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

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

JOINT HEARING MEMORANDUM

(Compulsory Pooling)

Kaiser-Francis Oil Company, ("Kaiser-Francis"), Samson Resources Company, ("Samson"), and Mewbourne Oil Company, ("Mewbourne"), submit this memorandum of issues in connection with the hearing on the merits on the Application For Compulsory Pooling in this matter.

SUMMARY

On April 27, 2004, Chesapeake Operating, Inc. trespassed onto Kaiser-Francis's oil and gas lease on the SE/4 of Section 4, T –21-S, R-35-E and, without notice, commenced drilling the KF "4" State Well No. 1. Chesapeake cites as its authority to do so incomplete C-101 and C-102 forms purporting to establish a 320-acre lay-down gas spacing and proration unit comprised of the SW/4 and SE/4 of irregular Section 4. However, Kaiser-Francis's lease covering the SE/4 of Section 4 is the subject of an operating agreement and a Communitization Agreement approved by the Commissioner of Public Lands establishing a 320-acre stand-up unit comprised of the SE/4 and Lots 9, 10, 15 and 16. On May 9, 2005, after it began drilling, Chesapeake filed its Application in this case seeking the forced-pooling of interests in the S/2, designation of Chesapeake as operator, recovery of costs, and assessment a risk penalty.

The Division cannot grant the relief requested by Chesapeake's Application for the following reasons:

(1) Chesapeake's Application seeks to pool uncommitted interests in the SW/4 and the SE/4 of Section 4. However, the lease interests in the SE/4 are the subject of a pre-existing voluntary agreement. Under Division precedent, they are not available to be force pooled.

(2) Chesapeake's Application requests only that the Division exercise its authority to pool the SW/4 and the SE/4 under the authority of NMSA 1978 § 70-2-17 C. Although not expressly pleaded in its Application, Chesapeake is also asking the Division to rescind the voluntary agreement under which Kaiser-Francis's lease is committed to the communitized unit.

(3) Chesapeake cannot establish that it made a good faith effort to obtain the voluntary participation of Kaiser-Francis in the drilling of the subject well.

(4) Chesapeake's conduct should preclude the assessment of a risk penalty. Further, the additional costs attributable to the deviated well bore should not be recoverable.

BACKGROUND FACTS

1. Kaiser-Francis, Samson Resources Company and Mewbourne Oil Company are the working interest owners in Lots 9, 10, 15, 16, and the SE/4 of Irregular Section 4, T. 21 S., R. 35 E., NMPM, Lea County, New Mexico (the "Subject Lands"). The mineral interests under the Subject Lands are owned entirely by the State of New Mexico and are subject to State Oil and Gas Lease Nos. V-7054 and B-1481-14.

2. Under that Communitization Agreement approved by the Commissioner of Public Lands on April 27, 2005, effective April 1, 2005, and pursuant to that Joint Operating Agreement dated March 24, 2005, the subject lands were consolidated to form a standard 320-acre stand-up

gas spacing and proration unit comprised of Lots 9, 10, 15, 16 SE/4 of Section 4. Further, pursuant to the Joint Operating Agreement the Movants designated Samson Company as operator and have agreed to drill the Osudo "4" State Com Well No. 1 at a standard gas well location 660 feet from the south line and 1,650 feet from the east line of said Section 4.

3. On March 30, 2005 Mewbourne filed with the Division's Hobbs District Office its Request for Approval of its Application for Permit to Drill ("APD") for the Osudo "4" State Comm Well No. 1. The APD was returned to Mewbourne by the Hobbs District Office without approval for the reason that the District Office had previously approved an APD submitted on behalf of Chesapeake Operating, Inc. on March 11, 2005 for Chesapeake's KF State "4" No. 1 Well in said Section 4. The C-102 form that accompanied Chesapeake's APD purported to show the dedication of a 320-acre lay-down gas spacing and proration unit consisting of the SW ¼ and SE ¼ equivalents of Section 4.

4. Chesapeake Operating, Inc. owns no interest in any portion of the Subject Lands. However, Chesapeake Permian, L.P., purports to own the lease outside the Subject Lands covering the SW/4 of Section 4.

