

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 14323  
ORDER NO. R-13154**

**APPLICATION OF CHESAPEAKE ENERGY  
CORPORATION FOR CANCELLATION OF  
THE DIVISION'S APPROVAL OF AN  
APPLICATION FOR PERMIT TO DRILL  
ISSUED TO COG OPERATING LLC, EDDY  
COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for consideration at a pre-hearing conference held on August 10, 2009, at Santa Fe, New Mexico, before Examiners David K. Brooks and Richard I. Ezeanyim.

NOW, on this 11<sup>th</sup> day of August, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

**FINDS THAT:**

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) In this application, Chesapeake Energy Corporation (Chesapeake) seeks an order cancelling the Division's approval of an application for permit to drill (APD) filed by COG Operating LLC (COG) for its Blackhawk 11 Federal Com Well No. 1-H, a horizontal well proposed to be drilled from a surface location 430 feet from the South line and 430 feet from the West line (Unit M) of Section 11, Township 16 South, Range 28 East, NMPM, in Eddy County, New Mexico, to a point of penetration of the Wolfcamp formation 426 feet from the South line and 621 feet from the West line (Unit M) of Section 11, and thence laterally in the Wolfcamp to a terminus 330 feet from the South line and 330 feet from the East line (Unit P) of Section 11.

(3) In a separate application (Case No. 14365) COG has applied for formation of a non-standard unit for the proposed well, comprising the S/2 S/2 of Section 11 and for compulsory pooling. Chesapeake is an owner within the proposed non-standard unit.

(4) It is undisputed that COG owns no interest in the oil, gas and minerals in and under the SE/4 SW/4 or the SW/4 SW/4 of Section 11, and that COG intends to complete the wellbore, in part, within the horizontal boundaries of those tracts. COG's only interest in the W/2 of the proposed non-standard unit is a right to use the proposed surface location. Chesapeake seeks cancellation of the Division's approval of COG's APD by reason of these undisputed facts.

(5) COG has moved to dismiss Chesapeake's application prior to hearing on four grounds:

- (a) Chesapeake's application seeks an advisory opinion.
- (b) The subject matter of the application would be better resolved by a rule.
- (c) Chesapeake's application is barred by administrative (*quasi* judicial) estoppel.
- (d) Chesapeake's application will be rendered moot by Case No. 14365.

(6) Chesapeake's application involves a live and present controversy. Pursuant to the Division's approval of COG's APD, it could commence drilling operations prior to the Division's decision of Case No. 14365.

(7) However desirable a rule may be, the resolution of this controversy between these parties about this APD cannot await a hypothetical rulemaking.

(8) COG's claim of estoppel is apparently based on a contention that Chesapeake had obtained APDs in analogous situations. Since there has been no hearing, the Division has before it no evidentiary record to support this contention. The question whether obtaining an APD, which is usually an *ex parte* process, can be a basis for *quasi* judicial estoppel can be considered when the case is heard if the evidence presented raises that issue.

(9) Though this case may be rendered moot by the decision of Case No. 14365, it is not moot now, and, as noted in Finding Paragraph (6), resolution of the issue raised may have practical consequences before Case No. 14365 is decided.

(10) An additional issue that COG raised at the pre-hearing conference is the potential hardship involved in re-applying for United States Bureau of Land Management (BLM) approval of the subject APD. While the Division does not control the BLM's approval process, if Chesapeake's order is granted, the Division can consider entering a tailored order that will disclaim any intent to affect BLM approval.

**IT IS THEREFORE ORDERED THAT:**

- (1) COG's Motion to Dismiss this case is denied.
- (2) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



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STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E.  
Director