

**BEFORE THE OIL CONSERVATION DIVISION
EXAMINER HEARING JANUARY 9, 2020**

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P.,
FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

Case No. 20962

Danger Noodle 29-20 Fed Com 1H Well
Danger Noodle 29-20 Fed Com 2H Well
Danger Noodle 29-20 Fed Com 3H Well

Case No. 20963

Danger Noodle 29-20 Fed Com 4H Well
Danger Noodle 29-20 Fed Com 5H Well
Danger Noodle 29-20 Fed Com 6H Well
Danger Noodle 29-20 Fed Com 7H Well

Devon Energy Production Company, L.P.

HEARING: SUPPLEMENTAL EXHIBIT 4

Consolidated Case Nos. 20962 and 20963

Supplemental Exhibit 4: Affidavit of Notice; Affidavits of Publication; and
Legal Issue Under Advisement, Pursuant to Order No. R-20979

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

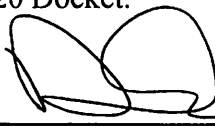
**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY LP FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

Consolidated Case Nos. 20962 and 20963

AFFIDAVIT OF NOTICE

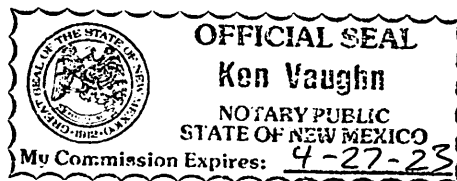
STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

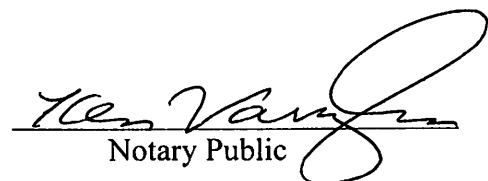
Darin C. Savage, attorney and authorized representative of Devon Energy Production Company, L.P., the Applicant herein, being first duly sworn, upon oath, states that the above-referenced Applications were under publication of notice in the Hobbs News-Sun on December 20 and 21, 2019, in compliance with 19.15.4.12(B) NMAC, and that proof of publication is attached hereto and provided for the January 9, 2020 Docket.



Darin C. Savage

SUBSCRIBED AND SWORN to before me this 31st day of December, 2019, by Darin C. Savage.





Notary Public

My Commission Expires:

April 27, 2023




Affidavit of Publication


STATE OF NEW MEXICO
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

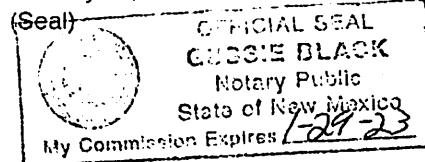
Beginning with the issue dated
December 21, 2019
and ending with the issue dated
December 21, 2019.


Publisher

Sworn and subscribed to before me this
21st day of December 2019.


Business Manager

My commission expires
January 29, 2023



This newspaper is duly qualified to publish
legal notices or advertisements within the
meaning of Section 3, Chapter 167, Laws of
1937 and payment of fees for said

