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. 13603

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APPLICATION OF DEVON ENERGY CORPORATION FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

AND

CASE NO. 13628

APPLICATION OF LCX ENERGY, L.L.C FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

ORDER NO. R-12511-A

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for hearing concurrently at 8:15 a.m. on March 2, 2006, at Santa Fe, New Mexico, before Examiner Richard I. Ezeanyim

NOW, on this 20th day of March 2006, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notices have been given by both parties, and the Division has jurisdiction of these cases and of their subject matter.

(2) Division Case No. 13603 and Case No. 13628 were consolidated at the hearing because two operators are seeking the same relief in these matters, therefore one order will be issued in these cases.

(3) In Case No. 13603, Devon Energy Corporation ("Devon") seeks an order pooling all uncommitted mineral interests from the surface to the base of the Wolfcamp

formation underlying the W/2 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, in the following manner:

The W/2 to form a standard 320-acre gas spacing and proration unit for all formations developed on 320-acre spacing within that vertical extent, which include but are not necessarily limited to the Undesignated West Cottonwood Creek-Wolfcamp Gas Pool; and

The NW/4 to form a standard 160-acre gas spacing and proration units for all formations developed on 160-acre spacing within that vertical extent.

(4) The above described Units are to be dedicated to the 1725 Federal Com Well No. 61 **(API# 30-015-34340)** which has been directionally drilled from a surface location 660 feet from the North line and 760 feet from the West line (Unit D) to a bottomhole location 660 feet from the South line and 760 feet from the West line (Unit M) of Section 6.

(5) In Case No. 13628, LCX Energy, L.L.C. ("LCX") seeks an order pooling all uncommitted mineral interests from the surface to the base of the Wolfcamp formation underlying the W/2 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, in the following manner:

The W/2 to form a standard 320-acre gas spacing and proration unit for all formations developed on 320-acre spacing within that vertical extent, which include but are not necessarily limited to the Undesignated West Cottonwood Creek-Wolfcamp Gas Pool; and

The NW/4 to form a standard 160-acre gas spacing and proration unit for all formations developed on 160-acre spacing within that vertical extent.

(6) The above described Units are to be dedicated to the 1725 Federal Com Well No. 61 **(API# 30-015-34340)** which has been directionally drilled from a surface location 660 feet from the North line and 760 feet from the West line (Unit D) to a bottomhole location 660 feet from the South line and 760 feet from the West line (Unit M) of Section 6.

(7) Two or more separately owned tracts are embraced within the Units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Units that are separately owned.

(8) Both Devon and LCX are owners of oil and gas working interest within the Units. Therefore, Devon and LCX have the right to drill and the 1725 Federal Com

Well No. 61 **(API# 30-015-34340)** has been directionally drilled and completed by LCX Energy, L.L.C.

(9) Devon and LCX each requested to be designated the operator of the subject well and of the Units.

(10) There are interest owners in the proposed Units that have not agreed to pool their interests.

(11) Both Devon and LCX appeared at the hearing on March 2, 2006, through counsel and presented land and engineering testimony. Devon presented the testimony of Meg Muhlinghause, a petroleum landman employed by Devon, and Raye P. Miller, a Practical Oilman employed by Marbob Energy. LCX presented the testimony of Frank Nix, a petroleum landman and Larry Gillette, a Petroleum Engineer both of who are employed by LCX.

Undisputed Facts:

(12) Based on the statements of counsel and testimony offered by the parties, the Division concludes that the following facts pertinent to these cases are undisputed.

(a) There is no disagreement between the parties over the unit configuration and the actual location of the well.

(b) Prior to the hearing on March 2, 2006, the well has been drilled and completed by LCX but was shut-in pending a decision in these cases.

(c) The well initially tested at 1.2 MMCFPD of gas.

(d) Both parties agree that continued shut-in of the well would probably result in reservoir damage. Accordingly, the Division issued an Emergency Order on March 3, 2006, to enable the well to be put on production until the Division Order is issued in these cases.

(e) This Emergency Order should remain in effect pending the issuance of a final Order in these consolidated compulsory pooling cases.

(f) LCX and Devon agree that the portion of sales proceeds attributable to Devon Energy Corporation's ownership share should be escrowed for the interim pending the issuance of an Order in the consolidated compulsory pooling cases.

(g) Devon filed application for compulsory pooling on November 15,

2005, and an amended application on December 6, 2005.

(h) LCX filed application for compulsory pooling on December 8, 2005.

(i) In the W/2 of Section 6, Devon has a 37.5 percent working interest while LCX has a 35.2 percent working interest..

(j) All other working interests in the W/2 of Section 6 except Devon are currently committed in one way or the other to the well. Therefore, LCX et al working interest in this unit is 62.5 percent.

(13) The counsel for Devon argued that LCX knew or should have known that Devon had an interest in these units, but it drilled the well before it made any contacts with Devon to try to reach an agreement. He opined that LCX did not demonstrate any good-faith effort to try to obtain the voluntary participation of all the parties involved. He also argued that since LCX has drilled the well, it has assumed all the risks involved in drilling the well and as a result, no risk penalty should be imposed regardless of who is designated the operator of the well.

(14) The counsel for LCX argued however, that LCX acted in good faith in seeking voluntary participation of all the mineral interest owners in the well. He also requested that the 200 percent risk penalty be imposed on any uncommitted mineral interest owner pursuant to the provisions of Division Rule 35.

