

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

**APPLICATION OF CHISHOLM ENERGY OPERATING, LLC
FOR A NON-STANDARD SPACING AND
PRORATION UNIT AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 16115

**APPLICATION OF CHISHOLM ENERGY OPERATING, LLC
FOR A NON-STANDARD SPACING AND
PRORATION UNIT AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 16116

**CHISHOLM'S RESPONSE IN OPPOSITION TO PREMIER OIL & GAS, INC.'S
MOTION FOR CONTINUANCE**

Chisholm Energy Operating, LLC ("Chisholm"), by and through its undersigned attorneys, files this response in opposition to Premier Oil & Gas, Inc.'s ("Premier") motion for continuance. For the reasons stated, the motion should be denied.

1. Premier—not Chisholm—is the applicant for de novo hearing in these cases in which it seeks to overturn Division's Order No. R-14876. The Division's Order was entered on September 18, 2018, pooling Premier and all uncommitted interests in the subject spacing units and designating Chisholm as operator of the spacing units and wells. Premier timely filed a de novo hearing request on October 11, 2018.

2. While Chisholm is saddened to hear of the medical issues affecting Mr. Jones' wife, Premier has had months to prepare its exhibits and testimony and coordinate with an additional expert witness to prosecute its requested de novo hearings in these cases. Indeed,

Premier should have been prepared for the possibility of a de novo hearing in December. The fact it has failed to prepare nearly four months after the Division's Order pooling Premier's interests does not present a valid basis to further delay resolution of these cases. As the applicant in this de novo hearing, it should be incumbent on Premier to be prepared to prosecute its case.

3. Moreover, a continuance would prejudice Chisholm. Chisholm's interests in the subject acreage are subject to a Farmout Agreement that requires it to drill a horizontal well on or before March 1, 2019. *See* McCombs Energy, Ltd. Farmout Agreement, at II. (A) ("Initial Test Well"), attached as **Exhibit A**. A delay in hearing these cases puts Chisholm's ability to meet that drilling deadline potentially at risk. Chisholm's contractual obligations should not be jeopardized simply because Premier has been unwilling to prepare in advance for a hearing it initiated.

4. Finally, Premier has intimated a willingness and intent to prolong resolution of these cases. *See, e.g.*, Email from K. Jones to B. Sullivan, dated September 25, 2018 ("The quagmire created by the OCD order could potentially take years to settle."), attached as **Exhibit B**. The effort to obtain a one-month continuance to the Commission's February docket should be seen for what it is—a dilatory tactic intended to delay resolution of these cases and prejudice Chisholm.

WHEREFORE, for the reasons stated, Premier's motion should be denied. In the alternative, and in the event the Commission or the Division Director grants Premier's motion, the Commission should deny all future continuances sought by Premier.

Respectfully submitted,

HOLLAND & HART LLP



Michael H. Feldewert

Adam G. Rankin

Jordan L. Kessler

Julia Broggi

Post Office Box 2208

Santa Fe, New Mexico 87504-2208

(505) 988-4421

(505) 983-6043 Facsimile

mfeldewert@hollandhart.com

agranks@hollandhart.com

jlkessler@hollandhart.com

jbroggi@hollandhart.com

**ATTORNEYS FOR CHISHOLM ENERGY OPERATING,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2019, I filed a copy of the foregoing document with the Oil Conservation Division clerk and served a copy to the following counsel of record via Electronic Mail:

Ernest L. Padilla, Esq.
Padilla Law Firm, P.A.
P.O. Box 2523
Santa Fe, New Mexico 87504
(505) 988-7577
padillalaw@qwestoffice.net

Attorneys for Premier Oil & Gas, Inc.



Adam G. Rankin

FARMOUT AGREEMENT

This Farmout Agreement ("Agreement"), dated March 7, 2018, is made and entered into by and between **McCombs Energy, Ltd.** ("FARMOR"), 755 E Mulberry Ave, Ste 600, San Antonio, Texas 78212 and **Chisholm Energy Operating, LLC** ("FARMEE"), 801 Cherry St, Ste 1200, Fort Worth, Texas 76102.

