

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

IN THE MATTER OF THE APPLICATION
OF SAMSON RESOURCES COMPANY,
KAISER-FRANCIS OIL COMPANY AND
MEWBOURNE OIL COMPANY FOR
CANCELLATION OF A DRILLING PERMIT
AND APPROVAL OF A DRILLING PERMIT,
LEA COUNTY, NEW MEXICO

CASE NO. 13492

2005 FEB 18 PM 2:00

REPLY IN SUPPORT OF JOINT MOTION IN LIMINE

Kaiser-Francis Oil Company, Samson Resources Company, and Mewbourne Oil Company, for their reply pursuant to their Joint Motion In Limine, state:

Kaiser-Francis, Samson and Mewbourne seek the exclusion from evidence of an undated letter from the Commissioner of Public Lands obtained in violation of the Division's rule prohibiting *ex parte* communications "with any commissioner or the division examiner". (19 NMAC 15.14.1223) The Land Commissioner's letter addressed Chesapeake's entry onto the SE/4 of Section 4, T21S, R35E, a lease that Chesapeake does not own, and whether its entry onto the lands was in "bad faith". The letter resulted from a meeting between Chesapeake and the Commissioner. Neither Samson, Kaiser-Francis or Mewbourne were notified nor invited, even though they are interested parties. Further Chesapeake's response provides no indication what representations may have been made to the Commissioner that led to the issuance of his letter.

Chesapeake's Response to Motion In Limine suggests that the *ex parte* meeting and the resulting letter were prompted by the Assistant Commissioner's May 4, 2005 letter requesting Chesapeake's "immediate response as to the authority Chesapeake evokes to allow its operations on State Trust acreage." (Exhibit 1, attached.) The Assistant Land Commissioner did not invite a meeting. Rather, Chesapeake, through its attorneys, provided a written response to the

Assistant Land Commissioner's May 4th letter. In so many words, Chesapeake's attorneys asked that the State Land office not become involved in the dispute. (See May 6, 2005 correspondence from Phillip T. Brewer and W. Thomas Kellahin, Exhibit 2, attached.)¹ The meeting that resulted in the Land Commissioner's undated letter was a separate initiative undertaken unilaterally by Chesapeake.

An examination of the Land Commissioner's letter makes quite clear that geology and spacing unit configuration were discussed with the Commissioner. Therefore, Chesapeake's assertion that there is no evidence that the merits of the underlying dispute were discussed is not credible.

Chesapeake's argument that the Land Commissioner does not fall within the scope of Rule 1223 prohibiting *ex parte* contacts is incorrect and is a departure from the realities of actual practice before the NMOCC. Chesapeake should know that state land commissioners do on occasion sit on the Commission during NMOCC hearings. With the exercise of the smallest amount of due diligence, this fact would have been discoverable by Chesapeake. Charged with notice of this possibility, Chesapeake should have immediately determined that a meeting to discuss the merits of the case with any of the Commissioners would be violative of Rule 1223.

Finally, Chesapeake's attack on the scope and extent of the Division's authority to adjudicate the issues raised in the Amended Application are a repetition of the arguments made in the context of its May 10, 2005 Motion to Dismiss. Those challenges to the Division's authority were fully addressed by Order No. R-12343-A. There, the Division set forth the parameters of the issues it would consider at a hearing on the merits on the Amended Application. Specifically, the Division found as follows:

¹ The letter was originally attached as Exhibit C to Chesapeake's Response To Joint Motion To Limit Drilling Operations.

(9) *The Division may revoke an APD after notice and hearing if it determines that the APD was improvidently granted. The cases provide examples of good cause for revoking or denying an APD, including the following:*

(a) *A demonstration that the holder of the APD does not have a good faith claim of title. (Order R-11700-B (TMBR/Sharp-Ocean Case).)*

(b) *A demonstration that the applicant for the APD does not have authority for surface uses that will be required to conduct operations. (Order R-12093-A. Application of Valdes (sic) Caldera Trust).)*


(c) *A demonstration that the acreage can be developed better by inclusion in a different unit. (Order R-12108-C, Finding 8(i) (Pride-Yates Case).)*

CONCLUSION

Movants previously indicated to Chesapeake's counsel that they would not seek the introduction of the Assistant Commissioner's May 4, 2005 letter into evidence at the hearing. Therefore, there should be no need for Chesapeake to seek the introduction of the Land Commissioner's undated letter. Correspondingly, the Division should avail itself of the suggested solution set forth in Chesapeake's Response to Motion In Limine: "*However, if the Commissioner's letter is excluded, the previous letter from the Assistant Commissioner must likewise be excluded.*" (Page 10, Chesapeake's' Response to Motion In Limine.) We believe this offers a reasonable resolution to this particular matter, and Chesapeake acknowledges this is a proper result.

Respectfully submitted,

MILLER STRATVERT P.A.

