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* New Mexico Board of Specialization Recognized Specialist in Natural Resources - Oil & Gas Law
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June 3, 2005

HAND-DELIVERED

Mark Fesmire, Director
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico

Re: NMOCD Case No. 13492; In The Matter Of The Application Of Samson Resources Company, Kaiser-Francis Oil Company And Mewbourne Oil Company For Cancellation Of A Drilling Permit And Approval Of A Drilling Permit, Lea County, New Mexico

Dear Mr. Fesmire

Enclosed for filing is an original and one copy of our Motion To Enforce Subpoena Duces Tecum And For Sanctions in the above matter.

In view of the particular circumstances surrounding this case, we respectfully request the Division's expedited consideration of this motion.

Thank you for your attention to this request.

Very truly yours,

MILLER STRATVERT P.A.



J. Scott Hall

JSH/glb

Enclosure

cc: Counsel of Record

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2005 JUN 3 PM 1 12

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

IN THE MATTER OF THE APPLICATION
OF SAMSON RESOURCES COMPANY,
KAISER-FRANCIS OIL COMPANY AND
MEWBOURNE OIL COMPANY FOR
CANCELLATION OF A DRILLING PERMIT
AND APPROVAL OF A DRILLING PERMIT,
LEA COUNTY, NEW MEXICO

CASE NO. 13492

**MOTION TO ENFORCE
SUBPOENA DUCES TECUM AND FOR SANCTIONS
AND
REQUEST FOR EXPEDITED CONSIDERATION**

Kaiser-Francis Oil Company (Kaiser-Francis) through its undersigned counsel, Miller Stratvert, P. A., (J. Scott Hall, Esq.), moves the Division enter its order compelling Chesapeake Operating Inc.'s immediate compliance with the Division's May 5, 2005 Subpoena Duces Tecum issued at the request of Kaiser-Francis (Exhibit A, attached). Kaiser-Francis further requests that the Division enter its order dismissing Chesapeake's applications for compulsory pooling in Case No. 13492 and Case No. 13505¹ for Chesapeake's willful disobedience of the Division's subpoena and its ongoing violation of Order No. R-12343-A. As grounds, Kaiser-Francis states:

1. On approximately April 27, 2005 Chesapeake Operating Inc. trespassed onto Kaiser-Francis's oil and gas lease in the SE/4 of Section 4, T-21-S, R-35-E and began drilling the KF "4" State Well No. 1. Mewbourne promptly filed its first Application in this case on April 28, 2005 and Kaiser-Francis entered its appearance on the next day. On May 5, 2005, at the request of Kaiser-Francis, the Division issued its Subpoena Duces Tecum specifying the

production of documents and materials responsive to eleven itemized requests. The Subpoena Duces Tecum required Chesapeake to produce the documents and materials on May 12, 2005.

2. On May 10, 2005 Chesapeake filed a Motion to Quash the subpoena on the grounds that the information sought (1) was not relevant, and (2) was protected by the privileges accorded to trade secrets. Chesapeake expressed no other grounds or objections to the Subpoena Duces Tecum in its Motion to Quash. Any other objections or privileges were waived as a consequence.

3. On May 16, 2005 the Division convened a hearing on a number of pre-hearing motions, including Chesapeake's Motion to Quash. On May 24, 2005, the Division entered Order No. R-12343-A which denied Chesapeake's Motion to Quash *in toto*. Order No. R-12343-A further provided that "(5) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary."

4. By letter dated May 24, 2005, Chesapeake's counsel was requested to have Chesapeake produce the documents specified in the May 5, 2005 Subpoena Duce Tecum "at the earliest opportunity". Chesapeake was also requested to place Kaiser-Francis on the fax list for the transmission of daily drilling reports from the KF "4" State Well No. 1 as is customary in the industry. Chesapeake was asked also to provide copies of all earlier daily drilling reports that had been previously generated. (*See* May 24, 2005 correspondence from counsel, Exhibit B, attached).

5. Since the issuance on May 24, 2005 of Order No. R-12343-A, Chesapeake has provided only the daily drilling reports. Otherwise, there has been a wholesale failure on the part of Chesapeake to produce any of the documents and materials specified in the May 5, 2005

¹ By these compulsory pooling applications, Chesapeake proposes to form two 320-acre spacing and proration units in Section 4, T-21-S, R-35-E that conflict with the communitized unit previously formed by Kaiser-Francis, Samson Resources Company and Mewbourne Oil Company.

Subpoena Duces Tecum. Further, there has been no response to our May 24, 2005 letter requesting the delivery of the subpoenaed documents and information. In that letter, because drilling operations were ongoing, it was specifically noted: “Under the circumstances, Chesapeake’s timely compliance is necessary.”

