil Conservation Commission in Finding Paragraph (25) of Order No. R-10731-B, entered in Cases No. 11666 and 11677) in the 640-acre unit is:

EGL Resources and Robert E. Landreth	87.50%
Devon Energy Production Company, L.P. and Southwestern Energy Production Company	12.50%.

(c) the applicants propose the same location and objective, and there is no material difference in their geologic interpretations of Section 4;

(d) differences between estimated well costs, as reflected in the AFEs placed in evidence by the respective applicants, are not significant; both applicants are experienced operators, and the evidence does not justify a conclusion that either applicant could not operate the units prudently.

(e) Devon owned its interests in the Devonian formation in Section 4 since 2000. Even though Devon has had the opportunity to develop the Devonian formation underlying Section 4 since 2000, it apparently chose not to do so until sometime after September 2002 when Landreth followed-up on the earlier proposals made by him and EGL.

(43) It was because of the efforts of EGL and Landreth that the development of the Devonian formation in Section 4 is being pursued.

(44) Division precedent has established that in the absence of other controlling factors, the party who originally developed the prospect, first developed the geologic data and initially sought to obtain voluntary agreement should be designated operator. (Finding 21, Order No. R-10922, Case Nos. 11830 and 11833, *Application of Mewbourne Oil Company and Devon Energy Production Company for Compulsory Pooling, Eddy County, New Mexico.*)

(45) There is a fairly significant difference in working interest control under the respective applications, with EGL controlling 87.5% of the working interest under the 640 acre unit proposed by it and with Devon controlling 25% of the working interest under its proposed 320 acre unit. Division precedent establishes that ownership and working interest control can be a "controlling factor" or a "critical factor" in such cases. (Findings 24 and 25, Order No. R-10731-B, Case Nos. 11666 and 11677, *de novo*, *Application of KCS Medallion Resources, Inc. and Yates Petroleum Corporation for Compulsory Pooling, Eddy County New Mexico.*)

(46) Geology, well location, well costs and the ability to operate are not at issue in this case and are not significant factors when considering the competing applications for compulsory pooling filed by the parties.

(47) Because EGL/Landreth developed the prospect and geology, initially proposed the well and control a significantly greater percentage of the working interests, EGL should be designated the operator of the proposed well and of the Unit.

(48) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to each owner of an interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, the application of EGL in Case No. 13049 should be approved by pooling all uncommitted mineral interests, whatever they may be, within the 640-acre unit comprising Section 4.

(49) The Application of Devon in Case No. 13048 should accordingly be denied.

(50) 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% thereof as a reasonable charge for the risk involved in the drilling of the well.

(51) Reasonable charges for supervision (combined fixed rates) should be fixed at $5, 000.00 per month while drilling and $500.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.Z.3. of the COPAS form titled *"Accounting Procedure-Joint Operations."*

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of EGL Resources, Inc. in Case No. 13049, all uncommitted mineral interests from the base of the Morrow formation to the base of the Devonian formation underlying Section 4, Township-23-South, Range-34-East, N.M.P.M., Lea County, New Mexico, are hereby pooled to form a standard 640-acre gas spacing and proration unit ("the Unit") for all formation or pools spaced on 640-acres within this vertical extent which presently include but are not necessarily limited to, the Undesignated North Bell Lake-Devonian Gas Pool.

(2) EGL Resources, Inc. is hereby designated the operator of the proposed well and of the Unit.

(3) The operator of the Unit shall commence drilling the proposed well on or before August 1, 2003, and shall thereafter continue drilling the well with due diligence to test the Devonian formation.

(4) In the event the operator does not commence drilling the proposed well on or before August 1, 2003, Ordering Paragraph (1) shall be shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the proposed well not be drilled to completion, or be 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.

(6) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known non-consenting working

interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("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 as hereinafter provided, 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 the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the proposed 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 deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division shall determine reasonable well costs after 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 paid, 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% of the above costs.

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

(12) Reasonable charges for supervision (combined fixed rates) are hereby fixed at $5,000.00 per month while drilling and $500.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled *"Accounting Procedure-Joint Operations."* The operator is

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) Except as provided in Ordering Paragraphs (10) and (12) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Lea 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.

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

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

(16) The application of Devon Energy Production Company, L.P. for pooling of the 320-acre units with Devon as operator and for dedication thereof to Rio Blanco "4" Federal Well No. 1 is hereby **denied.**

(17) 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

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LORI WROTENBERY
Director

SEAL