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

2005 AUG 5 PM 2 10

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

and

IN THE MATTER OF THE APPLICATION
OF CHESAPEAKE PERMIAN, L.P. FOR
COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO CASE NO. 13493

JOINT MOTION IN LIMINE

Samson Resources Company, Kaiser-Francis Oil Company and Mewbourne Oil Company, together, move the Division enter its order excluding and prohibiting Chesapeake Operating, Inc. and Chesapeake Permian, Ltd., from introducing into evidence the attached undated letter from the Commissioner of Public Lands, (Exhibit "A"), or from otherwise making direct or indirect reference thereto. As grounds for this motion, movants state:

Background

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 the next day. Samson Resources Company entered its appearance in the case on May 12, 2005. On May 10, 2005, Chesapeake Operating

filed its Motion To Dismiss in Case No. 13492. In the interim, 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. Chesapeake subsequently filed a Motion To Quash Subpoena Duces Tecum.

In support of its Motion To Dismiss, Chesapeake argued:

> *"We do not need yet another hearing about whether Chesapeake has a "good faith" basis for commencing drilling on a tract within its spacing unit. ...[T]he Commission's Order in Pride...tells us, as a matter of administrative law, that Chesapeake can rely upon its valid and approv[ed] APD as the "good faith" basis for doing what it did and continues to do."*[1]

On May 16, 2005 the Division convened a hearing on a number of pre-hearing motions, including Chesapeake's Motion to Dismiss. On May 24, 2005, the Division entered Order No. R-12343-A which denied Chesapeake's Motion to Dismiss, as well as its Motion To Quash. In Order No. R-12343-A, the Division specifically found as follows:

> *(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.*

As a consequence of the Application in Case No. 13492 and Order No. R-12343-A, the issues of whether Chesapeake had (1) a good faith claim of title or (2) the authority to utilize the SE/4 of Section 4 were placed squarely before the Division for adjudication.

Sometime after the Division issued Order No. R-12343-A, Chesapeake's representatives arranged a meeting with the Commissioner of Public Lands. Despite the pendency of Case No. 13492, neither Samson Resources Company, Kaiser-Francis Oil Company, nor Mewbourne Oil Company were notified of the meeting and were not afforded the opportunity to be present.

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[1] *Chesapeake's Motion To Dismiss,* pg. 2, May 10, 2005.

It is not known what representations were made to the Land Commissioner, but from the contents of the undated letter that resulted from the meeting, it is clear that whether Chesapeake's entry onto the drillsite was *"in bad faith"* was discussed.

Order No. R-12343-A makes clear that Chesapeake's (1) "good faith claim of title" and (2) its "authority for surface uses" are directly before the Division for determination.[2] There is no daylight, then, between the obvious subject matter of the undisclosed meeting with the Land Commissioner and the central issues in Case No. 13492.

Further, there is a significant probability that cases 13492 and 13493 and these issues will eventually be heard by the New Mexico Oil Conservation Commission, on which the Land Commissioner or his designee sits as one of three members. Consequently, Chesapeake's meeting with the Land Commissioner and the resulting letter appear to be a direct violation of the Division's and Commission's rule prohibiting *ex parte* contacts. That rule provides, in part, as follows:

19.15.14.1223 NMAC EX PARTE COMMUNICATIONS

> *A. In an adjudicatory proceeding, except for filed pleadings, at no time after the filing of an application for hearing shall any party, interested participant or their representatives communicate regarding the issues involved in the application with any commissioner or the division examiner appointed to hear the case when all other parties of record to the proceedings have not had the opportunity to be present.*

While we are appreciative of the Land Commissioner's desire to maintain an open-door policy, under the circumstances, Chesapeake abused the privilege. The letter that resulted from Chesapeake's meeting while this case was pending is tainted. Chesapeake intends to influence the outcome of these pending cases and its conduct was obviously inappropriate.

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[2] *Order No. R-12343-A*, finding paragraphs (9) (a) and (b).

The probative value of the undated letter is far outweighed by the unfair prejudice that would result to Samson, Kaiser-Francis and Mewbourne, all of whom Chesapeake excluded from the meeting with the Land Commissioner. Consequently, the letter and any other evidence related to it or to the meeting would be excludable pursuant to NMRA 1978 11-403. That rule states:

> ***11-403. Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.*** *Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.*

Further, the letter would be hearsay (Rule 11-801) and would constitute inadmissible opinion testimony (Rule 11-701).

Finally, the undated letter was clearly within the scope of the materials requested in the Division's Subpoena Duces Tecum issued to Chesapeake on May 5, 2005. Pursuant to the subpoena, Chesapeake was obliged to produce the following:

> *"11. All documents and materials in any way related to your decision to (1) enter onto the lands and (2) commence drilling operations."*

Chesapeake failed to disclose the existence of the undated letter, despite its ongoing obligation to supplement its previous production of documents as stated on the face of the Subpoena Duces Tecum.

Chesapeake should not be allowed to benefit from its questionable conduct. The Division should enter its order prohibiting Chesapeake from introducing the Land Commissioner's undated letter into evidence. Chesapeake should further be prohibited from offering any testimony relating to the meeting that resulted in the letter or making any other reference thereto, either directly or indirectly.

The undersigned sought, but was unable to gain, Chesapeake's voluntary agreement to forbear from utilizing the letter at the upcoming hearing on these Applications.

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 5th day of August, 2005, as follows:

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