6. Chesapeake has succeeded in delaying compliance with its discovery obligations for nearly one month now. Chesapeake failed to carry the burden necessary to support the two objections stated by it in its Motion to Quash which was accordingly denied by the Division. Neither has Chesapeake requested a stay of Order No. R-12343-A pursuant to Rule 1220(B), and therefore the matter is deemed fully adjudicated. Similarly, Chesapeake has made no indication that it is prevented from complying with the subpoena or offered any reason at all for its failure to comply. Kaiser Francis has been in direct communication with Chesapeake and requested Chesapeake to provide the subpoenaed materials. Chesapeake expressly and directly refused to do so.

7. At this point, in view of the lengthy delay, Chesapeake is unable to demonstrate that it has made a good faith effort to comply with the subpoena. Instead, it is clearly apparent that Chesapeake’s express refusal to comply is willful and in bad faith. Consequently, Chesapeake is in direct violation of the Division’s Subpoena Duces Tecum and Order No. R-12343-A.² Under such circumstances, the imposition of significant sanctions is warranted.

8. If a failure to make discovery is not due to a party’s inability, but was instead the result of bad faith or the party’s own fault, dismissal or entry of a default judgment may be the appropriate sanction. *See Castillo v. St. Paul Fire and Marine Ins. Co.*, 938 F.2d 776, 777 (7th Cir. 1991). (“Deliberate frustration of defendant’s discovery attempts warranted dismissal”). The United States Supreme Court upheld dismissal for discovery violations in *National Hockey*

² See NMSA 1978, Sections 70-2-28 and 70-2-31.

League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976). The court held that the trial court did not abuse its discretion in concluding that dismissal was an appropriate sanction after it found that the plaintiff acted in bad faith in not complying with its discovery obligations. 427 U.S. at 643. Similarly, in affirming the entry of a default judgment in *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 241, 629 P.2d 231, 317 (1980), appeal dismissed, 451 U.S. 901 (1981), the New Mexico Supreme Court held:

“When a party has displayed a willful, bad faith approach to discovery, it is not only proper, but imperative, that severe sanctions be imposed to preserve the integrity of the judicial process and the due process rights of the other litigants.”

9. Kaiser-Francis is incurring prejudice as a consequence of Chesapeake’s disobedience. Chesapeake’s ongoing refusal to comply with its discovery obligations is necessarily impairing the ability of Kaiser-Francis as well as Samson Resources and Mewbourne Oil Company to prepare for the hearings on the merits in Case No. 13492, presently scheduled for June 16, 2005 and Compulsory Pooling Case Nos. 13493 and 13505.

10. As the Division has previously found in Order No. R-12343-A, “[t]he documents requested by Kaiser-Francis’s 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 issues of [Chesapeake’s] good faith claim to title.” (Finding ¶ 15, Order No. 12343-A.)

11. Further, the information Chesapeake is withholding is information that it does not own. The Division also noted in Order No. R-12343-A that “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." (Finding ¶ 17, Order No. R-12343-A.)

12. Movant has delayed filing this motion in order to allow Chesapeake ample time to comply with its obligations and requests to deliver the information. Accordingly, in view of the pendency of the hearing on the merits, the Division is requested to give its expedited consideration to this motion.

13. Samson Resources Company joins in this motion.

WHEREFORE, for the above reasons, the Division is required to enter an Order as follows:

(1) Finding that Chesapeake has failed to comply with the Subpoena Duces Tecum and the provisions of Order No. R-12343-A.

(2) Requiring Chesapeake to immediately deliver documents, materials and information responsive to the Subpoena Duces Tecum on Monday, June 6, 2005;

(3) Dismissing Chesapeake's Applications for Compulsory Pooling in Case No. 13493 and Case No. 13505; and

(4) Canceling Chesapeake's APD's for the KF "4" State Well No. 1 and the Cattleman "4" State Com Well No. 1.

Respectfully submitted,

MILLER STRATVERT P.A.

By:



J. Scott Hall
Attorneys for Kaiser-Francis Oil Company
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 3rd day of June, 2005, as follows:

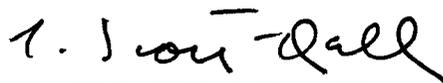
Thomas Kellahin, Esq.
Post Office Box 2265
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(505) 982-2047/Facsimile

Gail MacQuesten, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
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(505) 476-3462/Facsimile

James Bruce, Esq.
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Modrall Sperling Roehl Harris & Sisk P.A.
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J. Scott Hall

**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

SUBPOENA DUCES TECUM

TO: CHESAPEAKE OPERATING, INC.
c/o W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504

Pursuant to Section 70-2-8, NMSA (1978), and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., May 12, 2005, at the offices of the Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 and to produce and make available to Kaiser-Francis Oil Company and their attorney, J. Scott Hall, Esq., for copying, the documents and items specified below.

