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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

**SURREPLY OF CHESAPEAKE OPERATING, INC. ON
MOTION TO ENFORCE SUBPOENA DUCES TECUM AND FOR SANCTIONS**

Chesapeake Operating, Inc. ("Chesapeake") submits its SurReply to the Reply of Kaiser-Francis Oil Company to Chesapeake's Response to Kaiser's Motion to Enforce Subpoena Duces Tecum and For Sanctions ("Kaiser's Reply").¹

I. CHESAPEAKE HAS NEVER REFUSED TO PRODUCE DOCUMENTS AND HAS PROVIDED ALL NON-PRIVILEGED RESPONSIVE DOCUMENTS IN ITS POSSESSION.

Kaiser's Reply is a curious pleading which: (1) fails to respond to any of the authority cited in Chesapeake's Response; (2) fails to offer any explanation why Kaiser never contacted Chesapeake's counsel to try and work out any perceived problem concerning the timeliness of Chesapeake's document production before filing the Motion to Enforce; (3) fails to explain why new factual allegations were not included in the Motion; and (4) was filed before Chesapeake had produced all responsive documents as stated in its Response to the Motion. The reason Kaiser rushed to file its Reply is obvious. Kaiser had no legitimate complaint over discovery but filed its Motion to try to

¹ This filing of this SurReply was necessitated by Kaiser's raising new factual matter and argument for the first time in its Reply.

portray Chesapeake in a bad light in the hopes that it might influence the Division's decision on the merits.

The only contumacious conduct in this proceeding is Kaiser's failure to adhere to the standards set for in the Rules of Civil Procedure that it seeks to apply in this proceeding and the Lawyer's Creed of Professionalism before bringing a frivolous discovery motion without any factual support and then filing a Reply containing an affidavit that attempts to mislead the Division concerning Chesapeake's compliance with its discovery obligations. When the Division looks beyond the bluster of the Reply, the following facts, which Kaiser seeks to obscure through unfounded accusation and innuendo:

1. At no time prior to the filing of the Motion to Enforce did Kaiser make **any** attempt to resolve the issues presented in its Motion with Chesapeake's counsel;
2. Chesapeake has not violated the Division Order regarding the production of documents or any deadline set by the Division or even Kaiser to produce documents;
3. Kaiser did not present any deadline to Chesapeake for production to avoid the filing its Motion but only requested at the outset, when asking for the production of drilling reports that documents be provided at the "earliest opportunity;"
4. A party is allowed 14 days under the Rules of Civil Procedure to comply with a subpoena and Kaiser's Motion to Enforce was filed just a week after Division's Order was entered and Kaiser's Reply was filed the day before Chesapeake had stated it would be producing any remaining responsive documents;
5. Immediately after issuance of the Division's order, Chesapeake began providing daily drilling reports to Kaiser;
6. After Kaiser requested more detailed information regarding the drilling of the well, Chesapeake immediately provided them;
7. Chesapeake made arrangements to provide the mud log and open hole logs to Kaiser before it learned that Kaiser had filed its Motion to Enforce;
8. Chesapeake has **not** refused to produce **any** documents at any time.

Having jumped the gun when it filed the Motion to Enforce, Kaiser filed its Reply before the starter even arrived at the track, filing it two days before the time allowed for responding to the subpoena and the day before receiving the documents Chesapeake said it would be producing in its Response to the Motion to Enforce. Indeed, the Reply asks for relief which was mooted by Chesapeake's production of documents and had it bothered to contact Chesapeake's counsel, could have easily been worked out.

Rather than try to resolve matters through counsel, Kaiser makes the outlandish and recently contrived allegation that Chesapeake's legal department made a decision to refuse to comply with subpoena. Surely if that were the case, Kaiser would have raised any such refusal in its Motion to Enforce which sought the dismissal of Chesapeake's APDs and Application for Compulsory Pooling as a sanction under Rule 1-037, NMRA 2005 for alleged noncompliance with the Division's order overruling Chesapeake's motion for protective order.²

The allegation that Chesapeake refused to produce documents is simply untrue. The affidavit of Mr. Wakefield describes a conversation he had on June 2, 2003 with Lynda Townsend regarding the production of daily mud logs and wireline logs. During the conversation, Ms. Townsend, who had been told by the legal department not to release the land files until they could be reviewed for privileged documents, simply told

² As noted in Kaiser's Reply, the exclusive method for enforcing a subpoena by the Division is through the filing of a proceeding in District Court seeking an order to compel. See Kaiser's Reply, p. 4 (*citing* NMSA 1978 §§70-2-9 and 7-0-2-9). Since the Legislature required the Division to resort to judicial enforcement of its subpoenas, even if Kaiser had made the requisite showing that Chesapeake had refused to comply with the subpoena, which it manifestly has not, the dismissal sanction sought in the Motion to Enforce is clearly unavailable and could be obtained, if at all, only through judicial action. Of course, Chesapeake has fully complied with the Division's Order, the subpoena and any applicable obligations under the Rules of Civil Procedure at all times.

him that the land files were being held by the legal department before they would be released for production. The next day she left him a voice mail message asking to advise whom and where the wireline logs should be sent. See Supplemental Affidavit of Lynda Townsend, attached hereto as Exhibit "A" ("Townsend Aff."). Chesapeake began making arrangements for delivery of the logs by e-mail the day before Chesapeake was aware that Kaiser had filed the Motion to Enforce. *Id.*, ¶ h. Kaiser's suggestion that Chesapeake had affirmatively informed Kaiser that it would not comply with the subpoena is at best misleading.

