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

MIKE Heard 1/11/18

APPLICATION OF MATADOR PRODUCTION COMPANY FOR A NON-STANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

CASE NO. 15900

POST-HEARING MEMORANDUM

Caza Petroleum, Inc. ("Caza"), provides this Post-Hearing Memorandum in furtherance of its request that the order to be issued in this matter include provisions for the operator to (1) deliver periodic pay-out status reports and (2) make well data available to Caza.

By its Application, Matador Production Company seeks (1) to designate a non-standard, 160.48-acre, more or less, spacing and proration unit comprised of the W/2 W/2 of Section 33, Township 22 South, Range 35 East, Lea County, New Mexico; and (2) to pool all uncommitted interests in the Bone Spring formation underlying this acreage (approximately 45% of the unit) for its Bill Alexander State Com 33-22S-35E AR No. 111H Well. Caza Petroleum, Inc. is a working interest owner in the proposed non-standard unit and appeared through counsel at the January 11, 2018 hearing, but did not oppose Matador Production Company's Application.

Pay-out Reports. On examination, Matador's expert landman witness testified that the company is capable of making regular, periodic pay-out progress reports to its non-operating interest owners. By operation of a pooling order, if Matador's well produces Caza will be contributing to well costs either through the production attributable to its pooled share, or by voluntarily tendering its share of well costs. In view of this fact, it is reasonable to have the operator deliver regular payout progress reports.

Well Data. Matador's landman witness also testified that the joint operating agreement that Matador proposed be used for this drilling project does not require participation and payment of well costs by its non-operating interest owners as a condition to their receiving well data. Thus, the JOA is not an impediment.

Division precedent from earlier compulsory pooling cases, albeit in the context of discovery disputes, required well operators to provide well data.

In 2005, Chesapeake Operating, Inc. drilled a well before commencing compulsory pooling proceedings. Prior to hearing, one of the other working interest owners in the spacing unit sought well logs and other well data. Chesapeake objected, but the Division directed the information to be provided. (Case No. 13492; *Application of Mewbourne Oil Company for Cancellation of Two Drilling Permits and Approval of a Drilling Permit, Lea County, New Mexico; Order No. R-12343-A*, Exhibit "A", attached.)

In 2006, Devon Energy Corporation and LCX Energy LLC both filed competing compulsory pooling applications, each seeking to pool the same acreage. However, LCX Energy was compelled to commence drilling before the compulsory pooling proceedings were complete in order to save an expiring lease. Devon obtained a subpoena for the well data on the LCX well. LCX moved to quash the subpoena. The Division again followed its established policy by overruling LCX's objections and ordering LCX to produce well logs, completion reports, reservoir pressure information, bottomhole pressure tests, buildup tests, current well rates, flowing tubing pressures and choke sizes. (Case No. 13603; *Application of Devon Energy Corporation for Compulsory Pooling*; consolidated with Case No. 13628; *Application of LCX Energy LLC for Compulsory Pooling, Lea County, New Mexico; Order No. R-12511*, Exhibit "B", attached.) These prior orders of the Division are persuasive here.

Caza also has a property interest in the well data. With the ownership of their respective lease interests in the W/2 W/2 of Section 33, it should be undisputed that both Caza and Matador are the undisputed owners of a "right to exploration", a protected property right. See Phillips Petroleum Co. v. Cowden, 241 F.2d 586, 590 (5th Cir. 1957.) In Cowden, the specific right protected by the court was that of the landowner to acquire information regarding the subsurface structure of his land through geophysical operations performed within the boundaries of his land.

Further, the right to exploration includes the right to the geological and geophysical information. Layne Louisiana Co. v. Superior Oil Co., 26 So.2d 20 (La. 1946). See, also, Grynberg v. City of Northglenn, 739 P.2d 230 (Colo. 1987). In Grynberg, the Colorado Supreme Court held that only the mineral owner or its lessee could authorize geological testing, noting that "the recognition of the exclusivity of the right of the mineral owner to consent to such exploration is based upon the central importance of information concerning mineral deposits to the value of the mineral estate." Grynberg v. City of Northglenn, at 234. It is clear under the facts of this case that the data derived from drilling, including geologic data, are owned by Caza as well as Matador. Indeed, the reasoning of Cowden, Lane Louisiana, and Grynberg was expressly followed by the Division in Order No R-12343-A.