NOW THEREFORE, in consideration of the benefits to accrue to the parties hereto and the mutual covenants and obligations contained herein, the parties hereby agree to be bound by the following terms and provisions:

I. LANDS AND INTERESTS SUBJECT TO AGREEMENT:

FARMOR commits to this Agreement all its leasehold interests in Section 31-22S-26E, Eddy County, New Mexico, described on the schedule attached hereto as Exhibit "A". Such lands are hereinafter referred to as the "Subject Lands".

FARMOR represents, without Warranty of Title of any kind or character that it owns said leasehold interests in and to the Subject Lands shown on the attached Exhibit "A".

II. EARNING WELLS:

(A) INITIAL TEST WELL: On or before March 1, 2019, FARMEE agrees to commence, or cause to be commenced, the actual drilling of a horizontal well, hereinafter referred to as the "Earning Well", for oil and/or gas on the Subject Lands or in an adjacent Section if the Earning Well is a multi-section horizontal, which includes the Subject Lands. FARMEE agrees to drill said Earning Well with due diligence in a workmanlike manner to a depth sufficient to test the Wolfcamp formation.

(B) REPLACEMENT WELLS: If, prior to reaching the objective depth, any well drilled pursuant to this Agreement encounters impenetrable substances or conditions in the hole which render further drilling impracticable, FARMEE shall have the option to cease drilling operations at a shallower depth and either attempt a completion or plug and abandon the well as a dry hole. In that event, FARMEE shall thereafter have sixty (60) days to commence operations on the drilling of a replacement well, which shall serve to satisfy the obligations of this Agreement relating to the well for which it replaces.

(C) ADDITIONAL WELLS: FARMEE shall have the option, but not the obligation, to drill "Additional Well(s)" prior to the completion of the Earning Well(s), so long as the Additional Well(s) are drilled in succession and do not cause unreasonable delays in the completion of the Earning Well(s). The completion of any Earning Well or Additional Well as a producer of oil and/or gas in commercial quantities shall satisfy the obligations of the FARMEE and earn an Assignment of FARMOR'S interest as set forth in Article III below.

EXHIBIT A

BEFORE THE OIL CONSERVATION
COMMISSION

Santa Fe, New Mexico

Exhibit No. A

Submitted by: CHISHOLM ENERGY OPERATING

Hearing Date: January 17, 2019

Case No. 16115-16116

(D) **COMPLETION:** After any well drilled pursuant to this Agreement has reached its total depth, FARMEE shall either commence completion of the Earning Well as a producer of oil and/or gas in commercial quantities and diligently prosecute such completion operations without unreasonable delays, or propose completion of the Earning Well as a dry hole.

(E) **FAILURE TO DRILL:** The only consequence of FARMEE's failure to timely commence operations on any well provided for in this Agreement on or before March 1, 2019, will be the ipso facto cancellation of this Agreement in its entirety and the termination of FARMEE's rights to earn additional interest. Any such cancellation of this Agreement shall not affect any rights theretofore earned by FARMEE, nor relieve FARMEE of any obligations or responsibilities for expenses and liabilities theretofore incurred.

(F) **BONUS CONSIDERATION:** Prior to commencement of spudding of any well on the Subject Lands, FARMEE agrees to pay FARMOR a bonus consideration of \$1,000.00 per net leasehold acre.

III. ASSIGNMENT OF INTEREST:

(A) **ASSIGNMENT:** After FARMEE's completion of the Earning Well in accordance with all the terms and provisions of this Agreement as a well capable of commercial production, FARMEE shall be entitled to an Assignment of Oil and Gas Leases (hereinafter referred to as "Assignment") on the form of assignment attached as Exhibit "B" hereto, without warranty of title, express or implied, limited to FARMOR's interest in Section 31-22S-26E, from the surface of the earth to the base of the stratigraphic equivalent of the deepest formation penetrated.

The Assignment of interest earned by FARMEE hereunder shall be subject to all the provisions of this Agreement. The FARMOR shall retain all rights and interests not expressly assigned to FARMEE.

