

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

2005 MAY 13 PM 2 09

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

CASE NO. 13492

**RESPONSE OF KAISER-FRANCIS OIL COMPANY
AND SAMSON RESOURCES COMPANY TO
CHESAPEAKE OPERATING, INC.'S MOTION TO DISMISS**

Kaiser-Francis Oil Company (Kaiser-Francis) and Samson Resources Company (Samson) through their undersigned counsel respond to the Motion to Dismiss filed on behalf of Chesapeake Operating, Inc. (Chesapeake).

Kaiser-Francis and Samson, along with Mewbourne Oil Company, are the working interest owners of that State of New Mexico oil and gas lease acreage dedicated to a standard 320-acre standup gas spacing and proration unit comprised of Lots 9, 10, 15 and 16 and the SE/4 of Section 4 created by virtue of that Communitization Agreement approved by the Commissioner of Public Lands effective April 1, 2005. These lands are also subject to that Joint Operating Agreement dated March 24, 2005 under which Samson Resources Company is now the designated operator.

On March 11, 2005, Chesapeake Operating, Inc. submitted its APD for the KF State "4" No. 1 Well located in the SE/4 of Section 4. The C-102 form that accompanied Chesapeake's APD purported to show the dedication of a conflicting 320-acre lay down gas spacing and proration unit consisting of the SW/4 and the SE/4 of Section 4. It is undisputed that Chesapeake owns no interest in the SE/4 of Section 4.

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Although Chesapeake's APD was incomplete, the Division's Hobbs District Office gave its ministerial approval to the permit. Thereafter, on April 27, 2005, Chesapeake moved a drilling rig onto the SE/4 of Section 4 and began drilling the KF State "4" No. 1 Well. To date, Chesapeake has not disputed and cannot refute that it trespassed onto the SE/4 of Section 4. Chesapeake owns no interest in the SE/4 and is there solely on the strength of its incomplete APD.

On April 28, 2005, Mewbourne Oil Company filed its Application in this case seeking (1) the Division's approval for the drilling of their Osudo "4" State Comm Well No. 1 on their communitized lands, and (2) cancellation of Chesapeake's APDs for the KF "4" State No. 1 Well and the proposed Cattleman "4" State Com Well No. 1 also located on the communitized area.

As grounds for its Motion to Dismiss, Chesapeake represents, incorrectly, that the issues raised in the Application ... "have now been adjudicated in both the District Court and before the Division". Chesapeake's assertion is a misrepresentation. Neither the District Court nor the Division has adjudicated the merits of the issues raised in Mewbourne's administrative Application.

It is gross error to represent that the District Court ruled against Mewbourne when Chesapeake well knows that Mewbourne was not a party in the District Court case. Secondly, the only action taken by the District Court to date has been to issue a bench ruling on Samson Resources Company's request for preliminary injunction. Although the preliminary injunction was denied due to the pendency of this case and Case No. 13493 before the Division, there remains before the District Court Samson's claims for trespass and for tortious interference with the leasehold interest. (A copy of the Complaint in *Samson Resources Company v. Chesapeake Operating, Inc.*, Fifth Judicial District Court Cause No. CV-2005-275M, is attached.) Notably,

Samson did not include in its Complaint any request for the cancellation of Chesapeake's APD or the approval of the APD for the Osudo "4" State Comm Well No. 1. These are matters that only the Division has the jurisdiction to undertake.

Chesapeake is wrong when it asserts that the denial of an interim, emergency order ends the dispute. Kaiser-Francis, Samson and Mewbourne continue to have the right to pursue redress and to have the matter addressed at a hearing on the merits. In Snyder Ranches, Inc. v. Oil Conservation Commission, et al., 110 N.M. 637, 798 P.2d 587 (1990), a mineral interest owner opposed Mobil's application for an injection permit for its disposal well. The mineral owner opposed the technical justification for the permit, as well as the issuance of the permit itself, contending that the Division's permit was being used to authorize a trespass. The New Mexico Supreme Court made clear that (1) the Division's permit does not authorize the trespass, (2) the trespass issue was properly raised, and (3) the mineral owner should continue to have redress for the trespass. The Court said:

"Having found substantial evidence to support the Commission and district court's conclusions, our analysis should end. However, in order to avoid future error, we take the opportunity to answer Snyder Ranches' assertion that the granting of Mobil's application to inject salt water into the disposal well authorizes trespass against Snyder Ranches' property. We do not agree.

