

**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. 14268
ORDER NO. R-13059-A**

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

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on January 22, 2009, at Santa Fe, New Mexico, before Examiners Richard Ezeanyim, and Terry Warnell.

NOW, on this 11th day of February, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

FINDS THAT:

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

(2) The applicant, Devon Energy Production Company ("Applicant"), seeks an order pooling all uncommitted interests from the surface to the base of the Morrow formation underlying the E/2 of Section 15, Township 19 South, Range 31 East, NMPM, Eddy County, New Mexico, in the following manner:

The E/2 to form a standard 320-acre gas spacing and proration unit for any formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the West Lusk-Morrow Gas Pool;

The SE/4 to form a standard 160-acre oil or gas spacing and proration unit for any formations and/or pools developed on 160-acre spacing within that vertical extent, which include but are not necessarily limited to the Undesignated Lusk-Strawn Pool; and

The NW/4 SE/4 to form a standard 40-acre oil spacing and proration unit for any formations and/or pools developed on 40-acre spacing within that vertical extent,

which include but are not necessarily limited to the Undesignated West Lusk-Yates Pool, Undesignated Hackberry-Delaware Pool, and Undesignated Hackberry-Bone Spring Pool.

The above-described units ("the Units") are to be dedicated to the Applicant's proposed Acme "15" Federal Com. Well No. 1 (API #30-015-36748) to be drilled at a standard gas well location 1650 feet from the South line and 1650 feet from the East line (Unit J) of Section 15 to test all formations from the surface to the base of the Morrow formation.

(3) The primary target is the Morrow formation and the secondary target is the Strawn formation. There were several working interest owners in the Strawn formation in the NE/4 SE/4 of Section 15 who were not pooled by Order No. 13059 issued in Case No. 14244 on November 20, 2008. At the time Case No. 14244 was filed, title information in the NE/4 SE/4 of Section 15 was not complete, and Devon had to move forward with the pooling of the E/2 of Section 15 as to the Morrow formation because of an expiring lease.

(4) Devon intends to drill the well to the Morrow formation, and if the Morrow formation is not productive, it intends to re-complete the well in the Strawn formation. Devon also seeks approval of the allocation formula as to a completion attempt in the Strawn formation.

(5) 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.

(6) Applicant is an owner of an oil and gas working interest within the Units. Applicant has the right to drill and proposes to drill its Acme "15" Federal Com. Well No. 1 (API #30-015-36748) at a standard gas well location in the NW/4 SE/4 of Section 15.

(7) There are interest owners in the proposed Units that have not agreed to pool their interests. However, title information in the Strawn formation in the NE/4 SE/4 of Section 15 is complex and unclear, thereby requiring the need to set up an escrow account.

(8) 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, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Units.

(9) The applicant should be designated the operator of the subject well and of the Units.

(10) Any pooled 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% (pursuant to Rule 35.A) thereof as a reasonable charge for the risk involved in drilling the well.

(11) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,600.00 per month while drilling and \$660.00 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 Devon Energy Production Company, all uncommitted interests from the surface to the base of the Morrow formation underlying the E/2 of Section 15, Township 19 South, Range 31 East, NMPM, Eddy County, New Mexico, are hereby pooled in the following manner:

The E/2 to form a standard 320-acre gas spacing and proration unit for any formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the West Lusk-Morrow Gas Pool;

The SE/4 to form a standard 160-acre oil or gas spacing and proration unit for any formations and/or pools developed on 160-acre spacing within that vertical extent, which include but are not necessarily limited to the Undesignated Lusk-Strawn Pool; and

The NW/4 SE/4 to form a standard 40-acre oil spacing and proration unit for any formations and/or pools developed on 40-acre spacing within that vertical extent, which include but are not necessarily limited to the Undesignated West Lusk-Yates Pool, Undesignated Hackberry-Delaware Pool, and Undesignated Hackberry-Bone Spring Pool.

The above-described units ("the Units") shall be dedicated to the Applicant's proposed Acme "15" Federal Com. Well No. 1 (API #30-015-36748), to be drilled at a standard gas well location 1650 feet from the South line and 1650 feet from the East line (Unit J) of Section 15, to test all formations from the surface to the base of the Morrow formation.

(2) Devon shall initially test the Morrow formation, which is the primary target, and if the Morrow formation is not productive, Devon shall then recomplete the well to the Strawn formation.

(3) The cost allocation formula proposed by the applicant as shown in **Exhibit No. 8** attached to this order for a completion attempt in the Strawn formation is fair and

reasonable and shall be adopted in this case. This cost allocation formula shall also be adopted should a dual completion attempt be made in the Morrow and the Strawn formations.