5. On approximately April 27, 2005, without notice, Chesapeake moved a drilling rig onto the location for the KF State "4" No. 1 Well and commenced drilling operations that same day. It is undisputed that Chesapeake trespassed onto the Subject Lands.

6. On May 9, 2005, Chesapeake Permian filed its Application in this case seeking to force-pool the SE/4 of Section 4 to form a 320-acre lay-down unit dedicated to its KF "4" State Well No. 1. Chesapeake does not allege that it has "the right to drill" the well.

POINTS AND AUTHORITIES

1. The SE/4 Of Section 4 Is The Subject Of A Pre-Existing Voluntary Pooling Agreement.

Under Division precedent interpreting the operation of NMSA 1978 § 70-2-17 (C), there is no basis for the exercise of the Division's compulsory pooling authority in this case, and consequently, Chesapeake's Application must be denied.

§ 70-2-17 (C) provides, in part, as follows:

> *C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.*

The pooling statute does not squarely address the situation where, as here, a portion of the lands embraced within a proposed spacing or proration unit are the subject of a pre-existing voluntary agreement such as a communitization agreement or an operating agreement. However, disputes of this nature are not new to the Division. In similar cases in the past, the Division has made clear it will interpret its statutory pooling authority in such a way that voluntary pooling agreements and private operating agreements will be honored. The Division will correspondingly deny those applications requesting relief that would effectively undo voluntary agreements.

Precedent from a number of compulsory pooling cases establishes that the facts present here require the denial of Chesapeake's Application. The Division is requested to take administrative notice of the record and orders in the following cases:

Case No. 8606; Order No. R-8013; Application of Doyle Hartman for Simultaneous Dedication and Compulsory Pooling, Lea County, New Mexico. In 1985, the Applicant, Doyle Hartman sought to force pool lands that were subject to a 1951 Operating Agreement entered into by the parties' predecessors in interest. The compulsory pooling portion of the application was denied due to the Applicant's failure to provide evidence to refute that the operating agreement was not binding.

Case No. 10658; Order No. R-9841; Application of Mewbourne Oil Company for Compulsory Pooling, Eddy County, New Mexico. In 1993, the Applicant, Mewbourne Oil Company, sought to pool the interests of Devon Energy Corporation to form a 320-acre W/2 unit. Devon opposed the application on the grounds that the parties were bound to operating agreements entered into by their predecessors in 1953 and 1958 that covered a portion of the lands (200 acres) in the W/2 unit. Order No. R-9841 dismissing the Application provided as follows: "*FINDING: Since under the "force pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 320-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.*" The comments of the Division's counsel in the transcript of hearing are notable as it is expressed that, in such cases, the Division makes no determination on the merits of the terms of the operating agreement, but determines only whether the agreement exists.

Case No. 11434; Order No. R-10545; Application of Meridian Oil, Inc. for Compulsory Pooling and Unorthodox Well Location, San Juan County, New Mexico. In 1995, the applicant, Meridian Oil, Inc., sought to force pool the working interests of Doyle Hartman, Four Star Oil & Gas (Texaco) and others. Hartman and Four Star opposed the application on the grounds that the lands were subject to a pre-existing 1953 Communitization Agreement and an Operating Agreement pooling their interests and governing the drilling and development of the lands. The hearing examiner recognized the applicability of the 1953 agreements and dismissed the case due to the applicant's failure to exercise good faith in negotiations.

Case No. 11960; Order No. R-11009; Application of Redstone Oil and Gas Company for Compulsory Pooling and Unorthodox Well Location, Eddy County, New Mexico (Consolidated for hearing with Case No. 11927; Application of Fasken Land & Minerals, Ltd. for Compulsory Pooling, etc.; and Case No. 11877; Application of Fasken Land & Minerals, Ltd. for Compulsory Pooling, etc.) These 1998 cases involved the efforts of the applicants to force pool lands into 640 and 320 acre spacing and proration units that were covered, in part, by a 1970 operating agreement governing operations in

the Rock Tank Unit and certain adjoining leases. Whether the 1970 agreements were applicable was a threshold issue to be decided before the Division exercised its compulsory pooling authority. In Case No. 11877, Fasken attempted to pool the interests of Redstone in the E/2 of Section 12 into a 640-acre unit. The E/2 of Section 12 was already dedicated to the Rock Tank Unit and Redstone contended the pooling was unnecessary and improper. Prior to the issuance of the final orders in these cases, the parties were able to negotiate an agreement for the development of the acreage and consequently, the compulsory pooling portions of the cases were dismissed.

