JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

369 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (Phone)
(505) 660-6612 (Cell)
(505) 982-2151 (Fax)

jamesbruc@aol.com

August 30, 2004

Via fax and U.S. Mail

Mark E. Fesmire
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 13335/Devon Energy Production Company, L.P.

Dear Mr. Fesmire:

Enclosed is the response of Devon Energy Production Company, L.P. to the motion to dismiss filed by Marbob Energy Corporation. I have spoken with Mr. Carr, and we are available if you desire a conference. However, if you desire to decide the motion on the pleadings, Mr. Carr and I have no objection.

Very truly yours,

James Bruce

Attorney for Devon Energy Production Company, L.P.

cc: William F. Carr

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. Case No. 13335

RESPONSE OF DEVON ENERGY PRODUCTION COMPANY, L.P. IN OPPOSITION TO MOTION TO DISMISS

I. Background.

Devon Energy Production Company, L.P. ("Devon") has applied for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the W½ of Section 3, Township 22 South, Range 27 East, N.M.P.M. The unit is to be simultaneously dedicated to the proposed Esperanze 33 Fee Well No. 2, and to the existing Esperanze 33 Fee Well No. 1.

The are two groups of working interest owners: One group, of which Devon is a member, is subject to a 2001 operating agreement; the other group, of which Marbob Energy Corporation and Pitch Energy Corporation (collectively, "Marbob") are members, is subject to a 1968 operating agreement.

Marbob has requested that this case be dismissed because the No. 1 well was drilled without compulsory pooling.

II. Argument.

Marbob cites NMSA 1978 §70-2-17 for the point that compulsory pooling is only available when the parties have not reached voluntary agreement. **However, Devon and Marbob are not signatories to the same agreement.** Therefore, they have not reached voluntary agreement. Granting Marbob's motion means that operators will now be subject to agreements that they have never signed. For that reason alone, Marbob's motion must be denied.

77

Devon admits that the No. 1 well was drilled by proposing the well to the interest owners under both agreements. That was improper, since Devon is not a party under the 1968 agreement, but there were extenuating circumstances: Devon was under severe time constraints to drill the No. 1 well, due to an expiring farmout, and it proceeded as it did in order to get the well timely drilled. However, doing it wrong once does not require that it be done wrong a second time.

Furthermore, the 1968 agreement covers a substantial amount of acreage in addition to lands in Section 3, and in fact Devon has filed other compulsory pooling cases against interest owners under this agreement. See **Case No. 13318**. There is no course of conduct which would require Devon to be subject to the 1968 agreement in this case.

At the very least, an evidentiary hearing is required.

WHEREFORE, Devon requests that Marbob's motion be denied.

Respectfully submitted,

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Devon Energy Production Company, L.P.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile transmission this 30th day of August, 2004:

William F. Carr
Holland & Hart LLP
Post Office Box 2208
Santa Fe, New Mexico 87504
(505) 983-6043

Gail MacQuesten
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3462

James Bruce