Finally, Section 70-2-17 of the Oil and Gas Act directs that any pooling order "...***shall be upon such terms and conditions as are just and reasonable [.]***" NMSA 1978, § 70-2-17 (C) (emphasis added). In consideration of all the factors outlined above, Caza's request for well data is both just and reasonable and should be provided for in the Division's pooling order in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on January 17, 2018:

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

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

CASE NO. 13492
Order No. R-12343-A

ORDER ON PRE-HEARING MOTIONS

BY THE DIVISION;

This matter came before the director of the Oil Conservation Division (Division) on the following pre-hearing motions: 1) Chesapeake Operating Inc.'s Motion to Dismiss; 2) Chesapeake Operating Inc.'s Motion to Quash Subpoenas Issued at the Request of Kaiser-Francis Oil Company; 3) Joint Motion of Kaiser-Francis Oil Company and Samson Resources to Limit Drilling Operations; and 4) Joint Motion of Kaiser-Francis Oil Company and Samson Resources for Temporary Suspension of APD. All motions have been fully briefed by the parties, and argument on the first three motions was heard on May 16, 2005 at Santa Fe, New Mexico, before Examiner William V. Jones

NOW, on this 24th day of May, 2005, the Division Director, having considered the pleadings of the parties, and the recommendations of the Examiner,

FINDS THAT;

(1) This matter is before the Division pursuant to the application of Mewbourne Oil Company ("Mewbourne") for cancellation of two drilling permits issued to Chesapeake Operating Inc. ("Chesapeake") for Chesapeake's KF "4" State Well No. 1 (API No. 30-025-37129) and proposed Cattleman "4" State Comm Well No. 1 (API No. 30-025-37150), both to be located on tracts in the east of irregular Section 4, Township 21 South, Range 35 East, NMPM in Lea County, New Mexico. Mewbourne's application also seeks approval of a drilling permit for Mewbourne's proposed Osudo "4" State Com Well No. 1 to be located in a tract in the southeast of irregular Section 4.

(2) Chesapeake does not claim it has an interest in the drill sites for its proposed wells. Chesapeake claims that Chesapeake Permian, L.P. owns the lease covering tracts in irregular Section 4 that could be pooled with the drill site tracts to form standard spacing units, and that Chesapeake Permian, L.P. has proposed that Chesapeake Operating Inc. operate those units.

EXHIBIT A

(3) Chesapeake Permian, L.P. has filed an application for compulsory pooling seeking to create a standard lay-down 320-acre spacing unit consisting of the geographical south 1/3 of irregular Section 4 to be dedicated to the KF "4" State Well No. 1, designating Chesapeake Operating Inc. as the operator. Chesapeake Operating Inc. has begun drilling the KF "4" State Well No. 1.

(4) Chesapeake Permian, L.P. has filed an application for compulsory pooling seeking to create a standard stand-up 320-acre spacing unit consisting of the northern 2/3 of the eastern half of irregular Section 4 to be dedicated to its proposed Cattleman "4" State Com Well No. 1, designating Chesapeake as the operator of the unit. Chesapeake Operating Inc. has not begun drilling the Cattleman "4" State Com Well No. 1.

(5) Mewbourne, Kaiser-Francis Oil Company (Kaiser-Francis) and Samson Resources (Samson) seek to create a standard 320-acre stand-up spacing unit consisting of the southern 2/3 of the eastern half of irregular Section 4. The proposed unit is subject to a Communitization Agreement approved by the Commissioner of Public Lands effective April 1, 2005, and a Joint Operating Agreement dated March 24, 2005. Mewbourne applied for a permit to drill its proposed Osudo "4" State Com Well No. 1, but the Division denied the application because it had already issued permits to drill to Chesapeake in the same tract.

Chesapeake Operating Inc.'s Motion to Dismiss

(6) On May 10, 2005 Chesapeake moved to dismiss Mewbourne's application. As grounds, Chesapeake relies on Order R-12108-C (Yates-Pride Case); Order R-11700 (TMBR/Sharp-Ocean Case); and Order R-12343, denying Mewbourne's application for an emergency order in the instant case to halt drilling of the KF "4" State Well No. 1 pending the hearing on the merits.