Where the evidence clearly supports a finding that the commitment of working interests is governed by an operating agreement, farmout, communitization or other similar agreement, then those interests should not be subject to compulsory pooling. In each of those cases cited above, the applicant failed to make the showing required by the statute. Each time, the applicant either failed to obtain the compulsory pooling relief sought or the application was denied outright. This case is no different and the Division should not hesitate to deny Chesapeake's Application.

It is not disputed that the SE/4 and Lots 19, 10, 15 and 16 of Section 4 are voluntarily committed to the communitized spacing and proration unit approved by the Commissioner of Public Lands on April 27, 2005. Neither is it disputed that these same lands are the subject of the March 24, 2005 Operating Agreement approved by the interest owners. Consequently, under the operation of both §70-2-17 C and Division precedent, the SE/4 of Section 4 is not available to be compulsorily pooled.

Under the pooling statute, the Division must address the matter of the pre-existing voluntary agreements. It is a non-delegable function that the pooling statute expressly directs the Division to perform. Kerr-McGee Nuclear Corp. v. New Mexico Environmental Imp. Bd., 97 N.M. 88, 97, 637 P.2d 38, 47 (Ct. App. 1981). (Duties which are quasi-judicial in nature, and which require the exercise of judgment cannot be delegated.) Id. For this reason, the Division

must note that the dispute precipitated by Chesapeake's Application pits a *proposed* spacing unit against an *existing* spacing and proration unit created under voluntary agreements.

Kaiser-Francis asks that the Division do nothing more than make a proper finding consistent with agency precedent that its working interests are not subject to pooling as they were voluntarily committed under a pre-existing agreement. A finding otherwise would operate as an effective nullification of a private agreement that far exceeds the invocation of the Divisions authority under § 70-2-17 (C). The finding requested by Kaiser-Francis does not have such an effect. To the contrary, a finding that the lands are committed under the Communitization Agreement and Operating Agreement maintains the status quo and does not upset the pre-existing contractual relationship of the parties. If there is any doubt about the effect of the Division's order in this case, then such doubt must necessarily be resolved in favor of preserving agreements that were negotiated at arms-length between private parties.

2. Chesapeake May Not Effect the Revocation of Voluntary Agreements by Compulsory Pooling.

Chesapeake's Application requests the Division pool the SW/4 and the SE/4 under the authority of NMSA 1978 § 70-2-17 C. Although not expressly pleaded in its Application, Chesapeake is also asking the Division to rescind the voluntary agreements, a Communitization Agreement and a Joint Operating Agreement, under which Kaiser-Francis's lease is committed to the communitized unit. The Division may have the basis to grant such relief under NMSA 1978 § 70-2-17 E, but Chesapeake has not invoked the agency's authority to do so.[1] Nevertheless, the compulsory pooling relief requested by Chesapeake, if granted by the Division,

would have the practical effect of modifying and revoking the voluntary agreements of the parties under the Communitization Agreement and Operating Agreement.

It is indisputable that the efforts of Kaiser-Francis, Samson and Mewbourne to negotiate a development agreement and to consolidate their lease interests predate Chesapeake's trespass onto the SE/4 of Section 4. Those efforts led to the execution of a Joint Operating Agreement on March 24, 2005 and a Communitization Agreement on April 4, 2005. These agreements resulted in the establishment of the 320-acre stand-up unit. The Communitization Agreement was submitted to the State Land Office on April 20, 2005 and was approved by the Commissioner of Public Lands on April 27, 2005, with an effective date of April 1st.

