

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

RECEIVED 005

IN THE MATTER OF THE APPLICATION  
OF CHESAPEAKE ENERGY CORPORATION FOR  
CANCELLATION OF THE DIVISION'S APPROVAL  
OF AN APPLICATION FOR PERMIT TO DRILL ISSUED TO  
COG OPERATING LLC, EDDY COUNTY, NEW MEXICO

2009 AUG -7 P 1:41

CASE NO. 14323

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

Chesapeake Energy Corporation ("Chesapeake") by its attorneys, Kellahin & Kellahin, for its response to the motion to dismiss filed by COG Operating LLC ("COG") states:

**BACKGROUND**

Last year, COG filed and obtained approval from the BLM of an application for a permit to drill ("APD") based upon filing Division Form C-102 in which COG falsely represented that it had an interest in the surface location within one of the 40-acre tracts within a proposed non-standard 160-acre spacing unit being the S/2S/2 of Sec 11, T16S, R28E, Eddy County, NM

On May 1, 2009, Chesapeake filed an verified application<sup>1</sup> to cancel COG's Federal APD<sup>2</sup> for the Blackhawk "11" Fed Com Well No. 1-H, (API # 30-015-36541) a horizontal wellbore, because COG Operating does not have any interest in either (a) the surface location or (b) the first 1,604 feet of the producing interval of this wellbore.

In its Motion to Dismiss, COG stated that it "owns or controls 100% of the S/2SE/4" and by implication concedes that it has no interest in S/2SW/4. Based upon this, and without attaching any documents to prove this point or rebut Chesapeake's verified application, COG alleged that it has the right to occupy both the surface and bottom-hole locations for the well. COG argues for dismissal based upon four reasons—all of which are without merit.

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<sup>1</sup> Chesapeake's application was verified by Jared Boren the landman knowledgeable about this ownership question.

<sup>2</sup> Although the APD is dated April 30, 2008, the C-102 is dated August 14, 2008 with the APD approved on August 4, 2008

## POINTS I & II

There is nothing wrong with what Chesapeake has done. Chesapeake's application is clear, direct and precise. It means what it says—that COG has falsely filed a certification in Division Form C-102 in order to obtain approval of a permit to drill at a surface location in which it has no interest.

Despite COG's attempt to have this matter referred to as a "rule making" proceeding, the New Mexico Oil Conservation Commission ("Commission") has already decided against COG's position concerning the surface location portion of the subject case by its order in the Chesapeake vs. Samson, et al, Cases 13492 and 13493 (DeNovo). To insure that operators would not obtain APDs until they had reach a voluntary agreement or obtained compulsory pooling orders, the Commission by Order R-12343-E, dated March 16, 2007,<sup>3</sup> directed the Division to change Division form C-102 concluding as a legal matter that:

"33.To prevent further misunderstandings in the interpretation of the Commission's orders, particularly in Case No. 13153, *Application of Pride Energy Company, etc.*, Order No. R-12108-C and *Application of TMBR/Sharp, Inc.*, Order R11700-B, the Commission approves of the language on Division Form C-102, field 17, concerning the operator's certification and asks the Division to continue its use and to notify the Commission if it plans to discontinue its use. That certification states "I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief and that the organization 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 interests or in a voluntary pooling agreement or compulsory pooling order hereto entered by the Division". Case Nos. 13492 and 13493 (De Novo) Order No. R-12343-E Page 6

In addition, "An operator shall not file an application for a permit to drill or drill a well unless it owns an interest in the proposed well location or has a right to drill the well as stated in Division Form C-102" See Finding 19 of Order R-12343-B (Case 13492 and 134939 DeNovo).

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<sup>3</sup> a dispute between Samson, Kaiser-Francis and Mewbourne to cancel two APDs obtained by Chesapeake and Chesapeake's attempt to compulsory pool those parties.

The only remaining question is whether the operator must also have an interest in each of the four 409-acre tracts to be included in the 160-acre non-standard unit. While the certification appears to have been written with vertical wellbores in mind, it seems reasonable to apply the certification to horizontal wellbores by interpretation that the operator must have an interest in any tract penetrated by a horizontal wellbore. If not, then a horizontal wellbore APD violates the activity that the Commission was seeking to prevent when it amended the certification contained on the Division Form C-109 in a case involving a vertical wellbore.

Even though COG may have been pursuing a voluntary agreement<sup>4</sup>, it cannot sign the certification until that pursuit has been accomplished with a signed voluntary agreement or obtaining a compulsory pooling order. Only then, can the operator sign the certification "pursuant to" a contract etc.

The subject case filed by Chesapeake is the perfect proceeding in which to address this remaining issue and there is no reason to defer to a "rule making" proceeding.

Despite the clear directions of the Commission order and the certification required by Division Form C-102, COG is confused. In an apparent attempt to disguise its confusion, COG wants to misdirect the Division away from COG false representation in the Form C-102.

### **POINT III**

COG stated that the concept of "administrative estoppel" precludes a party who has successfully assumed a certain position from assuming a different position if it prejudices a party who had acquiesced in the former position." In the case cited by COG, none of that occurred; there was no prevailing party, the case was settled and dismissed without the Division's having decided this issue. Factually, the case cited by COG was exactly opposite to its position in its motion to dismiss.

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<sup>4</sup> Jan Spradlin at COG has informed Chesapeake that she believes that COG, as a practical matter, does not send out proposal letters to working interest owners on wells they want to drill. She indicated that their procedure is to get a permit and send it, along with their pooling application, to the affected WI owner.