The State of New Mexico may be said to have licensed the injection of salt water into the disposal well; however, such license does not authorize trespass. The issuance of a license by the State does not authorize trespass or other tortious conduct by the licensee, nor does such license immunize the licensee from liability for negligence or nuisance which flows from the licensed activity. See *Lummis v. Lilly*, 385 Mass. 41, ..., 429 N.E.2d 1146, 1150 (1982); *Summer v. Township of Teaneck*, 53 N.J. 548, 556, 251 A.2d 761, 765 (1969). In the event that an actual trespass occurs by Mobil in its injection operation, neither the Commission's decision, the district court's decision, nor this opinion would in any way prevent Snyder Ranches from seeking redress for such trespass." (emphasis added).

The Division's ruling in Order No. R-12343 did not adjudicate the merits of Mewbournes' Application. Further, Chesapeake is attempting to sow confusion over the purpose of Mewbourne's Application by invoking the *Pride Energy* Order (Order R-12108-C) and the *TMBR/Sharp* Order (Order R-11700-B). Chesapeake misinterprets these authorities by its statement that, "The Commission's Order in *Pride* tells us, as a matter of administrative law, that Chesapeake can rely upon its valid and approved APD as the "good faith" basis for doing what it did and continues to do."

Contrary to Chesapeake's interpretation, a careful reading of Order No. R-12108-C from the *Pride Energy* case will show that the Commission did not say that an approved APD provides the "good faith" basis for entry onto the lands. Rather, the Commission in *Pride* said, citing to Order No. R-11700-B¹, "That an applicant for permit to drill must have a good faith claim of title." More importantly, however, Order No. R-12108-C goes on to establish a specific administrative procedure to make a determination whether or not a good faith claim of title exists:

"(f) Although the Division can and should cancel an APD when it properly determines that no such good faith claim exists 'as the Commission determined, based a District Court judgment, in Order No. R-11700-B', it should not make that determination, which necessarily cannot be made on the face of the APD or from Division records, without first giving the Applicant notice and an opportunity for a hearing. Although the Division doubts that the right conferred by an approval of an APD is properly characterized as "property," it nevertheless concludes that such approval confers rights that should not be revoked arbitrarily." (Order No. R-1208-C, ¶ 8.)

This is exactly the procedure invoked by the Application in this case and which the parties are entitled to pursue by way of a hearing on the merits.

¹ Case No. 12731, *Application of TMBR/Sharp Drilling, Inc. For An Order Staying David H. Arrington Oil and Gas, Inc. From Commencing Operations, Lea County, New Mexico*; Case No. 12744, *Application of TMBR/Sharp Drilling, Inc. Appealing The Hobb's District Decision Approval Of Two Applications For A Permit To Drill filed by TMBR/Sharp Drilling, Inc., Lea County, New Mexico*.

The Division and Commission also allowed the parties to follow this procedure in the *TMBR/Sharp* case, where, after the administrative challenge to Arrington's APD's, TMBR/Sharp Drilling was able to prove-up that it had title to support the issuance of the APD's to it. Further, Order No. R-11700-B in the *TMBR/Sharp* case set forth the two criteria under which the Division may make a determination of a properly or improperly approved APD: "It is the responsibility of the operator filing an Application for a Permit to Drill to do so under a good faith claim to title and a good faith belief that it is authorized to drill the well applied for." These are among the matters that will be brought before the Division during the course of the hearing on the merits on Mewbournes' Application.

There is a further issue that requires the Division to maintain a hearing on the merits of Mewbourne's Application in this case.

In the past few years, the Division and the Commission have issued three principle cases interpreting an operator's entitlement to, and rights under, an approved APD from the Division. They are Order No. R-12093-A (Case No. 13215; *Application of Valles Caldera Trust to Deny Application of Geo Products of New Mexico, Inc. for Permits to Re-enter Abandoned Geothermal Wells (APDs), Sandoval County, New Mexico*), Order No. R-11700-B (from the *TMBR/Sharp* case referenced above), and Order No. R-12108-C (from the *Pride Energy* case, Case No. 13153). These decisions are inconsistent and cannot be easily reconciled. Further, the inconsistencies have resulted in confusion and have lead to abuse.

