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W. THOMAS KELLAHIN  
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OF COUNSEL

February 26, 1990

RECORDED

FEB 27 1990

OIL CONSERVATION DIV.  
SANTA FE

9891

Mr. William J. LeMay  
Oil Conservation Division  
P.O. Box 2088  
Santa Fe, NM 87504

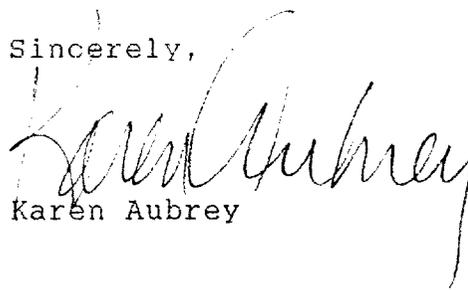
Re: Compulsory Pooling, Bird Creek Resources, Inc.

Dear Mr. LeMay:

Enclosed please find the original and one copy of an application by Bird Creek Resources, Inc. for Compulsory Pooling, Eddy County, New Mexico. Please set this application for hearing on the examiner docket on March 21, 1990.

In accordance with N.M.O.C.C. Rule 1207, we are sending all working interest owners listed in this application a copy of this letter and a copy of the enclosed application, by certified mail, in order to notify them that they have the opportunity to appear in support of or in opposition to the enclosed application.

Sincerely,



Karen Aubrey

KA/dm

xc: Larry Robinette

Certified Return Receipt Requested  
Working interest owners listed in  
Paragraph 3 of Application

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY AND MINERALS  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION  
OF BIRD CREEK RESOURCES, INC. FOR  
COMPULSORY POOLING, EDDY COUNTY,  
NEW MEXICO

9891

A P P L I C A T I O N

COMES NOW BIRD CREEK RESOURCES, INC., by and through its attorneys, KELLAHIN, KELLAHIN & AUBREY, and in accordance with Section 70-2-17(c) N.M.S.A. (1978 Comp.) applies to the New Mexico Oil Conservation Division for an order pooling all mineral interests from the surface to the bottom of the Delaware formation, East Loving Delaware Pool, or 6,300 feet, whichever is deeper, underlying the NE/4SE/4, Section 15, T23S, R28E, N.M.P.M, Eddy County, New Mexico. The above described acreage is to be dedicated to a well to be drilled at a standard location 2080 FSL and 660 FEL to a depth of approximately 6,300 feet. In support of this application, applicant would show:

1. Applicant has the right to drill and develop the NE/4SE/4 of Section 15 T23S R28E, Eddy County, New Mexico.
2. Applicant desires to drill a well at a standard location in the NE/4SE/4 of said section.

3. Applicant has sought the voluntary agreement of the owners of the non-consenting working interests, for the formation of appropriate spacing and proration units, but has been unable to obtain voluntary agreement. The non-consenting working interest owners and their percentage interests are:

POGO PRODUCING COMPANY P.O. Box 10340 Midland, TX 79702	9.17936%
SANTA FE ENERGY OPERATING PARTNERS, L.P. 500 W. Illinois Fifth Floor Midland, TX 79702	16.62411%
OXY USA, INC. P.O. Box 50250 Midland, TX 79710	12.59214%
E. C. ROBERTS P.O. Box 640 Gilmer, TX 75644	5.70516%
RUTH D. ROBERTS c/o Mr. Dan Roberts P.O. Box 807 Austin, TX 78767	5.70516%
J. R. ROWAN, INC. P.O. Box 162 Midland, TX 79708	11.41032%
T. CALDER EZZELL P.O. Box 10 Roswell, NM 88201	6.29607%
C. RAY ALLEN P.O. Box 630 Midland, TX 79701	6.29607%

LIBERTY NATIONAL BANK 18.74938%  
P.O. Box 1627  
Lovington, NM 88260  
Attn: Mr. Mike Abbott

Total 92.558%

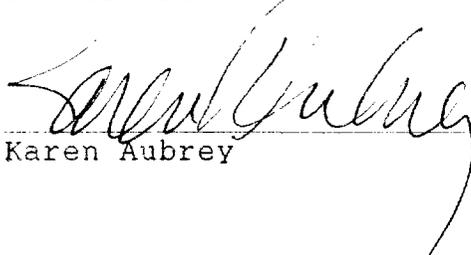
4. Pursuant to the Division's notice requirements, applicant has notified all working interest owners of this application for compulsory pooling and the applicant's request that this matter be set for hearing before the Division on March 21, 1990.
5. In order to obtain its just and equitable share of the hydrocarbons underlying the above tract(s), applicant needs an order pooling the mineral interests involved in order to protect applicant's correlative rights and prevent waste.

WHEREFORE, Applicant prays that this application be set for hearing before the Division's duly appointed examiner, and that after notice and hearing as required by law, the Division enter its order pooling the mineral interests described herein. Applicant further prays that it be named operator of the well, and that the order make provision for applicant to recover, out of production, its cost of drilling, completing and equipping the subject well, costs of operation, including costs of supervision, and a risk

factor in the amount of 200% for the drilling and completing of the well, and for such other and further relief as may be proper.