The State Land Commissioner's authority to approve development agreements and communitization agreements affecting State Trust Lands is set forth at NMSA 1978 § 19-10-45 and § 19-10-53. In approving such development agreements, the Commissioner is required by statute to make certain findings:

> 19-10-46. [Cooperative agreements; requisites for approval.] *No such agreement shall be consented to or approved by the commissioner unless he finds that:*
> *A. such agreement will tend to promote the conservation of oil or gas and the better utilization of reservoir energy;*
> *B. under the operations proposed the state and each beneficiary of the lands involved will receive its fair share of the recoverable oil or gas in place under its lands in the area affected; and*
> *C. the agreement is in other respects for the best interests of the state.*

Those findings were made by the Commissioner here and are reflected on the Approval of Communitization Agreement, Exhibit 1, attached.

[1] Samson, Kaiser-Francis and Mewbourne do not consent to the amendment of Chesapeake's Application by implication or otherwise.

In the administration of the State's oil and gas lease lands, NMSA 1978 § 19-10-48 recognizes that the Land Commissioner and the Division are each to execute their respective functions with due regard for the other's authority. That statutory provision states:

> 19-10-48. [Effect of provisions on powers of oil conservation commission and commissioner of public lands.*] Nothing herein [19-10-45 to 19-10-48 NMSA 1978] contained shall be held to modify in any manner the power of the oil conservation commission under laws now existing or hereafter enacted with respect to the proration, and conservation of oil or gas and the prevention of waste, nor as limiting in any manner the power and the authority of the commissioner of public lands now existing or hereafter vested in him.*

By virtue of NMSA 1978 § 19-10-31, Chesapeake was charged with notice of the Communitization Agreement. Further, the testimony establishes that as early as April 5, 2005 Chesapeake had knowledge of the actual and prospective contractual relationships among Samson, Kaiser-Francis and Mewbourne. These circumstances preceded the filing of Chesapeake's Application in this case on May 9th.

3. Chesapeake Cannot Demonstrate It Made a Good Faith Effort to Obtain Voluntary Participation.

The Applicable Standards of Diligence and Good Faith.

Chesapeake has approached this proceeding as if the granting of a compulsory pooling order were its entitlement. In so doing, it has failed to make a good faith effort to obtain an agreement for the voluntary participation of Kaiser-Francis, et al.

As Chesapeake would have it, under the compulsory pooling statute, an applicant need do nothing more than appear at a hearing and show (1) there are two or more interest owners in a

spacing unit, (2) that the owners have not agreed to pool their interests, and (3) it made a well proposal to the other owners, as perfunctory as that effort might have been.[2]

Under NMSA 1978, §70-2-18(A), an applicant proposing to dedicate separately-owned lands to a spacing and proration unit has an "obligation" to negotiate a voluntary agreement with the other interest owners to pool their lands. The Division and the Commission require operators to show that they have made a "diligent" and "good faith" effort to negotiate a voluntary agreement before a compulsory pooling application may be filed.[3]

The historic treatment by the agency of its compulsory pooling powers is revealing: The first compulsory pooling orders made by the Commission were made with some reluctance. In many instances, the Commission ordered pooling but further ordered that a continuing effort be made to secure the consent of all the interests involved. Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316 (1963). After a few cases had been decided, the Commission adopted the attitude toward compulsory pooling that still remains today. In each case there is an inquiry concerning the efforts made by the operator to secure the consent of the interests being pooled. The reasonableness of the offer may also be questioned. Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316, 318 (1963). The Division and the Commission continue to recognize the importance of good faith efforts to negotiate before commencing compulsory pooling actions, and use it as one criterion to determine if the application will be accepted or denied.

While the parameters of what constitutes a "good faith" effort have not been precisely defined in any order of the Commission or the Division, or in any reported court decision, the

[2] Notably, Chesapeake does not allege that it has "the right to drill".

procedure of compulsorily pooling the interests of landowners in order to drill wells is strikingly analogous to the procedure of eminent domain, where one, who seeks to invoke the state's police power of eminent domain, can condemn or expropriate private lands for public use. Both compulsory and eminent domain dramatically effect the rights landowners have in their land, and both compel the landowner into an action that was not of his/her own desire. One of our most basic liberties is the right to property, and it must be guarded. Actions like eminent domain and compulsory pooling must be carefully scrutinized. Enforcing a good faith effort to negotiate is one way the Division, Commission and the courts can slow the imposition on private citizens' rights to property. While eminent domain dissolves all rights of the property owner, its procedure and effect are very similar to the action of compulsory pooling, and can shed light on the proper procedure of conducting these acts in accordance with the right to property.