In Order No. R-12093-A, the Commission said,

"The Order granting the permit is a purely negative pronouncement. It grants no affirmative rights to the permittee to occupy the property ... it merely removes the conservation laws and regulations as a bar to drilling the well." Order No. R-12093-A, ¶ 11, citing to *Magnolia Petroleum Company v. Railroad Commission*, 170 Southwest 2d 189 (Tex. 1943).

The Commission went on to say,

“The Commission does not have jurisdiction to determine title or the rights of any party to occupy property. However, prudence dictates that the Commission ought not to issue a permit where the party applicant for the permit clearly does not have the right to conduct the contemplated activity. As stated by the Texas Supreme Court, “The Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith.” Order No. R-12093-A ¶ 16.

The Agency’s decision in Order No. R-12093-A is difficult to reconcile with Order No. R-12108-C which allowed the Applicant in that case to maintain an APD for a well on acreage that it was clear it did not have title to.

In view of the obvious chaos and confusion that has resulted from these inconsistent decisions, this Agency has an affirmative duty to rectify the situation. “When an administrative agency acts as a quasi judicial body, it fulfills the same function as a court, seeking to make a determination which is consistent with the public interest as reflected in the governing statute. Such agencies are subject to the requirement that they not act arbitrarily or capriciously, See 5 USC § 7062A 1976, and have an obligation to render consistent opinions and to either follow, distinguish or overrule their own precedent. [citations omitted], *Chisolm v. Defense Logistics Agency*, 656 F.2d 42 (3rd Cir. 1981). (emphasis added.)

For this reason, this Agency is compelled by proper administrative practice to allow the Application in this case to proceed to a hearing on the merits and to render a clear and reliable interpretation of its policy with respect to the issuance of APDs and the rights that may or may not be associated therewith.

Chesapeake’s Motion to Dismiss should be denied.

MILLER STRATVERT P.A.

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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 13 day of May, 2005, as follows:

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T. J. Scott Hall
J. Scott Hall

**FIFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LEA**

SAMSON RESOURCES COMPANY

Plaintiff,

vs.

**CHESAPEAKE OPERATING, INC.
Defendant.**

FIFTH JUDICIAL DISTRICT
LEA COUNTY NM
FILED IN MY OFFICE

05 APR 27 PM 5:13

JANIE C. HERNANDEZ
DISTRICT COURT CLERK

No. CV 2005-275 M^EB^E

**PLAINTIFF'S ORIGINAL COMPLAINT FOR
TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW SAMSON RESOURCES COMPANY Plaintiff in the above-entitled and numbered cause, and file this their Original Complaint for Temporary Restraining Order and Injunctive Relief against CHESAPEAKE OPERATING, INC., ("Chesapeake"), Defendant herein and in support thereof would respectfully show the Court the following:

I.

PARTIES AND SERVICE

1. Plaintiff Samson Resources Company, is an Oklahoma Corporation authorized to do business and doing business in the State of New Mexico.
2. Defendant, Chesapeake Operating, Inc. ("Chesapeake") is an Oklahoma Corporation authorized to do business and doing business in the State of New Mexico and may be served with process through its registered agent CSC of Lea County, 1819 N. Turner Street G; Hobbs, New Mexico 88240.

II.**JURISDICTION AND VENUE**

4. Pursuant to New Mexico Statue 38-3-1(D), venue is mandatory in Lea County, New Mexico, because the real property, ownership of which is at issue, is located there.

5. This Court has jurisdiction over the parties and the subject matter of this action.

III.**FACTS GIVING RISE TO THE COMPLAINT****No Ownership Interest**

6. Plaintiff Samson, owns leasehold interests in the SE 1/4 of Section 4, Township 21 South, Range 35 East, in Lea County, New Mexico as to all depths below 5,200' ("leasehold property").