(7) In the TMBR/Sharp-Ocean Case, the Oil Conservation Commission ("Commission") stated that the operator filing an application for a permit to drill ("APD") must do so under a good faith claim of title and a good faith belief that it is authorized to drill the well applied for. (Order R-11700-B, Finding 28.)

(8) In the Pride-Yates Case, the Division found that an owner who would have a right to drill at its proposed location in the event of a voluntary or compulsory pooling of the unit it proposes to dedicate to the well has the necessary good faith claim of title to permit it to file an APD even though it has not yet filed a pooling application. (Order R-12108-C, Finding 8(i).)

(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).)

(10) In the instant case, Mewbourne applied for an emergency order to halt the drilling of the KF "4" State Well No. 1 pending the hearing of the case on the merits. Mewbourne argued that the Division's approval of Chesapeake's APD did not give Chesapeake the right to drill a well on land where it did not have an ownership interest prior to securing either voluntary or compulsory pooling. The Division denied Mewbourne's request because Mewbourne did not make a showing that cancellation of the APD prior to hearing on the merits was necessary to prevent injury to the correlative rights of any party, prevent waste, or protect human health, safety or the environment. Order R-12343. That Order did not, however, preclude Mewbourne from challenging the APD at the hearing on the merits.

(11) Mewbourne's application challenges Chesapeake's good faith claim of title and authority, and argues that the acreage can be developed better by inclusion in Mewbourne's proposed unit. These issues were not decided in Order R-12343 and require factual development at a hearing.

(12) Chesapeake's Motion to Dismiss should be denied.

Chesapeake Operating Inc.'s Motion to Quash Subpoenas Issued at the Request of Kaiser-Francis Oil Company

(13) On May 10, 2005, Chesapeake filed a motion to quash the subpoenas duces tecum issued by the Division on May 5, 2005 at the request of Kaiser-Francis Oil Company, on the grounds that the documents sought were irrelevant and protected from discovery by the trade secret privilege, and that Order R-12343 rendered the subpoenas moot.

(14) As discussed above, Order R-12343 did not render moot Mewbourne's arguments that Chesapeake does not have a good faith claim of title and authority, and that the acreage can be developed better by inclusion in Mewbourne's proposed unit.

(15) The documents requested by Kaiser-Francis' subpoenas are directly relevant or likely to lead to the discovery of evidence relevant to the issues raised in Mewbourne's application. Requests 1-5, 7-9 and 11 request geologic and cost evidence from the KF "4" State Well No. 1 that relates to the issue of unit orientation, Requests 6,

10 and 11 are relevant or may lead to the discovery of evidence relevant to the issue of good faith claim of title.

(16) Chesapeake cannot assert a trade secret privilege against Kaiser-Francis regarding documents related to the drilling of the KF "4" State Well No. 1. Kaiser-Francis holds the lease to the tract on which the KF "4" State Well No. 1 is located, and with it, the right to explore for minerals and conduct geologic investigations.

(17) Further, the trade secret privilege is available only "if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." Rule 11-508 NMRA 2004. Drilling data from the KF "4" State Well No. 1 may prove central to the determination of unit orientation and, therefore, to the question of whether Chesapeake's APD should be cancelled. Chesapeake cannot obtain information from its drilling operations on a lease held by another, and then withhold that information from the leaseholder in a hearing on whether Chesapeake's proposed unit is superior to the unit proposed by the leaseholder.

(18) Chesapeake's motion to quash should be denied.

Joint Motion of Kaiser-Francis Oil Company and Samson Resources to Limit Drilling Operations

(19) On May 11, 2005 Kaiser-Francis and Samson filed a joint motion requesting an order limiting drilling operations by Chesapeake at the KF "4" State Well No. 1. The Movants sought to prevent Chesapeake from completing, testing and producing the well, and requested an active supervisory role for Movants in drilling operations, including dictating the types of open hole logs to be run and the casing to be set.

(20) Movants argued that granting the motion would maintain the status quo pending resolution of disputes determining the operator of the well, the ownership of data obtained by drilling and the ownership of the wellbore itself. Movants argued that operators may disagree on the appropriate means of testing and completing a well, and there is a substantial risk that an improperly planned or executed completion would result in damage to the well or the potential loss of reserves, resulting in waste and potential damage to Movants' correlative rights.