Eminent domain is the power of a government entity to take private lands and convert them for public use, with just compensation. Eminent domain is liberally interpreted in New Mexico. *Landavazo v. Sanchez*, 111 N.M. 137, 140, 802 P.2d 1283, 1286 (1990). The decision of the grantee of the power of eminent domain as to the necessity, expediency, or propriety of exercising that power is political, legislative, or administrative and its determination is conclusive and not subject to judicial review, absent fraud, bad faith, or clear abuse of discretion. *Id.* at 140, 1286; *North v. Public Service Co. of New Mexico*, 101 NM 222, 680 P.2d 603 (N.M. App. 1983). While eminent domain is not often subject to the judicial review, it is expressly subject to the courts supervision when it has been exercised in bad faith, or when one has exercised the power and has failed to make a good faith effort to negotiate with landowners

[3] Indeed, the "good faith" requirement has been expressly codified in the compulsory unitization procedures of the Statutory Unitization Act at NMSA 1978, §70-7-6-A(5).

commencing the action. NMSA 1978 § 42-A-1-4A states, "A condemnor shall make reasonable and diligent efforts to acquire property by negotiation." NMSA 1978 § 42-A-1-6A further states "...an action to condemn property may not be maintained over timely objection by the condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action." (emphasis added). Just as NMSA 1978 § 70-2-1 et. seq. sets out the requirements before commencing compulsory pooling, the eminent domain statutes stress the importance and lay out the requirement of good faith negotiations with the landowners before any further action is taken.

There are many eminent domain cases that analyze good faith efforts in negotiations. "What constitutes a good faith offer must be determined in light of its own particular circumstances." *Unger v. Indiana & Michigan Electric Co.*, 420 N.E.2d 1250, 1254 (Ind. App. 1981). A good faith offer is one where a reasonable offer is made in good faith and a reasonable effort is made to induce the owner to accept it. Perfunctory offers are not sufficient. *Id.* at 1254 (emphasis added.).

The authorities cited above indicate that the Division may consider whether Chesapeake has acted in bad faith. Chesapeake's first well proposal was purposefully deceptive: Chesapeake intentionally led Kaiser-Francis to believe that well it was proposing would be located on the SW/4 of Section 4. Then, Chesapeake sought to interfere in the contractual relationship of Kaiser-Francis, et al. Chesapeake's subsequent April 4th proposal, accompanied for the first time by a standard form operating agreement, was merely a perfunctory offer made after it had obtained its approved APD, knowing full well that Mewbourne, et al., would thus be precluded from obtaining their own drilling permit.

Chesapeake's conduct here falls far short of the standards that the industry and the Division expect an operator to meet when negotiating for an interest owner's voluntary participation in a well proposal.

4. Chesapeake Should Not Recover the Risk Penalty; Well Costs Attributable to the Deviated Well bore Exceeding Reasonable Costs Are Not Recoverable.

In the event, the Division determines a lay-down spacing unit should be dedicated to the KF "4" State Well No. 1 and that Chesapeake should be designated operator, under the circumstances of this case, no risk penalty should be assessed. Further, the Division should deny the recovery of well costs exceeding reasonable well costs, due particularly to Chesapeake's unilateral decision to deviate the wellbore to a new bottom hole location,

Risk Penalty.

Chesapeake asks to be compensated for the risks it assumed in drilling the well. It seeks to recover the risk in the form of a penalty against owners who previously dedicated their interests to their own drilling project under a voluntary agreements and under a Communitization Agreement. In making its request, Chesapeake comes before the Division as a trespasser. As fully explained above and in our separate Hearing Memorandum in Case No. 13492, there is inadequate legal support for Chesapeake's request to recover a risk penalty. Under the circumstances of this case, Chesapeake assumed all of the risk when it entered onto the communitized unit and drilled its unauthorized well. In doing so, Chesapeake knew full well from past experience that its request for the 200 percent risk penalty might not be granted.