7. Samson obtained those leasehold interests from Wilson Oil Company, Ltd. through an Amendment to Term Assignment of Oil and Gas Leases dated March 4, 2004. A copy of which is attached hereto as Exhibit A.

8. At the time of the assignment to Samson an operating agreement dated June 30, 1981, existed between Wilson Oil Company, as non-operator, and Coquina Oil Company, as operator, in relation to the leasehold property and other properties. This operating agreement was in effect up until March 24, 2005. A copy of this operating agreement is attached hereto as Exhibit B.

9. As of March 24, 2005 a new operating agreement took effect by and between Samson, Mewbourne Oil Company ("Mewbourne") and Kaiser-Francis Oil Company ("Kaiser") covering the leasehold property and other properties. A copy of the new operating agreement is attached hereto as Exhibit C.

10. On March 10, 2005, Chesapeake filed through the New Mexico Oil Conservation Division ("OCD") an Application for Permit to Drill for the leasehold property which clearly sets forth its intention to drill a well on the leasehold property. In the application Chesapeake represented that it is the operator. No operating agreements existed then or exist now which name Chesapeake as an operator on the leasehold property. A copy of the Application is attached hereto as Exhibit D.

11. On March 11, 2005, Chesapeake was granted the permit to drill on the leasehold property based on their application to the OCD.

12. On March 30, 2005, Mewbourne, as operator under the March 24th operating agreement, filed with the OCD its application for Permit to Drill on the leasehold property based on its agreement with Samson and Kaiser. The OCD denied the application because of its prior approval of Chesapeake's application. A copy of that denial is attached hereto as Exhibit E.

13. On April 26, 2005 Mewbourne filed with the OCD a new application for cancellation of Chesapeake's permit and approval of Mewbourne's permit. That request is still pending before the OCD.

14. On April 27, 2005, Floyd Steed who is employed by Samson went to the leasehold property and discovered that Chesapeake has almost completed the build-out of the leasehold property in preparation to move a rig onto the leasehold property to commence drilling operations. Mr. Steed was advised by Chesapeake representatives at the site, that the rig would be moved onto the leasehold property today (4/27/05). See affidavit of Mr. Steed attached hereto as Exhibit F.

15. Samson has completed a thorough review of its lease along with the pre-existing and current operating agreements and determined that Chesapeake has no interest in the leasehold property. See affidavit of Rita Buress attached hereto as Exhibit G.

16. Despite Samson informing Chesapeake of their lack of an interest in the leasehold property and its request that Chesapeake cease operations, Chesapeake continues to prepare for drilling. As a result of Chesapeake's actions Samson has been forced to file this pleading.

IV.

TRESPASS

17. Plaintiffs incorporate by reference the factual information contained in Paragraphs 1-16 of this Complaint.

18. By entering upon and preparing the leasehold property for drilling operations Chesapeake has committed a trespass upon the property interest of Samson. Chesapeake has no interest in the leasehold property and is not a signatory to any valid operating agreement covering the leasehold property. Consequently, Chesapeake has no rights to engage in drilling operations on the leasehold property and should be prohibited in engaging in such operations.

19. As a result of Chesapeake's trespass Samson has been damaged in that the legitimate designated operator Mewbourne has been prevented from securing a permit to drill. Until Chesapeake's permit is withdrawn or revoked Samson will be unable to enjoy the bounties of its property and further develop the property.

20. As a result of Chesapeake's trespass, Samson has been damaged in an amount with in the jurisdictional limits of this Court.

V.

TORTIOUS INTERFERENCE WITH THE LEASEHOLD INTEREST

21. Plaintiffs incorporate by reference the factual information contained in Paragraphs 1-20 of this Complaint.

23. Chesapeake's filing of the Application for Permit to Drill with the OCD and attempts to engage in drilling constitutes a deliberate and malicious interference with the contractual relationships between Samson, Mewbourne and Kaiser as to the leasehold property subject to the operating agreement.

24. Chesapeake willfully and intentionally committed acts calculated to cause damage to Samson and its lawful business and ownership of the leasehold property.

25. Chesapeake's acts are the proximate cause of damage to Samson in that Samson has lost the opportunity or lost time in which to develop and drill wells.

