



**MONTGOMERY
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2009 AUG 10 A 11: 22

August 10, 2009

HAND DELIVERED

Florene Davidson
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

**Re: NMOCD Case Nos. 14365 & 14366: Application Of COG Operating
LLC For Designation of a Non-Standard Oil Spacing (Blackhawk "11"
Fed Com Nos. 1-H and 2-H), Eddy County, New Mexico**

Dear Ms. Davidson:

On behalf of COG Operating LLC, enclosed for filing are the original
and two copies of COG's Response to Chesapeake Energy's Motion to
Dismiss.

Thank you.

Very truly yours,

Karen Williams
Assistant to J. Scott Hall

JSH/kw

Enclosures

cc: W. Thomas Kellahin, Esq.
David Brooks, Esq.

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

**APPLICATION OF COG OPERATING LLC
FOR DESIGNATION OF A NON-STANDARD
OIL SPACING AND PRORATION UNIT AND
FOR COMPULSORY POOLING
(BLACKHAWK "11" FED COM NO. 1-H)
EDDY COUNTY, NM**

CASE NO. 14365

**APPLICATION OF COG OPERATING LLC
FOR DESIGNATION OF A NON-STANDARD
OIL SPACING AND PRORATION UNIT AND
FOR COMPULSORY POOLING
(BLACKHAWK "11" FED COM NO. 1-H)
EDDY COUNTY, NM**

CASE NO. 14366

**COG OPERATING LLC'S RESPONSE
TO
CHESAPEAKE ENERGY CORPORATION'S
MOTION TO DISMISS**

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For its very brief response to Chesapeake Energy Corporations Motion To Dismiss, COG Operating LLC, (COG"), states:

As the same lands are involved, COG adopts and incorporates the points and authorities set forth in its own Motion to Dismiss in Case No. 14323.

Points and Authorities

Point I: The "Requirement" for Pre-Application Well Proposals

In these two pooling cases, Chesapeake complains that no well proposal was received before COG's Applications for Compulsory Pooling were filed. Two points are worth noting.

First: Chesapeake makes the logic-challenged argument that there must be a “failure to agree” on participation in a well before and operator may file a compulsory pooling application.

The point of Chesapeake’s Application in Case No. 14323 is to obtain the cancellation of a drilling permit for the COG Blackhawk Fed Com Well No. 1-H. There is no clearer expression of a “failure to agree” than this. As we said in our Motion To Dismiss in that case: “*A non-operating interest owner’s application seeking the cancellation of the operator’s drilling permit is a fair indication that the non-operator will resist participation in the operator’s well.*” If Chesapeake is now changing its position and is now telling us that it seeks a further opportunity to consider participating in the well, then it should voluntarily dismiss its Application in Case No. 14323. Otherwise, it is basing its motion to dismiss in this case on what would be a meaningless exercise.

Second: The “thirty-day” rule for pre-application well proposals is dead, having been slain in 2002 by Order No. R-11869. (Case No. 12922, *Application of David H. Arrington Oil and Gas, Inc. for Compulsory Pooling, Lea County, New Mexico*; and Case No. 12943, *Application of Great Western Drilling for Compulsory Pooling, Lea County, New Mexico.*)

Point II: The C-102’s

This matter is directly at issue in Case No. 14323 and is discussed in COG’s Motion to Dismiss in that matter.

At a hearing on COG’s Applications in these cases, it will be able to demonstrate, consistent with the C-102, that COG “...*either* owns a working interest or unleased mineral interest *in the land*, including the proposed bottomhole location, *or* has a right to drill this well at

this location pursuant to a contract with an owner of such mineral or working interest *or* in a voluntary pooling agreement or compulsory pooling order hereto entered by the Division.”

Further, it is evident that Chesapeake does not seek to develop its lease. Consequently, this case does not involve a “race to obtain APD’s” by competing operators as was more recently discussed in Order No. R-12451 (Case No. 13537, *Application of Lance Oil & Gas Company, Inc. For Compulsory Pooling, San Juan County, New Mexico*; and Case No. 13539, *Application of Synergy Operating, LLC for Compulsory Pooling, San Juan County, New Mexico*.) More accurately, this is a case where only one operator, COG, has obtained an APD and is “*proceeding diligently to seek voluntary or compulsory pooling*”. *Id.*, citing to Finding Paragraph 8 (I) of Order No. R-12108-C.

Wherefore, COG requests that the Division enter its order denying Chesapeake Energy Corporation’s Motion to Dismiss in these two cases.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: _____



J. Scott Hall

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was e-mailed to counsel of record on the 7th day of August, 2009 as follows:

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