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April 7, 2003

VIA FACSIMILE

Mr. David Catanach  
New Mexico Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87504

**RECEIVED**

APR 7 2003

**Oil Conservation Division**

Re: NMOCD Case NO. 13048; Application of Devon Energy Production Company,  
LP for Compulsory Pooling, Lea County, New Mexico

Dear Mr. Catanach:

Attached, please find a copy of the Motion To Dismiss filed on behalf of EGL Resources, Inc. and Robert Landreth in this case. The hearing on Devon's Application is set for this Thursday, April 10, 2003, and I would appreciate your consideration of the motion before then. I am available to attend a pre-hearing conference on this case just about any time this week, should you require it.

Thank you for your consideration.

Very truly yours,

MILLER STRATVERT P.A.



J. Scott Hall

JSH/glb

Attachment

cc: David Brooks, Esq.  
W. Thomas Kellahin, Esq.

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

IN THE MATTER OF THE APPLICATION OF  
DEVON ENERGY PRODUCTION COMPANY, LP  
("DEVON") FOR COMPULSORY POOLING  
LEA COUNTY, NEW MEXICO

CASE No. 13048

**MOTION TO DISMISS**

EGL Resources, Inc., ("EGL"), and Robert Landreth ("Landreth") through their counsel, Miller-Stratvert P.A. (J. Scott Hall) move that the Division enter its order dismissing the Application for Compulsory Pooling filed by Devon Energy Production Company, LP, ("Devon"). In support, EGL and Landreth state:

**INTRODUCTION**

Devon's Application to pool and dedicate 320 acres to a prospective Devonian formation well must be dismissed for the reason that the proposed spacing unit is one mile from outer boundaries of the North Bell Lake-Devonian Gas Pool (71840), a "defined pool" with Special Pool Rules that require 640-acre spacing for Devonian formation gas wells. Devon's proposed 320-acre unit violates the gas well acreage requirements under Rule 19.15.3.104A of the Division's Rules and Regulations governing well spacing and location. Consequently, the Division cannot grant the relief Devon requests in its Application.

**BACKGROUND FACTS**

1. On March 18, 2003, Devon filed its application for compulsory pooling seeking an order pooling all unjoined mineral interests from the base of the Morrow formation to the base of the Devonian formation in the N/2 of Section 4, T-23-S, R-34-E, NMPM in Lea County, New

Mexico. Devon seeks to form a 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” (70400). Devon proposes to re-enter the Rio Blanco “4” Federal Well No. 1 located in Unit F of Section 4 and drill down to the Devonian formation.

2. EGL and Landreth are the owners of working interests in Section 4, including the N/2 of the Section. On March 18, 2003, EGL filed its Application for compulsory pooling in Case No. 13049 seeking the consolidation of all unjoined interests in the entirety of Section 4, T-23-S, R-34-E so that the Rio Blanco “4” Federal Well No. 1 can be re-entered, drilled to and completed in the Devonian formation in the Undesignated North Bell Lake-Devonian Gas Pool (71840) in accordance with the applicable Special Pool Rules in effect for the area under Order No. R-6424.

3. The N/2 spacing and proration unit in Section 4 which Devon proposes to dedicate to the Rio Blanco “4” Federal Well No. 1 is located one mile from the outer boundary of the North Bell Lake-Devonian Gas Pool in Section 6, T-23-S, R-34-E. 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 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, pursuant to Order No. R-6424 issued by the Division on August 4, 1980, the North Bell Lake Devonian Gas Pool was extended to include the entirety of Section 6, along with Section 7 and Section 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 the pool.

5. The Antelope Ridge Devonian Gas Pool, 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). The 640-acre spacing provisions of the Special Pool Rules for the pool established under Order No. R-2636 were made permanent in 1966 by Order No. R-2636-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

#### POINTS AND AUTHORITIES

Devon appears to be taking two positions: (1) That the spacing unit for the Rio Blanco "4" Federal Well No. 1 is located within the Antelope Ridge-Devonian Gas Pool; and/or (2) The proposed well is a "wildcat" Devonian well and that accordingly 320-acre spacing applies under the Division's rules. This second position is not expressly stated in Devon's Application, but it may be inferred from the circumstances. In either case, Devon's position is unfounded. First, although they provide for 640-acre units, the rules for the Antelope Ridge-Devonian Gas Pool<sup>1</sup> are inapplicable to this case. Second, the Rio Blanco "4" Federal Well No. 1 is a "development well" in the Undesignated North Bell Lake-Devonian Gas Pool, rather than a "wildcat" well.

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 definition applicable to 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*

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<sup>1</sup> The case Advertisement for Docket No. 09-03 identifies the Antelope Ridge-Devonian Gas Pool.

*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*

Development wells are defined in 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 produced 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.*

Rule 104.C 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”.<sup>2</sup> As previously indicated, Order No. R-6424 established Special Pool Rules for the North Bell Lake-Devonian Gas Pool.