This subpoena is issued on application of Kaiser-Francis Oil Company through its attorneys Miller Stratvert P.A., Post Office Box 1986, Santa Fe, New Mexico 87504.

Dated this 5th day of May, 2005.

NEW MEXICO OIL CONSERVATION DIVISION

By: 
Mark Fesmire, Director

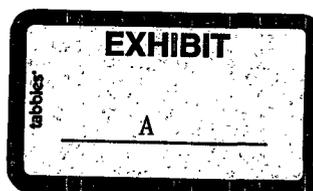


EXHIBIT 'A'

**TO SUBPONEA DUCES TECUM
TO CHESAPEAKE OPERATING, INC..
IN THE NEW MEXICO OIL CONSERVATION DIVISION
CASE NO. 13492**

For the KF "4" State Well No. 1 (API 30-025-37129); Unit "x", Section 4, T-21-S, R-35-E, NMPM, Lea County, New Mexico:

1. All open-hole and cased-hole logs from surface to total depth.
2. All mud logs from the surface to total depth.
3. All DST reports, including pressure charts, fluid recovery data and observed flow rates, together with service company analysis thereof with respect to reservoir parameters.
4. All daily drilling reports from commencement through completion of the well.
5. All data, analysis and reports for cores and side-wall cores.
6. All surface access, easements and use agreements, along with all surface damages agreements.
7. A copy of the drilling plan for the subject well.
8. All documents or a summary reflecting actual expenditures from commencement of operations on the well to drilling to total depth.
9. All completion reports as such become available.
10. All leases, permits, licenses or other evidence of your authority to enter onto the lands describe above.
11. All documents and materials in any way related to your decision to (1) enter onto the lands and (2) commence drilling operations.

These subpoena items are ongoing and you have the obligation to supplement the production of documents and materials responsive hereto as new documents and materials become available.

MILLER STRATVERT

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May 24, 2005

VIA FACSIMILE

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico

Re: NMOCD Case No. 13492; Application of Mewbourne Oil Company for Cancellation of Two Drilling Permits, Lea County, New Mexico

Dear Tom:

In accordance with Order No. R-12343-A, and as requested in my May 4, 2005 e-mail message to you (copy enclosed), please have Chesapeake fax copies of the Daily Drilling Reports for the KF "4" State Well No. 1 directly to Mr. Jim Wakefield at Kaiser-Francis: (918) 491-4459. The Daily Drilling Reports should be faxed to Mr. Wakefield each morning. Copies of all earlier Daily Drilling Reports generated to date should be provided to me.

At the earliest opportunity, please have Chesapeake produce the documents and materials specified in the May 5, 2005 Subpoena Duces Tecum. Also, please remind Chesapeake of their ongoing duty to timely supplement their production just as soon as new documents and materials become available to them. Under the circumstances, Chesapeake's timely compliance is necessary.

Very truly yours,

MILLER STRATVERT P.A.



J. Scott Hall

Enclosures



W. Thomas Kellahin, Esq.

May 24, 2005

Page 2

JSH/glb

cc (by facsimile): James Bruce, Esq.
J. E. Gallegos, Esq.
Jim Wakefield
Mark Lauer, Esq.

J. Scott Hall

From: J. Scott Hall
Sent: Tuesday, May 24, 2005 8:41 AM
To: Tom Kellahin (E-mail)
Cc: Jim Bruce (E-mail); Gene Gallegos (E-mail); Mark Lauer (E-mail)
Subject: FW: NMOCD Case No. 13492: Mewbourne/Kaiser-Francis/Chesapeake

Tom:

Please see my May 4, 2005 e-mail message, below.

Thanks.

Scott

-----Original Message-----

From: J. Scott Hall
Sent: Wednesday, May 04, 2005 3:31 PM
To: Tom Kellahin (E-mail)
Cc: Jim Bruce (E-mail)
Subject: NMOCD Case No. 13492: Mewbourne/Kaiser-Francis/Chesapeake

Dear Tom:

On behalf of Kaiser-Francis Oil Company, Chesapeake Operating, Inc. is requested to fax copies each morning of the Daily Drilling Reports for the KF "4" State Well No. 1 (30-025-37129) to Mr. Jim Wakefield: Fax No. (918) 491-4459.

If Chesapeak Operating, Inc. is unable to honor this request, please advise.

Thanks

Scott

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