(B) **RESERVED OVERRIDING ROYALTY INTEREST (ORRI):** FARMOR shall reserve from the Assignment a proportionately reduced ORRI equal to the difference between existing royalties and overriding royalties presently burdening the oil and gas leases and 20.00%, it being the intent to deliver to FARMEE an 80.00% net revenue interest. Such ORRI shall be free and clear of all costs of production, operations, and marketing (including, but not limited to, compression, dehydration, separation, and transportation) except applicable production or severance taxes and federal excise taxes.

IV. INFORMATION AND REPORTS:

With respect to the Earning Well drilled pursuant to this Agreement, FARMEE agrees:

(A) To provide FARMOR with the customary well information including daily drilling reports, completion reports, logs and forms filed with Regulatory Agencies as shown on the attached Exhibit "C";

(B) FARMOR agrees to keep all well information confidential and will not release any information without the written consent of FARMEE.

V. DELAY RENTALS AND SHUT-IN ROYALTIES

It is agreed that from the date of this Agreement, FARMOR shall pay any delay rentals and/or shut-in royalty payments, which may become due on the Subject Lands subject to this Agreement.

VI. STATUS OF PARTIES:

(A) RELATIONSHIP: In the drilling of any well pursuant to this Agreement and otherwise complying with the terms and provisions of this Agreement, each party hereto is acting independently and not as a mining or other partner. Except as provided for otherwise in this Agreement, FARMOR will have no responsibility whatsoever in connection with the drilling of any well pursuant to this Agreement and each such well will be drilled at FARMEE's sole cost, risk, and expense. FARMEE further agrees to hold FARMOR harmless from any and all debts, claims, or damages incurred in connection with the performance of this Agreement.

(B) INDEMNIFICATION: FARMEE shall indemnify and hold FARMOR and its employees and agents harmless from all claims, liens, demands, losses, and liabilities of every kind and character arising out of FARMEE's performance or failure to perform hereunder, or the acts of or failure to act by FARMEE's employees, agents, contractors, and subcontractors.

VII. NOTICES:

All notices and other communications required or permitted under this agreement shall be in writing, and unless otherwise specifically provided, shall be delivered personally or by mail (with sufficient postage prepaid), facsimile (with conformation of a successful transmission) electronic-digital email, with confirmation of receipt, or delivery service to the addresses set forth below, and shall be considered delivered upon the date of receipt. Either party may specify its proper address or any other address by giving notice to the other party, in the manner provided in this paragraph, at least ten (10) days prior to the effective date of such change of address.

FARMOR: McCombs Energy, Ltd.
755 E Mulberry Ave, Ste 600
San Antonio, Texas 78212
Attention: Gary V. Woods
Telephone: (210) 821-6523
Email: gwoods@mccombshq.com

FARMEE: Chisholm Energy Operating, LLC
801 Cherry St, Ste 1200

Fort Worth, Texas 76102
Attention: Beau Sullivan
Telephone: (817) 953-0812
Email: bsullivan@chisholmenergy.com

VIII. OTHER PROVISIONS:

(A) Binding effect. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and each party's respective successors and assigns. Any assignment of an interest in or subject to this Agreement made by any party hereto, or by a successor or assign of such party, shall expressly state the same.

(B) Entirety and Priority. This Agreement and its exhibits constitute the entire understanding between all parties hereto regarding the subject matter. The provisions of this Agreement may not be amended except by mutual written agreement of all the parties. This Agreement shall supersede and take priority over any other agreement or understanding between all or some of the parties hereto. In the event of a conflict between the terms and provisions of this Agreement and those contained in any other such agreement or understanding, the terms and provisions of this Agreement shall prevail.

(C) Headings. The headings used in this Agreement are for convenience only, and shall be disregarded for purposes of construing this Agreement.

(D) Performance Standards. All operations conducted by FARMEE under this Agreement shall be conducted in a diligent and workmanlike manner, and in accordance with all applicable federal, state, and local laws, regulations, and orders. Whether or not a well must be completed as a producer of oil and/or gas in order to earn a Lease hereunder, FARMEE shall use its best efforts, in accordance with good oil and gas field practice, to complete the well as a producer of oil and/or gas in paying quantities. Provided however, this provision shall not be construed to impose upon FARMEE any obligation to perform completion or other operations relating to a formation or reservoir in which it does not have the right to earn interest in or produce.