Devon’s well is not a “wildcat” well within the meaning of the Divisions rules for the reason that the proposed spacing unit is located one mile from the North Bell Lake-Devonian Gas Pool. Under Rule 104A.(1)(b)(ii), the spacing unit for the well must be “a distance of one mile or more from...” the outer boundary of any established pool for the same formation. Arguably, the Division’s rule is susceptible to two constructions. However, under the applicable rules of construction, and in the context of the main statutory objectives of the Oil and Gas Act to protect correlative rights and prevent waste, including preventing the drilling of unnecessary wells, as it is written, the Division’s rule must be read in the conjunctive and not in the disjunctive. (See *1<sup>st</sup> National Bank v. Bernalillo County Valuation Protest Board*, 90 N.M. 110, 560 P.2d 174 [Ct. App. 1977]; and *Hale v. Basin Motor Co.*, 110 N.M. 314, 795 P.2d 1006 [1990].) Wildcat wells may not be defined either as wells with a spacing unit located (1) one

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<sup>2</sup> The full text of Rules 104A-C, highlighted, is attached.

mile, or (2) more than one mile from the boundary of a defined pool. Rather, when construed conjunctively, the complete phraseology of the rule is read to mean the spacing unit for a wildcat well is to be more than one mile from the pool boundary. In the present circumstances, the spacing unit for the Rio Blanco "4" Federal No. 1 well is exactly one mile from the North Bell Lake-Devonian Gas Pool.

The application of the rules for the North Bell Lake-Devonian Gas Pool to Section 5 is consistent with the historic, long-standing practice of the Division in similar situations. Correspondingly, this interpretation by the Division of its own rules, and industry's reliance thereon, is to be accorded significant weight. (See 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*.)

Moreover, the Division's application of its pool rules in this manner best serves the interests of conservation by erring on the side of caution.

Devon's Application must assume that the Devonian reservoir underlying its proposed 320-acre spacing unit is unconnected to the existing North Bell Lake-Devonian Gas Pool, even though there has been no nomenclature case or other proceeding establishing the N/2 of Section 4 as a new pool or a separate common source of supply. It is an inappropriate assumption to make in view of the express findings in Order No. R-6424 on the extensive drainage capacities exhibited by the Devonian wells in the vicinity. The findings of that order specifically noted:

"(5) [T]he evidence presently available indicates that said Bell Lake Unit Well No. 6 (in Section 6) and applicant's 7909 JV-P Well No. 1 (in Section 18) are indeed both producing from a single common source of supply in the Devonian formation... ."

"(6) [T]he evidence further indicates that one well in said North Bell Lake-Devonian Gas Pool is capable of draining 640 acres and that 640-acre

*spacing and proration units should be established for said pool... .”* Order No. R-6424, Findings 5 and 6.

The significance of these findings that two wells located two sections apart were producing from the same reservoir is obvious.

Prudence, as well as the applicable rules of statutory construction<sup>3</sup>, all dictate that the Division must construe its rules to fall on the side of conservation. To fulfill the “objective and purpose” of the Oil and Gas Act that the Division prevent waste, protect correlative rights<sup>4</sup> and otherwise act in the interests of conservation, the Division should construe its rules in a manner that recognizes it is more appropriate to apply Special Pool Rules based on actual well data, rather than defaulting to the generic, basin-wide rules for deep formation gas well spacing that are enacted only for administrative convenience in the *absence* of any directly applicable data.

The importance, and the primacy, to be accorded to Special Pool Rules is set forth in Rule 11 of the Division’s rules:

**19.15.1.11 SCOPE OF RULES**

- A. The following rules of statewide application have been adopted by the Commission to conserve the natural resources of the State of New Mexico, to prevent waste, to protect correlative rights, to protect public health and the environment and to otherwise implement the Oil and Gas Act, NMSA 1978, Section 70-2-1 through 70-2-38.
- B. Orders, including special pool orders (formerly referred to as “Special Pool Rules and Regulations”), of the Division or the Commission may be issued when required and shall prevail against rules if in conflict with them. (emphasis added).

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<sup>3</sup> NMSA 1978 Section 12-2A-18. Principles of Construction; presumption.

- A. A statute or rule is construed, if possible, to:
  - (1) give effect to its objective and purpose;
  - (2) give effect to its entire text; and
  - (3) avoid an unconstitutional, absurd or unachievable result.

<sup>4</sup> NMSA 1978 Section 70-2-11

This rule, itself, directs how the Division's rules are to be construed<sup>5</sup>, and makes perfectly clear that the Special Pool Rules for the North Bell Lake-Devonian Gas Pool should "prevail" over the generic, basin-wide Rule 104-A. Indeed, Rule 11 is well-nigh conclusive of the conflict between Rule 104A and the special pool order (R-6424) requiring 640 acre spacing.

WHEREFORE, EGL and Landreth request the Division that Devon Energy Production Company's Application for Compulsory Pooling in this case be dismissed.