In 1999, Chesapeake re-entered the College of the Southwest "17" Well No. 1 and deepened it to the Strawn formation where all interests in an 80-acre spacing unit had been

consolidated. Finding nothing there, Chesapeake continued drilling down to the Wolfcamp and Atoka-Morrow formations without consolidating the interests in those respective 160 and 320-acre units. After drilling the well, Chesapeake sought to force-pool the interest in those units and applied for a 200 percent risk penalty. In Order No. R-11327,[4] the Division denied Chesapeake's request. Instead, it found that Chesapeake had assumed the risk drilling to the Atoka-Morrow formation without first consolidating the interests of the other owners. Under the circumstances, the Division reduced the risk penalty to 100 percent, but further limited the penalty to only the completion costs. Id., at Finding 28.

A 200 percent risk penalty is discretionary, not mandatory. By the express terms of NMSA 1978 § 70-2-17.C, the Division "...may include a charge for the risk involved in drilling the well... ." (emphasis added).

In view of the circumstances of this case, Samson, Kaiser-Francis and Mewbourne request that Chesapeake be awarded no risk penalty.

Reasonable Well Costs.

Again, only in the event the Division determines a S/2 unit should be formed and that Chesapeake should be entitled to recover well costs, Chesapeake should not be allowed to recover well costs exceeding reasonable well costs, particularly those additional costs attributable to Chesapeake's unilateral decision to change bottom hole locations from 660' FSL and 990' FEL to 668' FSL and 1947' FEL, resulting in a deviated well bore. Primarily as a result of this change, Chesapeake spent 70 days drilling the KF "4" State Well No. 1.

Under Rule 35 and pursuant to NMSA 1978 §70-2-17.C, an applicant may only seek reimbursement of those costs that are "...not in excess of what are reasonable... ." Consequently,

[4] Case No. 12325; *Application of Chesapeake Operating, Inc. for Compulsory Pooling and An Unorthodox Well*

the burden should be placed on Chesapeake to demonstrate the reasonableness of all its well costs and why the deviation was warranted.

CONCLUSION

For the foregoing reasons, Kaiser-Francis Oil Company requests the Division enter its order denying Chesapeake's Application and granting such other relief deemed appropriate.

Respectfully submitted,

MILLER STRATVERT P.A.

By: _____

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was hand-delivered to counsel of record at the time of the hearing on the merits in this matter as follows:

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NEW MEXICO STATE LAND OFFICE

CERTIFICATE OF APPROVAL

COMMISSIONER OF PUBLIC LANDS, STATE OF NEW MEXICO

Mewbourne Oil Company
Osudo 4 State Com Well No. 1
Lea County, New Mexico
Lots 9, 10, 15, 16, and SE4, Section 4, Township 21 South, Range 35 East
Pennsylvanian

There having been presented to the undersigned Commissioner of Public Lands of the State of New Mexico for examination a Communitization Agreement for the development and operation of acreage which is described within the referenced agreement, dated April 1, 2005 which has been executed, or is to be executed by parties owning and holding oil and gas leases and royalty interests in and under the property described, and upon examination of said agreement, the Commissioner finds:

(a) That such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy in said area;

(b) That under the proposed agreement, the State of New Mexico will receive its fair share of the recoverable oil or gas in place under its lands in the area;

(c) That each beneficiary institution of the State of New Mexico will receive its fair and equitable share of the recoverable oil and gas under its lands within the area;

(d) That such agreement is in other respects for the best interests of the State, with respect to state lands.

NOW, THEREFORE, by virtue of the authority conferred upon me under Sections 19-10-45, 19-10-46, 19-10-47, New Mexico Statutes Annotated, 1978 Compilation, I, the undersigned Commissioner of Public Lands of the State of New Mexico, for the purpose of more properly conserving the oil and gas resources of the State, do hereby consent to and approve the said agreement, and any leases embracing lands of the State of New Mexico within the area shall be and the same are hereby amended to conform with the terms thereof, and shall remain in full force and effect according to the terms and conditions of said agreement. This approval is subject to all of the provisions of the aforesaid statutes.

IN WITNESS WHEREOF, this Certificate of Approval is executed, with seal affixed, this 27th day of April, 2005.

COMMISSIONER OF PUBLIC LANDS
of the State of New Mexico

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