LEGAL LEGAL LEGAL

LEGAL NOTICE
DECEMBER 21, 2019

JE No. 20963: Notice to all affected parties and persons having any interest, title interest or claim to this case, including overriding royalty interest owners, as well as the known and unknown heirs, devisees and successors of TRAINER PARTNERS, LTD., CONOCOPHILLIPS COMPANY, EOG RESOURCES ASSETS, LLC, EOG RESOURCES INC., MAGNUM HUNTER PRODUCTION INC., SHARBRO ENERGY, LLC, MCCOMBS ENERGY, LLC, OXY USA, INC., OXY Y-1 COMPANY, CACTUS ENERGY INC., CM ROYALTIES LP, HIGHLAND TEXAS ENERGY COMPANY, MCMULLEN MINERALS, LLC, PEGASUS RESOURCES, LLC, PONY OIL OPERATING LLC, ROCK RIDGE ROYALTY COMPANY, LLC, STEVEN M BURR AND CHRISTY B. BURR, H&W, TD MINERALS LLC, TRUITT MATTHEWS AND MICHELLE R. MATTHEWS, H&W, AMY REHERMANN TRUSTEE OF ANDERSON TRUST, ANN E. HEARN, AUDREY ELAINE (DEATHRIDGE) BERNARD, BILL STINEBUCK, CAROLINA R. GREENE, CBF COMPANY (WELLS FARGO NA REAL ESTATE), DANIEL E. GONZALES, DEE ETTA DEAN, DILLARD LEE DORLAND AKA D.L. DORLAND, DONNA P. LANDRETH, E.L. LATHAM COMPANY, ERMA JO (HOLMAN) SPELL, HENRY C. WUNSCH AND MARY ANN WUNSCH, H&W, JACKSON GARRETT BERNARD, JAMES L. DORLAND, JR., JASON W. HICKS, JENNIFER HERRERA, JENNIFER S. HICKS, JOHN BERNARD AKA JOHN PIER BERNARD, JOHNSON COMPANY GARY SCHUBERT MANAGING PARTNER, KELSEY LEAH BERNARD, RAMIREZ, KENNETH R. DEAN, KEVEN JUAN BERNARD, KIM COMBS, KIMBERLY KAY (DORLAND) COMBS, KYLE FAY SHEPARD, LANTY FAY BERNARD, DECEASED, MCMULLEN MINERALS LLC, NORMA J. CHANLEY, PATRICIA C. STEWART, PFZ LLC, RITA M. GONZALES, ROBERT P. BYRON & JEANNINE HOPPER BYRON TRUSTEES OF ROBERT & JEANNINE BYRON REVOCABLE TRUST DTD 6-18-03, ROBERT E. LANDRETH, ROMAN FOUR CORPORATION, ROY G. BARTON, SALLY ANN HINDMAN, SALLY FAEGIN, STEPHEN B. HOWARD, THE ESTATE OF ELLIOT JOHNSON, DECEASED, THE ESTATE OF FRANK EDWARDS, DECEASED, THE ESTATE OF MARIA ESTER MARQUEZ, DECEASED, VIRGINIA BLACK, PAULETTE WILLIAMSON PARTNER OF WILLIAMSON ENTERPRISES, AND KIMBERLY KAY COMBS TRUSTEE OF THE ZONETTA MOORE TRUST KIMBERLY of Devon Energy Production Company, L.P.'s applications for approval of a spacing unit and compulsory pooling, Lea County, New Mexico. The State of New Mexico, through its Oil Conservation Division, hereby gives notice that the Division Examiner will conduct a public hearing at 8:15 a.m. on January 9, 2020, at 1220 S. St. Francis, Santa Fe, New Mexico, 87505, as a continuance of its hearing held December 12, 2019. Devon Energy Production Company, L.P., at 333 W. Sheridan Ave, Oklahoma City, OK 73102, seeks an order from the Division: (1) creating a standard 640-acre, more or less, horizontal spacing and proration unit comprised of the W/2 of Sections 20 and 29, Township 23 South, Range 33 East, NMPM, Lea County, New Mexico, and (2) pooling all mineral interests in the Wolfcamp formation (BRINNINSTOOL; WOLFCAMP, WEST [96689]) underlying the unit. Said horizontal spacing unit is to be dedicated to the proposed Danger Noodle 29-20 Fed Com 6H Well, to be horizontally drilled from a surface location in SE/4 SW/4 (Unit N) of Section 29 to a bottom hole location in the NE/4 NW/4 (Unit C) of Section 20. This Well defines the HSU. Also proposed to be drilled are: (1) the Danger Noodle 29-20 Fed Com 4H Well to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20; (2) the Danger Noodle 29-20 Fed Com 5H Well proposed to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20; and (3) the Danger Noodle 29-20 Fed Com 7H Well proposed to be horizontally drilled from a surface location in the SE/4 SW/4 (Unit N) of Section 29 to a bottom hole location in the NE/4 NW/4 (Unit C) of Section 20. The completed intervals and first take and last take points for all wells proposed in the unit meet the Division's statewide setback requirements for horizontal oil wells. Devon will utilize proximity tracts. Also to be considered will be the cost of drilling and completing the wells and the allocation of the costs thereof; actual operating costs and charges for supervision; the designation of the Applicant as Operator of the wells; downhole commingling; and a 200% charge for the risk involved in drilling and completing the wells. The wells and lands are located approximately 3 miles east of Artesia, New Mexico. #35011