Respectfully submitted,

MILLER STRATVERT P.A.

By: \_\_\_\_\_



J. Scott Hall  
Attorneys for EGL Resources, Inc.  
and Robert Landreth  
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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 7 day of April, 2002, as follows:

Thomas Kellahin, Esq.  
Post Office Box 2265  
Santa Fe, New Mexico 87504



\_\_\_\_\_  
J. Scott Hall

<sup>5</sup> The Uniform Statute and Rule Construction Act, NMSA 1978 Section 12-2A-1, *et seq.*, provides, in part, as follows:

**12-2A-20. Other Aids to construction.**

- A. In considering the text of a statute or rule in light of...the context in which the statute or rule is applied, the following aids to construction may be considered in ascertaining the meaning of the text:
- B. (4) an administrative construction of the same or similar statute or rule of this state[.]

**19.15.3.104 WELL SPACING AND LOCATION**

**A. Classification Of Wells: Wildcat And Development Wells**

**(1) Wildcat Well**

(a) In San Juan, Rio Arriba, Sandoval, and McKinley Counties a wildcat well is any well to be drilled the spacing unit of which is a distance of two miles 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 to be drilled.

(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.

**(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 produced 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.

(b) Any well classified as a development well for a pool but completed in a producing formation not included in the vertical limits of that pool shall be operated and produced in accordance with the rules in effect for the nearest pool that is producing from that formation within the two miles in San Juan, Rio Arriba, Sandoval, and McKinley Counties or within one mile everywhere else. If there is no designated pool for that producing formation within the two miles in San Juan, Rio Arriba, Sandoval, and McKinley Counties or within one mile everywhere else, the well shall be re-classified as a wildcat well.

**B. Oil Well Acreage And Well Location Requirements**

(1) Any wildcat well that is projected to be drilled as an oil well to a formation and in an area that in the opinion of the Division may reasonably be presumed to be productive of oil rather than gas and each development well for a defined oil pool, unless otherwise provided in special pool orders, shall be located on a spacing unit consisting of approximately 40 contiguous surface acres substantially in the form of a square which is a legal subdivision of the U.S. Public Land Surveys, which is a governmental quarter-quarter section or lot, and shall be located no closer than 330 feet to any boundary of such unit. Only those 40-acre spacing units committed to active secondary recovery projects shall be permitted more than four wells.

(2) If a well drilled as an oil well is completed as a gas well but does not conform to the applicable gas well location rules, the operator must apply for administrative approval for a non-standard location before the well can produce. The Director may set any such application for hearing.

**C. Gas Wells Acreage And Well Location Requirements**

Any wildcat well that is projected to be drilled as a gas well to a formation and in an area that in the opinion of the Division may reasonably be presumed to be productive of gas rather than oil and each development well for a defined gas pool, unless otherwise provided in special pool orders, shall be spaced and located as follows:

(1) 640-Acre Spacing applies to any deep gas well in Rio Arriba, San Juan, Sandoval or McKinley County that is projected to be drilled to a gas producing formation older than the Dakota formation or is a development well within a gas pool created and defined by the Division after June 1, 1997 in a formation older than the Dakota formation, which formation or pool is located within the surface outcrop of the Pictured Cliffs formation (i.e., the San Juan Basin). Such well shall be located on a spacing unit consisting of 640 contiguous surface acres, more or less, substantially in the form of a square which is a section and legal subdivision of the U.S. Public Land Surveys and shall be located no closer than: 1200 feet to any outer boundary of the spacing unit, 130 feet to any quarter section line, and 10 feet to any quarter-quarter section line or subdivision inner boundary.

(2) 320-Acre Spacing applies to any deep gas well in Lea, Chaves, Eddy or Roosevelt County, defined as a well that is projected to be drilled to a gas producing formation or is within a defined gas pool in the Wolfcamp or an older formation. Such well shall be located on a spacing unit consisting of

320 surface contiguous acres, more or less, comprising any two contiguous quarter sections of a single section that is a legal subdivision of the U.S. Public Land Surveys provided that:

(a) the initial well on a 320-acre unit is located no closer than 660 feet to the outer boundary of the quarter section on which the well is located and no closer than 10 feet to any quarter-quarter section line or subdivision inner boundary;

(b) only one infill well on a 320-acre unit shall be allowed provided that the well is located in the quarter section of the 320-acre unit not containing the initial well and is no closer than 660 feet to the outer boundary of the quarter section and no closer than 10 feet to any quarter-quarter section line or subdivision inner boundary; and

(c) the Division-designated operator for the infill well is the same operator currently designated by the Division for the initial well.

(3) 160-Acre Spacing applies to any other gas well not covered above. Such well shall be located in a spacing unit consisting of 160 surface contiguous acres, more or less, substantially in the form of a square which is a quarter section and a legal subdivision of the U.S. Public Land Surveys and shall be located no closer than 660 feet to any outer boundary of such unit and no closer than 10 feet to any quarter-quarter section or subdivision inner boundary.