(4) Devon Energy Production Company is hereby designated the operator of the subject well and of the Units.

(5) The operator of the Units shall commence drilling the proposed well on or before February 28, 2010, and shall thereafter continue drilling the well with due diligence to test the Morrow and Strawn formations.

(6) In the event the operator does not commence drilling the proposed well on or before February 28, 2010, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(7) Should the subject well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the Unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(8) Upon final plugging and abandonment of the subject well, and all other wells drilled on the Units pursuant to Division Rule 13.9, the pooled Units created by this Order shall terminate, unless this order has been amended to authorize further operations.

(9) 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.) After 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 ("well costs").

(10) 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."

(11) 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 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 will determine reasonable well costs after public notice and hearing.

(12) 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 estimated well costs it has paid exceed its share of reasonable well costs.

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

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

(15) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,600.00 per month while drilling and \$660.00 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.

(16) Except as provided in Ordering Paragraphs (13) and (15) 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 Records Clerk in Santa Fe of the name and address of the escrow agent within one (1) year from the date of issuance of this order.

(17) 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.

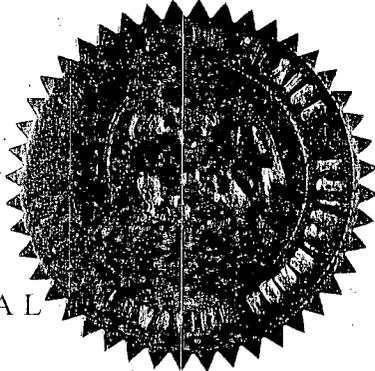
(18) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(19) 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.

(20) This order replaces and supersedes original Order No. R-13059 in its entirety.

(21) 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

A handwritten signature in black ink, appearing to read 'Mark E. Fesmire', written over a horizontal line.

MARK E. FESMIRE, PE
Director

1 hereby grants to Operator full right, power and authority to execute in each such party's name and on its behalf any financing statement which
 2 Operator deems necessary in order to perfect the security interest hereby granted under the applicable Uniform Commercial Code.

3 **L. Legal Costs:**

4 In the event Operator shall ever be required to bring legal proceedings in order to collect any sums due from any Non-Operators under
 5 this Agreement, then Operator shall also be entitled to recover all court costs, costs of collection and a reasonable attorney's fee, which the
 6 lien provided for herein shall also secure.

7 **M. Controlling Language:**

8 In the event of a conflict between the provisions of this Article XVI. and any other provision of this Operating Agreement, the
 9 provisions of this Article XVI. shall control and prevail.

10 **N. Operator Indemnity:**

11 1. Notwithstanding any provision contained herein to the contrary, Operator shall not be obliged to perform nor shall be liable for its
 12 failure to perform or to continue any work or incur any expenditure or indebtedness hereunder for the Joint Account until all funds requested
 13 of Non-Operators pursuant to cash calls given in accordance with the applicable provisions hereof have been received by Operator.

14 2. Any provision of this Agreement to the contrary notwithstanding, and without limiting any other provision of this Agreement
 15 (including, again without limitation Article V.A.), Operator shall not be liable to the other parties for any failure of Operator, except such
 16 failures as may result from willful misconduct, to comply with the requirements of any Federal, state or local ordinance, statute, law, rule,
 17 regulation or procedure, pertaining to the establishment of prices for oil, gas or other minerals, or to the classification of wells for such
 18 purpose, or pertaining to any other matter related to the regulation of entitlements, supply, demand, allocation, delivery, contracting for or
 19 pricing of oil, gas or other minerals, it being understood and agreed by all parties that compliance with current laws and regulations is subject
 20 to confusion and to numerous risks, uncertainties, conflicting opinions and burdensome filing requirements. Any liability for refund of sums
 21 obtained because the parties have been paid amounts in excess of lawful prices shall be borne severally by the parties to the same extent that
 22 such excess funds were paid to the parties.

23 **O. AFE:**

24 An AFE is an estimate only of costs; in no way shall the execution of an AFE limit the liability of the party.

25 **P. Take in Kind:**

26 In the event any Party shall fail to make the arrangements necessary to take in kind or separately dispose of its proportionate share of
 27 the oil and gas produced from the Contract Area, Operator shall have the right, but not the obligation, to purchase such oil and gas or sell it
 28 to others at any time and from time to time, for the account of the non-taking party, and Operator will use its best efforts to market Non-
 29 Operators share of oil and gas on the same terms that Operator markets its own share of such production. Any such purchase or sale by
 30 Operator shall be subject always to the right of the owner of the production to exercise at any time its right to take in kind or separately
 31 dispose of its share of all oil and gas not previously delivered to a purchaser by the giving of written notice thereof to Operator at least thirty
 32 (30) days prior to its requested taking (the "Taking Date"); such notice shall be deemed effective on the first day of the next month following
 33 the Taking Date. Any purchase or sale by Operator of any other party's share of oil and gas shall be only for such reasonable periods of time
 34 as are consistent with the minimum needs of the industry under the particular circumstances, but in no event for a period in excess of one (1)
 35 year.