(21) Chesapeake argued that Chesapeake Permian, L.P. leases a tract included in its proposed spacing unit, with the right to drill and operate the well under the name Chesapeake Operating Inc. Chesapeake argues that it is meeting or exceeding all of the drilling, evaluation and completion procedures suggested by Movants and that its drilling, logging, completion and testing programs are equal to or greater than those used by Mewbourne for the comparable Osudo "9" Well No. 1 and industry custom and practices. Chesapeake also argues that it will incur significant harm, including monetary damages and damage to its correlative rights, if drilling operations are halted.

(22) Movants have not shown that Chesapeake is not competent to drill and complete the well, or that Chesapeake's proposed drilling, completion and testing procedures will result in damage to the well or loss of reserves.

(23) To resolve issues related to unit configuration, it is important to both Movants and Chesapeake that information be obtained from drilling, completing and testing the KF "4" State Well No. 1. That information will be available to Movants through Kaiser-Francis' subpoenas.

(24) Allowing Chesapeake to produce from the KF "4" State Well No. 1 before a unit has been approved would violate 19.15.13.1104.CNMAC.

(25) Movants' request that Chesapeake be prevented from producing the KF "4" State Well No. 1 before a unit has been approved should be granted; the remainder of Movants' motion to limit drilling operations should be denied.

Joint Motion of Kaiser-Francis Oil Company and Samson Resources for Temporary Suspension of APD

(26) On May 13, 2005 Samson and Kaiser-Francis moved the Division to enter an order temporarily suspending the APD issued to Chesapeake for the Cattleman "4" State Com Well No. 1. The well has been staked but not spudded.

(27) Chesapeake has voluntarily agreed that it will not commence building a location or spud the Cattleman "4" State Com Well No. 1 until the Division has entered an order deciding the orientation of the spacing unit for the K-F State "4" Well No. 1, and requests that its APD not be suspended.

IT IS THEREFORE ORDERED THAT;

(1) The Motion of Chesapeake Operating, Inc. to dismiss the Application of Mewbourne Oil Company is denied.

(2) The Motion of Chesapeake Operating, Inc. to quash subpoenas issued at the request of Kaiser-Francis Oil Company is denied. Parties to case 13492 are directed to limit the use of the materials obtained under the subpoenas to the preparation and presentation of this case.

(3) The joint motion of Kaiser-Francis Oil Company and Samson Resources Company for an order limiting drilling operations is granted as to the request to prohibit production from the KF "4" State Well No. 1 prior to issuance of an approved unit; the remainder of the joint motion is denied.

(4) The joint motion of Kaiser-Francis Oil Company and Samson Resources Company for an order temporarily suspending the APD issued to Chesapeake Operating Inc. for the Cattleman "4 State Com Well No. 1 is denied, however, Chesapeake is

directed not to commence building a location or spud the Cattleman "4" State Com Well No. 1 until the Division has entered an order deciding the spacing unit orientation in this case.

(5) 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.

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director

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

IN THE MATTER OF THE PROCEEDING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING PRE-HEARING MOTIONS RELATING TO: 1) THE APPLICATION OF DEVON ENERGY CORPORATION IN CASE NO. 13603 FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO; AND 2) THE APPLICATION OF LCX ENERGY, LLC IN CASE NO. 13628 FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

CASE NO. 13603
CASE NO. 13628
ORDER NO. R-12511

ORDER ON PRE-HEARING MOTIONS

BY THE DIVISION:

This matter came before Examiner David R. Catanach on February 16, 2006 for the purpose of hearing oral arguments regarding the following pre-hearing motions filed by Devon Energy Corporation ("Devon") and LCX Energy, LLC ("LCX Energy") in Cases No. 13603 and 13628: 1) Subpoena Duces Tecum issued by the Division on January 11, 2006 on behalf of Devon, and subsequently served on LCX Energy; 2) LCX Energy's Motion to Quash Devon's Subpoena Duces Tecum dated January 18, 2006; and 3) Devon's Response to LCX Energy's Motion to Quash dated January 26, 2006.