By: 

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Approved electronically/August 7, 2005

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Approved electronically/August 17, 2005

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 18 day of August, 2005, as follows:

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J. Scott Hall



State of New Mexico
Commissioner of Public Lands

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May 4, 2005

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Via Fax 505-982-2047

Phillip T. Brewer, Esq.
P.O. Box 298
Roswell, NM 88202-0298

Via Fax 505-625-0299

RE: State Trust Land, Section 4, T-21-S, R-35-E

Dear Messrs. Kellahin and Brewer:

The State Land Office (SLO) has been advised through proceedings in the Oil Conservation Division (OCD) and the state district court in the Fifth Judicial District that your client, an entity of Chesapeake Energy, is in the process of drilling a well on state trust mineral acreage in the above-referenced Section 4. It is the SLO's understanding that your client's entry onto the state trust land is not pursuant to lease or other specific authorization issued to Chesapeake by the Commissioner of Public Lands or the lessee of record. It is our further understanding that the entry may be upon reliance of an authorization for permit to drill issued by the Oil Conservation Division (OCD).

Access to state trust surface and minerals requires specific approval of the Commissioner, who is the state official charged by constitution and statute to control and manage state trust property. Reliance solely on OCD approval without approval of the Commissioner or the lessee pursuant to SLO rules as to state trust lands is misplaced.

The SLO understands that there exists a dispute between our lessee of the property and your client over the right to drill and produce the minerals and that the OCD is scheduled to address this issue in a May 19 hearing. The Commissioner has established the SLO rules for state trust lands to govern both voluntary pooling (19.2.100.51 NMAC) and forced pooling (19.2.100.52 NMAC) situations.

The SLO's present understanding is that Chesapeake's activity on trust land is not in compliance with state statutes and SLO rules. We expect full compliance with applicable statutes and rules and would appreciate an immediate response as to the authority Chesapeake invokes to allow its operations on state trust acreage.

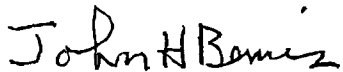
EXHIBIT

1

"NOTICE OF ACTION"

My direct dial number is 505-827-4489 and my fax number is 505-827-4739.

Very truly yours,

A handwritten signature in black ink that reads "John H. Bemis". The signature is written in a cursive, slightly slanted style.

John H. Bemis
Assistant Commissioner
For Oil & Gas

Cc: Scott Hall via fax 505-989-9857
James Bruce via fax 505-982-2151
Michael Curry via fax 915-682-3692

PEGASUS PLACE
125 WEST FOURTH STREET
POST OFFICE BOX 298
ROSWELL, N.M. 88202-0298

Phil Brewer
ATTORNEY & COUNSELOR

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May 6, 2005

Mr. John H. Bemis
Assistant Commissioner
for Oil and Gas
New Mexico Commissioner of Public Lands
Post Office Box 1148
Santa Fe, New Mexico 87504-1148

VIA FACSIMILE
(505) 827-5766
AND REGULAR MAIL

RE: Section 4, Township 21 South, Range 35 East, N.M.P.M.,
Lea County, New Mexico

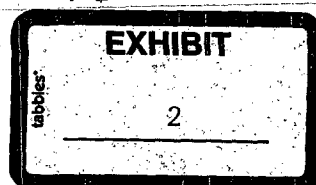
Dear Mr. Bemis:

Tom Kellahin and I thank you for your letter of May 4, 2005 relating to the mineral development under the above captioned lands and we would be happy to comply with the request set forth at the bottom of Page 1 of your letter were it not for the concerns discussed hereinafter. First, you were present, in person or telephonically, at the hearings held before the New Mexico Oil Conservation Division and the Lea County District Court on May 3, 2005. Mr. Kellahin and I presume that you also had the opportunity to familiarize yourself with the pleadings filed in these actions, but you certainly heard the arguments of Chesapeake's counsel regarding Chesapeake's authority to conduct the presently ongoing drilling activity in Section 4. Neither Mr. Kellahin nor I can think of anything to tell you with respect to said authority beyond that which you have already heard and/or read. Second, if anything more could be reported, we are hesitant, given the fact that counsel for Mewbourne, Samson, and Kaiser-Francis were copied with your letter, to disclose what might be considered our attorney-client work product by means other than as expressly provided in NMOCD and District Court rules. Third, Mr. Kellahin and I have reviewed the statutes and regulations pertaining to the operation of the New Mexico State Land Office and we have not been able to discover anything that would serve as the basis for your request, particularly given the fact that, as noted above, it



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appears that you may have some sympathy for the position that is being taken by adverse parties in a pending dispute. Fourth, since the State's royalty will be the same whichever spacing unit is approved by NMOCD, we are confused by the Commissioner's Office taking such an apparent position.

While Chesapeake appreciates the fact that good relations with the Commissioner's Office to be a necessary aspect of its ongoing business in New Mexico, Mr. Kellahin and I have, with all due respect to you and your position, advised our client that trying to guess what additional information you are seeking and providing whatever that might be to you is not legally required and should not be pursued. Neither Mr. Kellahin nor I wish to increase the adversarial nature of the dispute that exists with regard to the development of Section 4; but we would be remiss in not pointing out that the tenor and perceived purpose of your letter indicate a desire for the Commissioner's Office to become involved in said dispute beyond the scope of your jurisdiction. This would, again with all respect, constitute an unprecedented move by your agency to usurp the jurisdiction of NMOCD to determine the spacing that will best prevent waste, protect correlative rights, etc. and we hope that we have misunderstood the intent underlying your letter. If either Mr. Kellahin or I may be of further assistance to you in a way that will not cause us concern as to the legal requirement therefor, we will be happy to do so. We otherwise appreciate your understanding of our position.

Very truly yours,



Phil Brewer

PTB:elh