(15) The senior landman for LCX testified as follows:

(i) That he is new to New Mexico and does not have a great deal of New Mexico experience even though he has 26 years of land work in Texas;

(ii) That the field landman advised him that all the mineral interest owners in the unit have been leased and all the title opinions have been executed;

(iii) That because LCX lease was due to expire on October 29, 2005, he advised the drilling engineer to start drilling the well;

(iv) That the well was spudded on October 7, 2005;

(v) That as the well was drilling and during the course of preparing the

communitization agreement, he discovered that the interest of Devon has not been committed and he realized that he had made a mistake; and

(vi) That he immediately called Devon's landman on October 28, 2005, and acknowledged the mistake and started a series of negotiations with Devon.

(16) The negotiations that ensued between LCX and Devon did not yield any fruitful results hence the Division is now obligated to designate an operator for this well.

(17) **The Division concludes that**:

(a) There is no disagreement between the parties over the unit orientation or the actual location of the well.

(b) Geological and engineering evidence are not relevant to these consolidated cases since the well has already been drilled, completed, and tested at 1.2 MM CFPD of gas.

(c) It appears that the landman for LCX made a mistake and did not seek the participation of Devon's interest before drilling the well.

(d) Devon Energy Corporation has the single largest mineral interest at 37.5 percent in this W/2 of Section 6. LCX Energy, L.L.C. has the second largest mineral interest at 35.2 percent in the unit. However, with the rest of the working interest owners committed to LCX, then LCX et al interest in the unit is collectively 62.5 percent.

(e) All these other working interest owners except Devon support the application of LCX and request that LCX be designated the operator of the well.

(f) The Oil Conservation Commission has indicated that working interest percentages operated is a major factor in determining whom to designate as operator.

(g) Division Rule 35 provides that "Unless otherwise ordered pursuant to Subsection B of 19.15.1.35 NMAC, the charge for risk shall be 200% of well costs"

(h) Subsection B of 19.15.1.35 NMAC states in part:

B. **Exceptions - Any person responding to a compulsory pooling application who seeks a different risk charge than that provided in**

Subsection A shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with Subsection B of 19.15.14.1208 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence.

(i) During the hearing, no geologic or technical evidence was offered for a different risk penalty, therefore a risk penalty of 200 percent should be imposed.

(j) A compulsory-pooled unit should be established consisting of the stand-up west half (W/2) of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico.

(18) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and 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 hydrocarbons, the application of LCX should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Units.

(19) LCX Energy, L.L.C. should be designated the operator of the well and of the units.

(20) The application of Devon Energy Corporation for compulsory pooling should be denied.

(21) Any pooled working interest owner who does not pay its share of actual well costs should have withheld from production its share of reasonable well costs plus an additional 200% (pursuant to rule 35.A) thereof as a reasonable charge for the risk involved in drilling the well.

(22) 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 these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of LCX Energy, L.L.C., all uncommitted mineral interests from the surface to the base of the Wolfcamp formation underlying the W/2 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, are hereby pooled in the following manner:

The W/2 to form a standard 320-acre gas spacing and proration unit for all formations developed on 320-acre spacing within that vertical extent, which

include but are not necessarily limited to the Undesignated West Cottonwood Creek-Wolfcamp Gas Pool; and

The NW/4 to form a standard 160-acre gas spacing and proration unit for all formations developed on 160-acre spacing within that vertical extent.

The above described Units shall be dedicated to the 1725 Federal Com Well No. 61 **(API# 30-015-34340)** which has been directionally drilled from a surface location 660 feet from the North line and 760 feet from the West line (Unit D) to a bottomhole location 660 feet from the South line and 760 feet from the West line (Unit M) of Section 6.

(2) LCX Energy, L.L.C. is hereby designated the operator of the subject well and of the Units.

(3) The application of Devon Energy Corporation for compulsory pooling is hereby denied.

(4) Upon final plugging and abandonment of the subject well, the pooled Units created by this Order shall terminate, unless this order has been amended to authorize further operations.

(5) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Units, including un-leased mineral interests, who are not parties to an operating agreement governing the Units.) Within 30 days from the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Units an itemized schedule of estimated costs of drilling, completing and equipping the subject well.

(6) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled 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. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(7) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following the effective date of this order. 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 will determine reasonable well costs after public notice and hearing.

(8) Within 60 days following determination of reasonable well costs, any pooled 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 the amount, if any, that the actual well costs it has paid exceed its share of reasonable well costs.

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

(a) the proportionate share of actual well costs attributable to each non-consenting working interest owner; and

(b) as a charge for the risk involved in drilling the well, 200% of the above costs.

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

(11) 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 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 pooled working interest owners.

(12) Except as provided in Ordering Paragraphs (9) and (11) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy 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.

(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. 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.

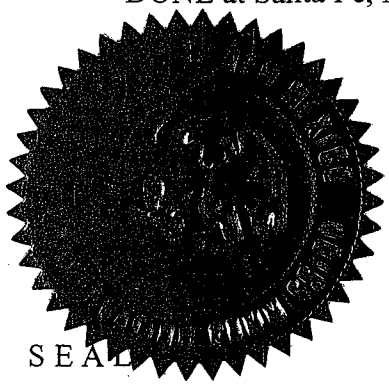
(14) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

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

(16) This Order supersedes the Emergency Order issued by the Division on March 3, 2006.

(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.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, PE
Director