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

IN THE MATTER OF THE FIRST AMENDED APPLICATION OF XTO ENERGY INC. FOR COMPULSORY POOLING AND DOWNHOLE COMMINGLING, SAN JUAN COUNTY, NEW MEXICO **CASE NO. 14,331**

S.G. METHANE COMPANY'S RESPONSE
TO
XTO ENERGY'S OBJECTIONS TO SUBPOENA

SG Methane Company, ("SG"), hereby responds to XTO Energy, Inc.'s Objections To Subpoena Dated July 8, 2009, (in substance, a Motion To Quash Subpoena Duces Tecum).

Summary

SG owns oil and gas lease working interests in the Pictured Cliffs formation underlying the NE/4 of Section 24, T29N, R10W in San Juan County. In November of 2008, XTO entered onto the lands and drilled the Martinez Gas Com D Well No. 001R. XTO drilled the well before obtaining the participation of all the interest owners in the NE/4 of Section 24. This is permissible under NMSA 1978 §70-2-17 C, but does not relieve the operator from its obligation under §70-2-18 to consolidate all ownership interests under a voluntary agreement or by compulsory pooling order. Neither does it relieve XTO from having assumed 100% of the risk of drilling the well before consolidating the un-joined interests. By proceeding in this manner, XTO contends that it has eliminated the risk penalty under §70-2-17 C as an issue in this matter. It also asserts that SG has no legal right to the data sought. XTO is wrong on both counts.

On July 8, 2009, at the request of SG Methane, the Division issued its Subpoena Duces Tecum specifying the production of a number of items by XTO on July 20, 2009, preparatory to

the August 6, 2009 hearing on the merits on the application in this case. Notably, the subpoena seeks information in XTO's possession that is owned by SG Methane.

On July 13, 2009, XTO objected to the Division's subpoena, in effect seeking to quash it. XTO sets forth largely identical and duplicative objections to each of the subpoena items. XTO resists the production on the stated grounds that the information sought (1) is not relevant, and (2) is protected by the privileges accorded to confidential trade secrets.1

XTO's objections should be rejected for the reasons that (1) the relevance objection is inapplicable in this circumstance, and (2) XTO does not have standing to assert the trade secret privilege over information to which it cannot claim exclusive ownership. Further, XTO's objections are nullified by case law, the rules of evidence and directly applicable Division precedent.

The Relevance Objection

While relevance is not a proper basis for refusing to cooperate with pre-hearing discovery, the materials sought by the subpoena are obviously relevant to the Application.

The time for XTO to assert a relevance objection is at a hearing on the merits, not during the course of discovery. For now, it is not SG's burden to demonstrate the relevance of the materials it seeks by way of the subpoena in the manner contemplated by NMRA 11-401 or 11-402 of the Rules of Evidence.

XTO's objection/motion contains no citations to authority and is devoid of any discussion at all why the objection/motion would refer to trial objections to admissibility when the issue

1 XTO also asserts objections, generally, on the grounds of "undue burden" and invokes the work product, attorney/client "and other applicable privileges". The bases for these objections are not explained and do not appear to be directed to any specific subpoena item. Accordingly, they will not be addressed further.

concerns a party's obligation to comply with pre-hearing discovery.2 It is a different context altogether and the law providing for broad and liberal pre-hearing discovery is well established.

The discovery rules were adopted to eliminate surprise and to allow for full preparation of a case. Redman v. Board of Regents of NM School for Visually Handicapped, 102 N.M. 234, 238, 693 P.2d 1266, 1270 (Ct. App. 1984), cert. denied, 102 N.M. 225, 693 P.2d 591 (1985). "[D]iscovery is designed to 'make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest possible extent.'" United Nuclear Corp., 96 N.M. at 169, 629 P.2d at 245.

