

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

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IN THE MATTER OF THE APPLICATION OF
CHESAPEAKE ENERGY CORPORATION FOR
APPROVAL OF A 160-ACRE NON-STANDARD
SPACING AND PRORATION UNIT AND FOR
COMPULSORY POOLING,

CHAVES COUNTY, NEW MEXICO CASE NOS. 14222; 14223; 14224; 14225,
14226; 14227; 14228; 14229;
14230; and 14231

COG OPERATING LLC'S REPLY
PURSUANT TO ITS
MOTION TO DISMISS

COG Operating LLC, ("COG"), for its Reply pursuant to its Motion To Dismiss the Applications of Chesapeake Energy Corporation, ("Chesapeake"), in these matters, states:

Chesapeake's Response is wholly unresponsive to the Motion To Dismiss. The failure to respond to the matters placed at issue by the Motion warrants the dismissal of Chesapeake's compulsory pooling Applications.

By its Motion, COG points out that Chesapeake's compulsory pooling/non-standard unit approval Applications and its Applications for APD cancellation seek inconsistent relief from the Division. The granting of one type of application necessarily negates the other.^[1]

By simultaneously maintaining both types of Applications, Chesapeake runs squarely into a violation of the election of remedies doctrine. Supported by citation to established authority, COG's motion sets out why Chesapeake's actions are barred by law. However, rather than address the substance of COG's Motion, Chesapeake digresses into a discussion of the theories that inspired its Applications in Cases 14217, 14218 and 14219. Those Applications are not within the scope of relief requested by COG's Motion. COG is fully prepared to meet those separate Applications head-on at a hearing on the merits.

^[1] This is not to say, however, that both types of Applications cannot be simultaneously denied.

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Chesapeake, being obviously unwilling to make the proper election between the inconsistent remedies it seeks, allows the Division to make the election for it. (NMSA 1978 §70-2-14, the Division's examiner has the authority ". . . to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient orderly conduct of such hearing[s]."

WHEREFORE, COG requests the Division enter its Order dismissing the referenced compulsory pooling/non-standard unit Applications filed on behalf of Chesapeake Energy Corporation.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

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Certificate of Service

I hereby certify that on this 20th day of October, 2008 a copy of the foregoing was faxed to the following:

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