(E) PROTESTS. FARMOR agrees not to protest, or cause to be protested any New Mexico Oil Conservation Division applications that FARMEE files covering the Subject Lands.

(E) Time of the Essence. Regarding all provisions of this Agreement, it is understood and agreed that time is of the essence.

IN WITNESS WHEREOF, this Agreement is executed to be effective on the date and year first written above.

FARMOR:

FARMEE:

MCCOMBS ENERGY, LTD.

**CHISHOLM ENERGY OPERATING,
LLC**

By: Gary V. Woods
Gary V. Woods
President

By: Mike Middlebrook
Mike Middlebrook
Chief Operating Officer

Date: 3/8/18

Date: 3/13/18

EXHIBIT A

EXHIBIT "A"

Attached hereto and made a part of that certain Farmout Agreement dated March 7, 2018, between McCombs Energy, Ltd., as Farmor and Chisholm Energy Operating, LLC, as Farmee, to which this is attached as Exhibit "A"

STATE LEASE: V-6205
DATED: May 1, 2001
RECORDED: Book 430, Page 202
LESSOR: State of New Mexico
LESSEE: Rolla R. Hinkle, III
DESCRIPTION: The Eastern 320 acres of Section 31-22S-26E, N.M.P.M.

STATE LEASE: V-6218
DATED: May 1, 2001
RECORDED: Book 430, Page 208
LESSOR: State of New Mexico
LESSEE: Rolla R. Hinkle, III
DESCRIPTION: The Western 313.80 acres of Section 31-22S-26E, N.M.P.M

End of Exhibit "A"

EXHIBIT A

EXHIBIT "B"

ASSIGNMENT OF OIL AND GAS LEASES

STATE OF NEW MEXICO)
) §. KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF EDDY)

THAT this Assignment of Oil and Gas Leases and between **McCOMBS ENERGY, LTD.**, whose address is 755 E Mulberry Ave, Ste 600, San Antonio, Texas 78212, hereinafter referred to as "Assignor" and **CHISHOLM ENERGY OPERATING, LLC**, whose address is 801 Cherry St, Ste 1200, Fort Worth, Texas 76102, hereinafter referred to as "Assignee".

THAT, IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby BARGAIN, SELL, ASSIGN, TRANSFER AND CONVEY, without warranty or covenant of title, either express or implied, except by or through Assignor, ALL of Assignor's right, title and interest, in and to the oil and gas rights, as covered by the oil, gas and mineral leases described in Exhibit "A", attached hereto and by reference made a part hereof, and the lands covered by such leases insofar and only insofar as such leases cover rights from the surface down to the base of the (deepest formation penetrated).

TO HAVE AND TO HOLD the Leases hereby granted unto Assignee, their heirs, administrators, representatives, assigns and successors in interest SUBJECT TO THE FOLLOWING RESERVATIONS, TERMS, COVENANTS AND CONDITIONS:

Assignor reserves from this Assignment a proportionately reduced overriding royalty interest equal to the difference between existing royalties presently burdening the oil and gas leases and 20.00%, it being the intent to deliver to Assignee an 80.00% net revenue interest. Such overriding royalty interest shall be free and clear of all cost of production, operations, and marketing (including, but not limited to compression, dehydration, separation, and transportation) except applicable production or severance taxes and federal excise taxes.

This Assignment is subject to the provisions of that certain Farmout Agreement dated March 7, 2018, between Assignor and Assignee.

The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective heirs, administrators, representatives, successors and assigns; and such terms, covenants and conditions shall be covenants running with the land(s) and the Assigned Leasehold and with each transfer or assignment of said land(s) or Assigned Leasehold.

IN WITNESS WHEREOF, this instrument is executed this 3 day of March, 2018, EFFECTIVE AS OF March 7, 2018.