NOW, on this 20th day of February, 2006, the Division Director, having considered the pleadings of the parties and the recommendations of the Examiner,

FINDS THAT:

(1) This matter is before the Division pursuant to: 1) the application of Devon in Case No. 13603 to compulsory pool all mineral interests from the surface to the base of the Wolfcamp formation underlying the W/2 and the NW/4 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, to form standard 320-acre and 160-acre, respectively, spacing and proration units for all formations and/or pools spaced on 320 and 160 acres within this vertical extent. These units are to be dedicated to the 1725 Federal Com Well No. 61 (API No. 30-015-34340) which has been drilled by LCX Energy as a horizontal well from a surface location 660 feet from the North line and

EXHIBIT B

760 feet from the West line (Unit D) to a bottomhole location approximately 660 feet from the South line and 760 feet from the West line (Unit M) of Section 6; and 2) the application of LCX Energy in Case No. 13628 to compulsory pool all mineral interests from the surface to the base of the Wolfcamp formation underlying the W/2 and the NW/4 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, to form standard 320-acre and 160-acre, respectively, spacing and proration units for all formations and/or pools spaced on 320 and 160 acres within this vertical extent. These units are to be dedicated to the aforesaid 1725 Federal Com Well No. 61.

(2) Cases No. 13603 and 13628 are currently scheduled to be heard by the Division on March 2, 2006.

(3) LCX Energy applied to the United States Bureau of Land Management ("BLM") for a drilling permit for the 1725 Federal Com Well No. 61 on July 21, 2005. The permit to drill was approved by the BLM on September 14, 2005.

(4) LCX Energy spudded the 1725 Federal Com Well No. 61 on October 7, 2005, and as of this date, has completed drilling operations.

(5) LCX Energy and Devon own 65% and 35%, respectively, of the interest within the W/2 of Section 6.

(6) Prior to commencing drilling operations on the 1725 Federal Com Well No. 61, LCX Energy made no well proposals nor attempted to consolidate the interest within the W/2 of Section 6 for the purpose of drilling the subject well.

(7) LCX Energy contends that due to lease expirations within the W/2 of Section 6, it was necessary to commence drilling the subject well prior to initiating negotiations with Devon.

(8) Negotiations have ceased between LCX Energy and Devon with regards to Devon's participation in the drilling of the subject well.

(9) Devon contends that the information it seeks from LCX Energy is necessary in order to effectively prepare for the presentation of Case No. 13603.

(10) LCX Energy contends that much of the information Devon is seeking is either: 1) unavailable; 2) available from public or Division records; or, 3) proprietary in nature.

(11) LCX Energy further contends that the well information may be kept confidential for a period of 90 days from the date of completion of the well pursuant to Division Rule 19.15.13.1105(C).

(12) Division Rule 19.15.13.1105(C) is intended to restrict general public access to certain data, but does not limit the power of the Division to require production of data by subpoena in an appropriate case.

(13) Devon's request to obtain drilling and completion information from LXC Energy regarding the 1725 Federal Com Well No. 61 is justified and should therefore be approved. Accordingly, Requests No. 2 and 3, which relate to well logs, completion reports, reservoir pressure information, bottomhole pressure tests, buildup tests, current well rates, flowing tubing pressures and choke sizes, should be provided to Devon by LXC Energy.

(14) The remainder of information Devon seeks (Requests No. 1 and 4 through 10) is deemed by the Division to be either unavailable or not necessary to Devon to prepare its Case No. 13603 for presentation. Accordingly, LCX Energy's Motion to Quash Devon's Subpoena Duces Tecum with regards to Requests No. 1 and 4 through 10, is hereby granted.

IT IS THEREFORE ORDERED THAT:

(1) LCX Energy, LLC's Motion to Quash Devon's Subpoena Duces Tecum is hereby granted as to Requests No. 1 and 4 through 10.

(2) LCX Energy, LLC's Motion to Quash Devon's Subpoena Duces Tecum is hereby denied as to Requests No. 2 and 3.

(3) LCX Energy, LLC shall furnish Devon Energy Corporation with all information required by Requests No. 2 and 3 by 5:00 p.m. on February 24, 2006.

(4) Jurisdiction is hereby 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.

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director