36 **Q. Mandatory Operations (Optional - For multi-spacing unit Contract Areas):**

37 Notwithstanding the other provisions hereof, and particularly Article VI, if any well proposed hereunder is an obligation well, a party
 38 not participating in drilling the well shall assign to the participating parties its interest in the leases or portion thereof which would be lost or
 39 not earned if the well was not drilled. Such assignment shall be due upon the commencement of operations for such well and shall be free
 40 and clear of all mortgages (unless such mortgages are subordinated to this Agreement), claims, liens, overriding royalty interests, production
 41 payments, net profits interests, and other encumbrances or leasehold burdens placed thereon by or resulting from the Assignor's ownership
 42 and operations subsequent to the date of this Operating Agreement, but otherwise without warranty of title, either express or implied. An
 43 "obligation well" is defined as a well which must be drilled to earn or maintain a lease or portion thereof which cannot otherwise be
 44 maintained. A well proposed within the last one hundred eighty (180) days of the primary term of a lease (whether as a unit well or lease
 45 well) shall constitute an "obligation well".

46 In the event a party should propose to rework or recomplete a well which has ceased to produce and such operation is necessary to
 47 perpetuate a lease or leases which would otherwise expire, a party choosing to go non-consent on such operation shall assign to the
 48 Consenting Parties its interest in the lease or leases or portion thereof which would expire if the proposed operation was not conducted. Such
 49 assignment shall be made in the manner provided for hereinabove for the drilling of an obligation well.

50
 51 **R. Drilling Costs:**

52 The entire cost of drilling the well to a depth to test the Morrow will be initially borne by the working interest owners
 53 owning an interest in all formations less and except the Strawn formation ("Other Formations") as reflected on Exhibit "A", Contract Area A.
 54 The following working interest owners own Strawn formation rights only as reflected on Exhibit "A", Contract Area B.:

55 Badger Energy, Inc., Amity Oil Company, Dorchester Limited Partnership, Amax Oil & Gas, Inc. or their respective successors and
 56 assigns or affiliates

57
 58 Should the well be completed in the Strawn formation, the WI owners named above who own Strawn rights only shall reimburse the
 59 working interest owners in the Other Formations in accordance with COPAS Bulletin Accounting Guidelines AG-1 dated April 2003, Article
 60 H.A.2.b. (Footage Ratio) as follows:

61 All Pre-casing Point Costs which can be related to the Strawn formation or Other Formations (e.g., logging, testing, coring, fishing,
 62 etc.) will be paid for by the participating working interest owners in these particular zones. All other Pre-casing Point Costs ("remaining
 63 costs") shall be borne by various participating owners, according to their respective participating interests in the formations involved as
 64 follows:

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$$WI \text{ in Strawn Formation Only} = \frac{1}{2} \times \frac{\text{footage to base of Strawn formation} \times \text{REMAINING COSTS}}{\text{TOTAL DEPTH}}$$

66
 67
$$WI \text{ in Other Formations} = \frac{1}{2} \times \frac{\text{footage to the base of the Strawn formation} \times \text{REMAINING COSTS}}{\text{TOTAL DEPTH}}$$

68
 69 Plus:
$$100\% \times \frac{\text{footage from base of Strawn formation} \times \text{REMAINING COSTS}}{\text{TOTAL DEPTH}}$$

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2 Should a dual completion attempt be made in both the Strawn formation or Other Formations, all completion costs that can be isolated to
3 the Strawn formation or Other Formations shall be paid for by the participating working interest owners of those particular formations. All
4 other costs, with the exception of casing and tubing shall be paid for equally by the participants in the Strawn formation and the participants in
5 the Other Formations. All casing and tubing shall be paid for as follows:

6 Average costs of casing and tubing from the surface to the base of the Strawn formation:

7 Participants in the Strawn formation = 1/2
8 Participants in Other Formations = 1/2

9 Average costs of casing and tubing from the base of the Strawn formation to total depth shall be borne 100% by the participants in the
10 Other Formations.

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