McCOMBS ENERGY, LTD.

By: Gary V. Woods
Gary V. Woods, President

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF Bexar) §.

On this 8th day of March, 2018, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared **Gary V. Woods** to me known to be the identical person who executed the within and foregoing instrument on behalf of **McCOMBS ENERGY, LTD.**, as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

My Commission Expires: 7-24-19

Julie A. Cantor
Notary Public

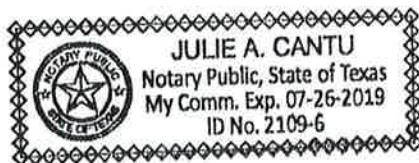


EXHIBIT A

EXHIBIT "A"

**ATTACHED TO AND MADE A PART OF THAT CERTAIN
ASSIGNMENT OF OIL AND GAS LEASE EFFECTIVE THE 7th DAY OF MARCH,
2018, BETWEEN MCCOMBS ENERGY, LTD., AS ASSIGNOR AND CHISHOLM
ENERGY OPERATING, LLC, AS ASSIGNEE**

STATE LEASE: V-6205
DATED: May 1, 2001
RECORDED: Book 430, Page 202
LESSOR: State of New Mexico
LESSEE: Rolla R. Hinkle, III
DESCRIPTION: The Eastern 320 acres of Section 31-22S-26E, N.M.P.M.

STATE LEASE: V-6218
DATED: May 1, 2001
RECORDED: Book 430, Page 208
LESSOR: State of New Mexico
LESSEE: Rolla R. Hinkle, III
DESCRIPTION: The Western 313.80 acres of Section 31-22S-26E, N.M.P.M

End of Exhibit "A"

EXHIBIT A

EXHIBIT “C”

Attached hereto and made a part of that certain Farmout Agreement dated March 7, 2018, between McCombs Energy, Ltd., as Farmor and Chisholm Energy Operating, LLC, as Farmee, to which this is attached as Exhibit “C”

Daily reports and logs:

McCombs Energy, Ltd.
755 E Mulberry Ave, Ste 600
San Antonio, Texas 78212
Telephone: (210) 821-6523

Name

Email

Add parties to receive data

EXHIBIT A

Beau

From: ken.jones@premieroilgas.com <ken.jones@premieroilgas.com>
Sent: Thursday, September 27, 2018 8:23 AM
To: Beau Sullivan <bsullivan@chisholmenergy.com>
Subject: FW: Chisholm trade

Beau-

Here are a few items that we'll need to see as to the proposed Neptune acreage:

- 1) JOA w/Mewbourne including the lands covered and Exhibit A
- 2) Any current well proposals
- 3) Any well information as to what HBP status for Section 24-18S-28E acreage

I quickly searched for any wells that Chisholm operates north of Carlsbad and I found 3 other wells that Chisholm operates besides the Neptune 30. They are:

- 1) Neptune 31 Fed #1
- 2) Sand Dunes 36
- 3) Pathfinder 19 State

I'm not familiar with these properties so it will take some research. I'm using them as a tool to identify any non-op interest that Chisholm may own.

Ken

From: ken.jones@premieroilgas.com <ken.jones@premieroilgas.com>
Sent: Tuesday, September 25, 2018 12:53 PM
To: 'Beau Sullivan' <bsullivan@chisholmenergy.com>
Subject: RE: Chisholm trade

Beau-

Premier has seen the OCD order. We believe that the Premier's Algerita well proposals are still in effect under the 2008 JOA which has a date of October 8 in which Chisholm can elect to participate. The wells were staked yesterday. We have secured a rig with the appropriate timeframe under the assumption that Chisholm doesn't elect to drill and complete.

The quagmire created by the OCD order could potentially take years to settle. Premier is willing to use the remainder of this week to workout a potential deal for Premier's interest in the Hackberry/Algerita interest.

Ken

From: ken.jones@premieroilgas.com <ken.jones@premieroilgas.com>
Sent: Tuesday, August 28, 2018 5:21 PM
To: 'Beau Sullivan' <bsullivan@chisholmenergy.com>
Subject: RE: Chisholm trade