Respectfully submitted,

KELLAHIN, KELLAHIN & AUBREY  
Post Office Box 2265  
Santa Fe, New Mexico 87504  
(505) 982-4285

By: 

Karen Aubrey

KA/dm

KELLAHIN, KELLAHIN AND AUBREY

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JASON KELLAHIN  
OF COUNSEL

SANTA FE, NEW MEXICO 87504-2265

TRANSMITTAL MEMORANDUM

DATE: March 23, 1990  
TO: William J. LeMay  
Oil Conservation Division  
P.O. Box 2088  
Santa Fe, New Mexico 87504  
RE: NMOCD Case Nos. 9890 & 9891 / Bird Creek

The following documents are enclosed:

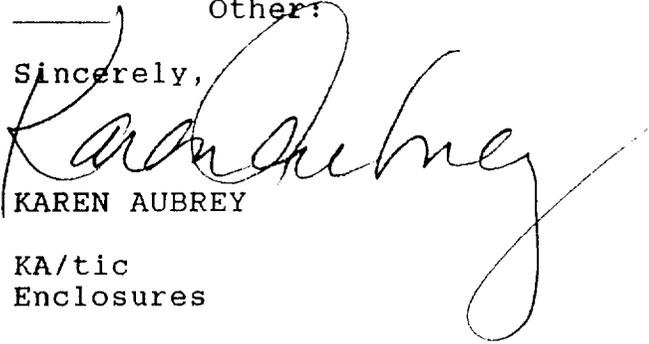
Proposed Order of the Division / NMOCD Case No. 9890

Proposed Order of the Division / NMOCD Case No. 9891

Please:

- Per your request
- For your information only; no action on your part is required
- For your information
- We would appreciate a response from you on this matter
- In order to proceed, we need a response from you by \_\_\_\_\_
- If you have any questions on this matter, please do not hesitate to call
- Please call our office, we need to discuss this matter with you
- Please note that some action on your part is required
- Other:

Sincerely,



KAREN AUBREY

KA/tic  
Enclosures

xc: Lawrence W. Robinette

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. 9891  
ORDER NO. R-

APPLICATION OF BIRD CREEK RESOURCES, INC.  
FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO

PROPOSED  
ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on March 21, 1990. at Santa Fe, New Mexico, before Examiner Michael E. Stegner.

NOW, on this \_\_\_\_ of March, 1990, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) Division Case Nos. 9890 and 9891 were consolidated at the time of the testimony.

CASE NO. 9891  
ORDER NO. R-  
PAGE TWO

(3) The Applicant, Bird Creek Resources, Inc., ("Bird Creek") seeks compulsory pooling of all mineral interests underlying the NE/4SE/4 of Section 15, Township 23 South, Range 28 East, from the surface to the bottom of the Delaware formation, East Loving Delaware Oil Pool, or 6,300 feet, whichever is deeper, for the formation of a spacing and proration unit consisting of 40 acres to be dedicated to a well to be drilled at a standard location, 2105 feet from the South line and 560 feet from the East line of said Section 15.

(4) That the NE/4SE/4 of Section 15, T23S, R28E is a standard spacing unit for the East Loving Delaware Pool.

(5) That Applicant has the right to drill and complete a well at the proposed location.

(6) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the subject application as amended should be approved by pooling all mineral interests whatever they may be, within said unit.

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

(10) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(11) The applicant has proposed a 200 percent risk penalty to be assessed against those interest owners subject to the force-pooling provisions of this order, and in support thereof presented evidence and testimony at the hearing.

(12) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(13) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs, but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

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ORDER NO. R-  
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(14) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(15) \$4541.00 per month while drilling and \$438.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each nonconsenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well not in excess of what are reasonable, attributable to each non-consenting working interest.

(16) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

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(17) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before \_\_\_\_\_, 1990, the order pooling said unit should become null and void and of no effect whatsoever.

(18) Should all parties to this forced pooling 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 unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, in the East Loving Delaware Oil Pool underlying the NE/4 SE/4 of Section 15, Township 23 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, are hereby pooled forming a standard 40 acre oil spacing and proration unit for said pool to be dedicated to a well to be drilled at a standard oil well location 2105 feet from the South line and 560 feet from the East line (Unit ) of said Section 15.

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ORDER NO. R-  
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PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the \_\_\_\_ day of \_\_\_\_\_ 1990, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the East Loving Delaware Pool.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the \_\_\_\_ day of \_\_\_\_\_ 1990, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Bird Creek Resources, Inc. is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

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(4) Within 30 days from the date the schedule of estimated well costs is furnished to him any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production and any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the 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 said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed

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estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

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

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him, and

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the prorata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

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(9) \$4541.00 per month while drilling and \$438.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) 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 the terms of this order.

(11) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Eddy County, New Mexico,

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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 said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

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

(15) Jurisdiction of this cause 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

WILLIAM J. LEMAY  
Director

SEAL