COG mistakenly contends that Chesapeake is estopped from having the Division cancel COG's APD by arguing that in Division Case 14208 Chesapeake obtained an approved APD for a wellbore that traverse one or more tracts that it did not control. COG is again wrong. COG has cited a case that is exactly opposite to its position. Case 14208 was an application filed by COG to compulsory pool Chesapeake. The APD was issued to COG and not to Chesapeake. In Case 14219, it was Chesapeake who sought and an order canceling the APD approved for COG's Orion Federal Well No 2 (API # 30-005-27994) because COG did not have an interest in each of the 40-acre tracts to be traversed by this wellbore.

#### **POINT IV**

In its Point IV, COG argued that by filing a compulsory pooling application, currently docketed at Division Case 14365, COG has rendered moot Chesapeake's Case. COG contends that it was "compelled to seek force pooling" for this wellbore because Chesapeake had sought to cancel COG's permit. In doing so, COG neglected to tell the Division that COG Operating has yet to provide Chesapeake with a written well proposal, including AFE or a proposed Joint Operating Agreement for this wellbore.

The actions by COG Operating display either a total lack of knowledge of or a total disregard for the Division's rules, orders, procedures and practices. If allowed by the Division, this will encourage COG Operating and others to obtaining an APD affecting acreage its does not control and to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort.

#### **CONCLUSION**

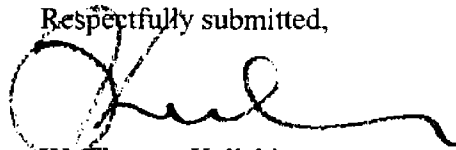
It is time for the Division to stop COG from this gamesmanship and to sent notice to the operators that they must not be using the APD procedure including falsely filed certification if Division Form C-102 as a strategy to block other potential operators or to control development.

COG's motion to dismiss is an attempt to block Chesapeake--a practice that is not permitted by the Division:

"(17) The mere fact that an applicant obtained an APD first which has not been revoked does not necessarily guarantee that the applicant should be designated the operator *of the* wells and of the units under the compulsory pooling procedures. The Division does not want to decide this case based on a race to obtain an APD. Doing so would encourage potential operators to file for APD's strategically, to block other potential operators." See Order R-12451

Chesapeake requested that the Division deny COG's motion to dismiss without further argument.

Respectfully submitted,



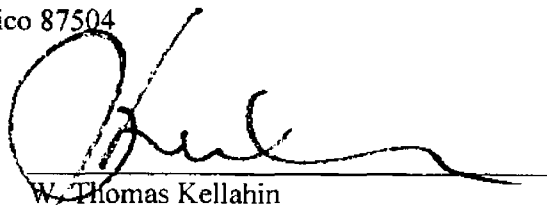
W. Thomas Kellahin  
Kellahin & Kellahin  
706 Gonzales Road  
Santa Fe, New Mexico 87501

#### CERTIFICATE OF SERVICE

I certify that on August 7, 2009 I served a true and correct copy of the foregoing pleading by email to the following:

David K. Brooks, Esq  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

J. Scott Hall, Esq.  
Montgomery & Andrews PA  
325 Paseo de Peralta  
Santa Fe, New Mexico 87504



W. Thomas Kellahin

Chesapeake's Response to Motion to Dismiss

Case 14323

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DISTRICT I  
1025 N. French Dr., Hobbs, NM 88240

DISTRICT II  
1301 W. Grand Avenue, Artesia, NM 88210

DISTRICT III  
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV  
1220 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico  
Energy, Minerals and Natural Resources Department

**OIL CONSERVATION DIVISION**  
1220 South St. Francis Dr.  
Santa Fe, New Mexico 87505

Form C-102  
Revised October 12, 2005

Submit to Appropriate District Office  
State Lease - 4 Copies  
Fee Lease - 3 Copies

AUG 15 2008

**OCD-ARTESIA** AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number 30-015-	Pool Code 97102	Pool Name CROW FLATS: WOLFCAMP
Property Code	Property Name BLACKHAWK "11" FEDERAL COM	Well Number 1
OGRID No. 229137	Operator Name C.O.G. OPERATING L.L.C.	Elevation 3570'

Surface Location

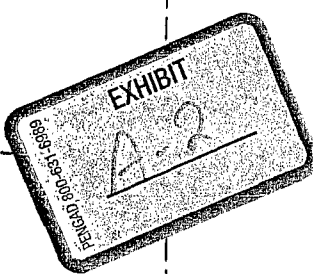
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
M	11	16 S	28 E		430	SOUTH	430	WEST	EDDY

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
P	11	16 S	28 E		330	SOUTH	330	EAST	EDDY

Dedicated Acres	Joint or Infill	Consolidation Code	Order No.
160			

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED  
OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION

			<b>OPERATOR CERTIFICATION</b>	
			I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the division.	
			Signature: <u>Phyllis A. Edwards</u> Date: <u>8-14-08</u>	
			Printed Name: <u>Phyllis A. Edwards</u> Regulatory Analyst	
		<b>SURVEYOR CERTIFICATION</b>		
		I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision and that the same is true and correct to the best of my belief.		
		DECEMBER 16, 2007		
		Date Surveyed: <u>DEC 16 2007</u>		
		Signature: <u>GARY L. JONES</u> Professional Surveyor		
		Certificate No. <u>GARY L. JONES 7977</u>		
		BASIN SURVEYS		

<b>SURFACE LOCATION</b> LAT.: N 32°55'55.47" LONG.: W104°09'13.98" SPC- N.: 702870.627 E.: 596395.029 (NAD-83)		<b>BOTTOM HOLE LOCATION</b> LAT.: N 32°55'54.42" LONG.: W104°08'21.77" SPC- N.: 702772.089 E.: 600844.111 (NAD-83)	
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<b>PROJECT AREA</b>	
<b>PRODUCING AREA</b>	
<b>PENETRATION POINT</b>	

3572.6' 3571.1' 430' 330' 330' 3564.6'