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KAIYA TOOP
ABADIE SCHILL
555 RIVERGATE LANE 84-180
DURANGO, CO 81301

Affidavit of Publication

STATE OF NEW MEXICO
COUNTY OF LEA

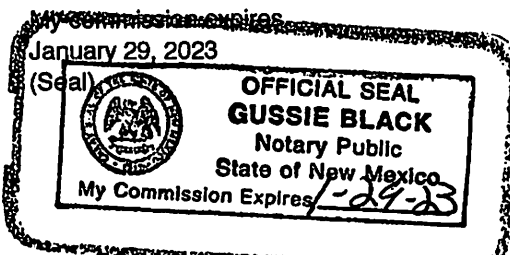
I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

Beginning with the issue dated
December 20, 2019
and ending with the issue dated
December 20, 2019.


Publisher

Sworn and subscribed to before me this
20th day of December 2019.


Business Manager



This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937 and payment of fees for said

LEGAL NOTICE DECEMBER 20, 2019

CASE No. 20862: Notice to all affected parties and persons having any right, title interest or claim to this case, including overriding royalty interest owners, as well as the known and unknown heirs, devisees and successors of TRAINER PARTNERS, LTD., CONOCOPHILLIPS COMPANY, EOG RESOURCES ASSETS, LLC, EOG RESOURCES INC., MAGNUM HUNTER PRODUCTION INC., SHARBRO ENERGY, LLC, MCCOMBS ENERGY, LLC, OXY USA, INC., OXY Y-1 COMPANY, CACTUS ENERGY INC., CM ROYALTIES LP, HIGHLAND TEXAS ENERGY COMPANY, MCMULLEN MINERALS, LLC, PEGASUS RESOURCES, LLC, PONY OIL OPERATING LLC, ROCK RIDGE ROYALTY COMPANY, LLC, STEVEN B. BURR AND CHRISTY B. BURR, H&W, TD MINERALS LLC, TRUITT MATTHEWS AND MICHELLE R. MATTHEWS, H&W, AMY REHERMANN, TRUSTEE OF ANDERSON TRUST, ANN E. HEARN, AUDREY ELAINE (DEATHRIDGE) BERNARD, BILL STINEBUCK, CAROLINA R. GREENE, CBF COMPANY (WELLS FARGO NA REAL ESTATE), DANIEL E. GONZALES, DEE ET TA DEAN, DILLARD LEE DORLAND AKA D.L. DORLAND, DONNA P. LANDRETH, E.L. LATHAM COMPANY, ERMA JO (HOLMAN) SPELL, HENRY C. WUNSCH AND MARY ANN WUNSCH, H&W, JACKSON GARRETT BERNARD, JAMES L. DORLAND, JR., JASON W. HICKS, JENNIFER HERRERA, JENNIFER S. HICKS, JOHN BERNARD AKA JOHN PIER BERNARD, JOHNSON COMPANY, GARY SCHUBERT MANAGING PARTNER, KELSEY LEAH BERNARD RAMIREZ, KENNETH R. DEAN, KEVEN JUAN BERNARD, KIM COMBS, KIMBERLY KAY (DORLAND) COMBS, KYLE FAY SHEPARD, LANTY FAY BERNARD, DECEASED, MCMULLEN MINERALS, LLC, NORMA J. CHANEY, PATRICIA C. STEWART, PFZ LLC, RITA M. GONZALES, ROBERT P. BYRON & JEANNINE HOPPER BYRON TRUSTEES OF ROBERT & JEANNINE BYRON REVOCABLE TRUST DTD 6-18-03, ROBERT E. LANDRETH, ROMAN FOUR CORPORATION, ROY G. BARTON, SALLY ANN HINDMAN, SALLY FAEGIN, STEPHEN B. HOWARD, THE ESTATE OF ELLIOT JOHNSON, DECEASED, THE ESTATE OF FRANK EDWARDS, DECEASED, THE ESTATE OF MARIA ESTER MARQUEZ, DECEASED, VIRGINIA BLACK, PAULETTE WILLIAMSON PARTNER OF WILLIAMSON ENTERPRISES, AND KIMBERLY KAY COMBS TRUSTEE OF THE ZONETTA MOORE TRUST KIMBERLY of Devon Energy Production Company, L.P.'s applications for approval of a spacing unit and compulsory pooling, Lea County, New Mexico. The State of New Mexico, through its Oil Conservation Division, hereby gives notice that the Division Examiner will conduct a public hearing at 8:15 a.m. on January 9, 2020, at 1220 S. St. Francis, Santa Fe, New Mexico, 87505, as a continuance of its hearing held December 12, 2018. Devon Energy Production Company, L.P., at 333 W. Sheridan Ave, Oklahoma City, OK 73102, seeks an order from the Division: (1) creating a standard 840-acre, more or less, horizontal spacing and proration unit comprised of the W/2 of Sections 20 and 29, Township 23 South, Range 33 East, NMPM, Lea County, New Mexico, and (2) pooling all mineral interests in the Bone Spring formation (CRUZ; BONE SPRING (14865); TRIPLE X; BONE SPRING (59900)) underlying the unit. Said horizontal spacing unit is to be dedicated to the proposed Danger Needle 29-20 Fed Com 2H Well, to be horizontally drilled from a surface location in SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20. This Well defines the HSU. Also proposed to be drilled are: (1) the Danger Needle 29-20 Fed Com 1H Well to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20; and (2) the Danger Needle 29-20 Fed Com 3H Well to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NE/4 NW/4 (Unit C) of Section 20. The completed intervals and first take and last take points for all wells proposed in the unit meet the Division's statewide setback requirements for horizontal oil wells. Devon will utilize proximity tracts. Also to be considered will be the cost of drilling and completing the wells and the allocation of the costs thereof; actual operating costs and charges for supervision; the designation of the Applicant as Operator of the wells; downhole commingling; and a 200% charge for the risk involved in drilling and completing the wells. The wells and lands are located approximately 3 miles east of Artesia, New Mexico.