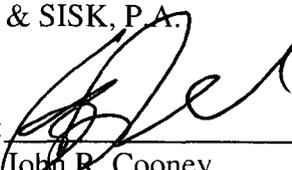
Similarly misleading is Kaiser's contention that Chesapeake has somehow sought to conceal facts when it secured an amended APD to change the bottom hole location of the KF "4" State Well. As noted in Kaiser's Reply, the parties have been actively pursuing settlement negotiations. Although Mr. Wakefield takes issue with Chesapeake's characterization of Chesapeake's communication with Kaiser as "frequent," since the order was entered on May 26, 2005 Chesapeake has communicated with Kaiser on almost a daily basis. See Townsend Aff., *passim* (reflecting communications on May 26 and 27 and June 1, 2 and 3). During those discussions, an agreement in principle was reached with Kaiser to settle the dispute between the parties. However, Samson Resources, which had originally agreed to participate in the well in response to Chesapeake's AFE, refused to consent based in part on its objection to the button hole location. In the hopes of reaching a settlement and to obviate any complaint by Samson, (or Kaiser or Mewbourne) about the bottom hole location selected by Chesapeake, Chesapeake filed for and received an Amended Permit to Drill. There was no intent or effort to conceal

information from Kaiser or any other party, nor has Kaiser asked Chesapeake to provide any additional information regarding this change.

CONCLUSION

Kaiser's Reply confirms that its Motion to Enforce was at best a premature attempt to seek the production of documents which Chesapeake said it would produce and has produced. However, given Kaiser's failure to make good faith effort to resolve the matter through counsel before filing its motion, and because it appears that the motion was filed not to secure any substantive relief Kaiser was legally entitled to but to try and prejudice the Division against Chesapeake, Chesapeake should be entitled to recover its attorney's fees and costs incurred in responding to the Motion as part of its drilling costs recoverable against Kaiser's interest in the spacing unit approval by the Division.

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WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was faxed and mailed to the following counsel of record this 13th day of June, 2005:

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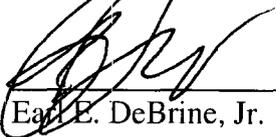
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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 13492
ORDER R-12343

SUPPLEMENTAL AFFIDAVIT OF LYNDA TOWNSEND

Lynda Townsend, being first duly sworn, deposes and states:

1. I am over the age of eighteen years, am competent to testify to the matters contained herein, and have personal knowledge thereof.

2. I have previously given an affidavit in this matter. My earlier affidavit stated that Chesapeake had been in "frequent communication" with Kaiser's employees regarding the drilling of the KF "4" State No. 1 well. The full extent of my communications with Kaiser have clearly been frequent, consisting of the following:

- a. On May 26, 2005 I spoke to Jim Wakefield on the telephone to discuss offers that had been exchanged between the parties concerning the settlement of the parties' dispute regarding the well. We discussed the status of the drilling of the well during that conversation. Mr. Wakefield was very amiable and told me that Kaiser would like to settle, that when attorney's got involved it became very expensive and counter-productive; I asked if Kaiser could speak for all parties. Mr. Wakefield told me to give him some time to contact Mewbourne Oil Company and Samson Resources but was fairly sure they were amiable to negotiating a settlement. I arranged for our standard drilling reports to be forwarded to Kaiser and requested and received their drilling engineer contacts to talk with Rob Jones, Chesapeake Permian's District Manager, regarding running 7" pipe and plans for continued drilling.
- b. Later on May 26, 2005 I called Jim Wakefield to follow up regarding his contact with Mewbourne and Samson regarding settlement. Mr. Wakefield said that Samson had been upset with Kaiser for sending their counter proposal, that Samson wanted to operate the well and

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they would take the lead in negotiating. I let Mr. Wakefield know that a proposed settlement letter was on its way at the request of Samson.

- c. On May 27, 2005 I sent a new settlement proposal to Kaiser, Mewbourne and Samson under Mike Hazlip's signature.
- d. The wireline logs were run May 28 and 29, 2005 and Chesapeake has diligently been assembling the remaining requested material for disbursement by counsel.
- e. On June 1, 2005 I called Jim Wakefield regarding his request to obtain rig reports. I informed him that Samson had been receiving the detailed rig reports since May 31, 2005, since he told me that Samson was leading the negotiations and everything was to go through them, but would make arrangements so Kaiser would also receive them.
- f. On June 2, 2005 I called Jim Wakefield regarding the progress of the settlement offer. Mr. Wakefield said that they were having some problems with Samson, but a meeting was set up for the following Monday. He asked about receiving the mud logs, wireline logs and other requested material in the subpoena. During the conversation I reminded him that all requested material was included in the settlement discussions in the settlement agreement and could be done all at once. He told me they were two separate issues to which I wholeheartedly agreed. During our conversation I did not say that legal had forbidden me to release any documents. Chesapeake's in-house attorney had requested that I hold the land files until he could review them for reproduction and release. I told Mr. Wakefield that legal had told me to withhold the remaining documents until approved for release by legal. Once legal reviewed them on June 7, 2005, they were sent to Chesapeake's counsel for production to Kaiser's attorney.
- g. Later that afternoon on June 2, 2005, I called Jim Wakefield but he was not in his office. I left a message asking him to advise where and to whom he wanted the mud logs and wireline logs sent.
- h. On June 3, 2005 I received a phone message from Jim Wakefield at approximately 9:30 a.m. with instructions on log delivery and disbursement to Kaiser. The information was passed on to the geologist and all logs were e-mailed to Kaiser that afternoon. All this was set in motion the day before and had nearly been completed before Chesapeake learned of the motion filed by Kaiser.
- i. On June 6, 2005 I received a phone message from Jim Wakefield inquiring about the well and how the settlement was progressing.

