

**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, L.P.
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.**

2004 AUG 31
CASE NO. 1335

**SUPPLEMENTAL REPLY OF MARBOB ENERGY CORPORATION
AND PITCH ENERGY CORPORATION
IN SUPPORT OF THEIR MOTION TO DISMISS**

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COME NOW, MARBOB ENERGY CORPORATION, ("Marbob") and PITCH ENERGY CORPORATION ("Pitch"), through their undersigned attorneys, hereby file this Supplemental Reply in support of their Motion to Dismiss:

1. In its supplemental Response, Devon shows it does not understand the principle of ratification and adoption. Here, by its course of action, Devon has accepted the 1969 Joint Operating Agreement. However, in this case, we also have a written agreement between the parties. By letter dated October 5, 2001, Devon proposed a casing point election to Marbob and Pitch under the 1968 Joint Operating agreement. This proposal signed and thereby accepted on October 6, 2001. See, Exhibit B to the Motion to Dismiss. When Marbob and Pitch accepted the casing point election pursuant to Devon's offer, they had a signed contract with Devon under the 1968 Joint Operating Agreement and thereafter this agreement governs Devon's operations on this unit.

2. Before a party may ask the State to exercise its police power and pool the interests of another owner, certain statutory preconditions must be met. In this case Devon has failed to meet those conditions. It has not made a good faith effort to reach voluntary agreement with Marbob, Pitch and others and cannot do so until it at least clarifies what contracts and orders it contends govern the development of this spacing unit.

3. In its response to the Motion to Dismiss, Devon states that it acted improperly when it formed the subject spacing unit under the 1968 operating agreement. In its Supplemental Response, it now argues what the rights and obligations of the parties could have been if it had pooled the spacing unit. The problem is that it did not pool this

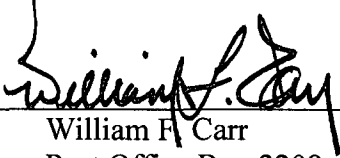
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spacing unit and has not acted to correct what it asserts was improper about the way it formed the unit for the original well. Instead, it tries to bounce in and out of the two Joint Operating Agreements covering interests in this property depending on which agreement benefits Devon.

WHEREFORE, MARBOB ENERGY CORPORATION and PITCH ENERGY CORPORATION request that their Motion to Dismiss be granted and that their interests be dismissed from Devon's compulsory pooling application in this case.

Respectfully submitted,

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ATTORNEYS FOR MARBOB ENERGY
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CERTIFICATE OF SERVICE

I certify that on August 31, 2004 I served a copy of the foregoing document to the following by Facsimile to:

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