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KAIYA TOOP
ABADIE SCHILL
555 RIVERGATE LANE 84-180
DURANGO, CO 81301

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**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY LP FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

Consolidated Case Nos. 20962 and 20963

LEGAL ISSUE UNDER ADVISEMENT: ORDER No. R-20979

Legal Issue: Whether 19.15.4.12(A)(1)(a) NMAC properly excludes an Overriding Royalty Interest (“ORRI”) Owner from notice in a compulsory pooling hearing when said royalty interest is subject to a pooling or unitization clause.

SUMMARY

As discussed in Applicant’s Brief submitted December 16, 2019, an ORRI is a royalty interest, that is, a non-possessory interest in real property void of any rights to drill or to produce, and free of all costs and expenses of production, as well as free of all executive rights, liabilities and accountability involving drilling and production. An ORRI is subject to the pooling and unitization clauses of the underlying lease out of which the ORRI is carved, or subject to the unitization clauses of a federal communitization agreement as governed by federal statute. Furthermore, under the Oil and Gas Act (“Act”), protection of “correlative rights” applies only to a working interest owner’s right “to produce without waste,” *see, i.e.*, NMSA 1978, § 70-2-33(H), and not to an ORRI owner who has no right to produce or drill, *see id.* at (E); an ORRI owner has only a passive right to receive at the wellhead a small portion of that which working interest owners produce. Consequently, the Act provides proper discretion to the Division to exclude notice to ORRI owners, under 19.15.4.12(A)(1)(a) NMAC, in pursuit of preventing “the greater hazard” of the “dissipation of the [State’s] natural resources....” *Rutter & Willbanks Corp. v. Oil Conservation Commission*, 1975-NMSC-6, 87 N.M. 286, 292, 532 P.2d 582, 588 (noting that the Commission’s established participation formula preempts an ORRI owner’s right to object to an Order for a spacing unit).

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

Darin C. Savage
Lara Katz
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
lara@abadieschill.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on December 31, 2019:

Deana M. Bennett
For Cimarex Energy Co.
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Post Office Box 2168
500 Fourth Street NW, Suite 1000
Albuquerque, New Mexico 87103-2168
Telephone: 505.848.1800
Email: Deana.bennett@modrall.com

/s/ Darin C. Savage

Darin C. Savage