VI.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

26. Samson would further show that an immediate and irreparable injury will occur if Chesapeake is not immediately enjoined from drilling its well on the leasehold property.

27. In order for Chesapeake to drill its well it will commit a trespass on the leasehold property. In doing so, Chesapeake will cause irreparable damage to the leasehold property and invade Samson's mineral interest.

28. In addition, Chesapeake's drilling of its well will interfere with Samson's peaceful possession and use of its property.

VII.**APPLICATION FOR PRELIMINARY INJUNCTION**

29. Under New Mexico law, a party seeking a preliminary injunction must show; 1) the party will suffer irreparable injury unless the injunction is granted; 2) the threatened injury outweighs any damage the injunction might cause the party against whom the injunction is sought; 3) issuance of the injunction will not be adverse to the public's interest; and 4) there is a substantial likelihood the party seeking injunctive relief will prevail on the merits. *National Trust for Historic Preservation v. City of Albuquerque*, 874 P.2d 798, 803 (Ct. App. 1994).

30. Pursuant to the facts shown above, Samson has satisfied all prongs of the test entitling it to a Preliminary Injunction.

VIII.**DEMAND FOR TRIAL BY TWELVE-MEMBER JURY**

31. Samson hereby demands that all matters triable by jury in this complaint on file herein be tried before a jury of twelve persons.

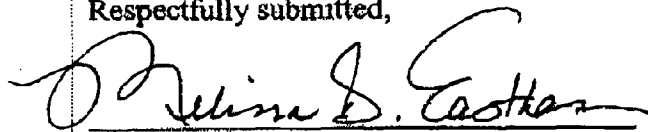
PRAYER FOR RELIEF AND REQUEST FOR PERMANENT INJUNCTION

WHEREFORE, Plaintiffs respectfully request the Court enter judgment awarding Plaintiffs the following relief:

- a. All direct and consequential damages of Chesapeake's breaches of its duties as described herein;
- b. That Chesapeake has no right to locate its proposed well on the leasehold property
- c. An award of costs, reasonable attorneys' fees as attorneys' fees and pre-judgment and post-judgment interest at the highest lawful statutory or contractual rate;

- d. That the Court upon review of the verified complaint, enter a Temporary Restraining Order in accordance with New Mexico Rule of Civil Procedure 1-066; and upon satisfaction of the bond or cash deposit requirements established by said Court, direct issuance of said Order by the Clerk, the Sheriff or server being instructed to serve upon Defendant the Temporary Restraining Order and applicable documents restraining the Defendant and their agents, employees, representatives and any other parties in concert or participation therewith, from commencing the drilling its well as planned in the Application for Permit to Drill and that Chesapeake also be cited to appear and answer to the application for temporary restraining order;
- e. That the Court set a hearing in accordance with said law for a temporary injunction and issue a temporary injunction affirming the same matters requested under the Temporary Restraining Order;
- f. That, after final hearing, the Court issue a permanent injunction enjoining Chesapeake from drilling its as planned in the Application for Permit to Drill; and
- j. Such other and further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,



David W. Lauritzen

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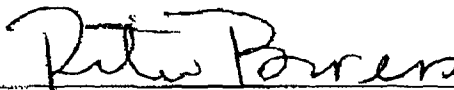
ATTORNEYS FOR PLAINTIFFS

VERIFICATION

STATE OF TEXAS

COUNTY OF Midland

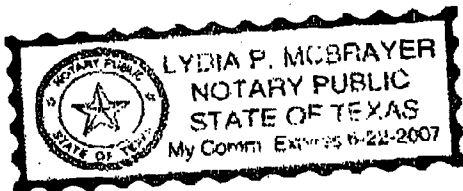
BEFORE ME, the undersigned Notary Public, on this day personally appeared Rita Buress, Senior Landman for Samson Resources Company, who, after being duly sworn, stated under oath that she is the duly authorized representative of Samson Resources Company, that she has read the above Original Complaint for Temporary Restraining Order and Injunctive Relief of Samson Resources Company, and that every statement contained therein is within her personal knowledge, is reflected in public records and to the best of her knowledge and belief is true and correct.



Rita Buress

Senior Landman, Samson Resources Company

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this 27th day of April 2005.


Notary Public, State of Texas