In the past, the Division and the Commission have consistently applied the broadest relevance standard in the adjudication of discovery disputes. The information sought by the subpoena is, on its face, clearly "pertinent" within the meaning of NMSA 1978 Section 70-2-8. The law favors liberal discovery in any proceeding. Carter v. Burns Constr. Co., 85 N.M. 27, 31, 508 P.2d 1324, 1328 (Ct. App. 1973); cert. denied, 85 N.M. 5, 508 P.2d 1302 (1973). The applicable relevance standard in discovery is also broadly construed. Smith v. MCI Telecommunications Corp., 137 F.R.D. 454, 463 (S.D.N.Y.). Objections based on relevance must be viewed in light of the broad and liberal discovery principle consciously built into the rules of civil procedure. "The boundaries defining information relevant to the subject matter involved in an action are necessarily vague, making it practically impossible to formulate a general rule by which they can be drawn." Because courts [and the Division] "are not shackled with strict interpretations of relevancy," discovery is permitted on matters that "are or may become relevant" or "might conceivably have a bearing" on the subject matter of the action, or

2 NMRA 1-026(B)(1) provides, in part: "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

where there is "any possibility" or "some possibility" that the matters inquired into will contain relevant information. Conversely, courts have said that discovery will be permitted unless the matters inquired into can have "no possible bearing upon," or are "clearly irrelevant" to the subject matter of the action. United Nuclear Corp., 96 N.M. at 174, 629 P.2d at 250. XTO utterly fails to make such a showing.

As the court said in Beler v. Savarona Ship Corporation, 26 F.Supp. 599 (E.D.N.Y.1939):

> The requirement of materiality does not . . . compel the person seeking discovery definitely to prove materiality before being entitled to a discovery. Such an interpretation of the rule would place upon it a narrow construction which would severely limit the bounds of the discovery procedure. It might compel a party to know what was in the documents before he had seen them. One of he basic purposes of the new Rules is to enable a full disclosure of the facts so that justice might not move blindly.

United Nuclear Corp., 96 N.M. at 179, 629 P.2d at 255.

The Trade Secret Objection

XTO has no standing to invoke the privilege under Rule 11-508, first and foremost for the fundamental reason that XTO cannot claim exclusive ownership of the information in its possession it seeks to withhold. SG has an equal ownership claim and is entitled to review the well data coming from its lands. Second, but equally important, allowing XTO to withhold information it has appropriated from a co-owner results in an injustice.

Privileges in New Mexico are recognized only as provided for in the New Mexico Constitution and the rules adopted by the New Mexico Supreme Court, and except as therein provided, no person has the privilege to refuse to disclose any matter, refuse to be a witness or refuse to produce any object or writing. Rule 11-501 NMRA 2004; Public Service Company of New Mexico v. John Lyons, 2000-NMCA-077, ¶11, 129 N.M. 487, 491, 10 P.3d 166, 170. New Mexico Courts (and administrative tribunals) "are bound by the privileges expressly stated in

Rule 11-502 NMRA 2000 (required reports privileged by statute), Rule 11-503 NMRA 2000 (attorney-client privilege), Rule 11-504 NMRA 2000 (physician-patient and psychotherapist-patient privilege), Rule 11-505 NMRA 2000 (husband-wife privileges), Rule 11-506 NMRA 2000 (communications to clergy), Rule 11-507 NMRA 2000 (political vote), Rule 11-508 NMRA 2000 (trade secrets), Rule 11-509 NMRA 2000 (communications to juvenile probation officers and social service workers), Rule 11-510 NMRA 2000 (identity of informer), and Rule 11-514 NMRA 2000 (news media)." *Id.* at ¶ 13.

Under Rule 11-508 NMRA 2004 (Trade Secrets), a person has a privilege to refuse to disclose and to prevent others from disclosing a trade secret owned by the person, but only if assertion of the privilege will not tend to conceal fraud or otherwise work injustice. If the assertion of the privilege would otherwise work an injustice, then the Court should order disclosure of the material while taking such protective measures as the interests of the privilege-holder and the furtherance of justice may require. *Id.* Further, the privilege is waived if the holder of the privilege has voluntarily disclosed any significant part of the matter to anyone under circumstances where the disclosure is not privileged. Rule 11-511 NMRA 2004.

With the ownership of its lease interest on the NE/4 of Section 24, SG is the undisputed owner of the "right to exploration", a protected property right. See Phillips Petroleum Co. v. Cowden, 241 F.2d 586, 590 (5th Cir. 1957.) In Cowden, the specific right protected by the court was that of the landowner to acquire information regarding the subsurface structure of his land through geophysical operations performed within the boundaries of his land.

Further, the right to exploration is an exclusive right and includes the right to the geological and geophysical information. Layne Louisiana Co. v. Superior Oil Co., 26 So.2d 20 (La. 1946). See, also, Grynberg v. City of Northglenn, 739 P.2d 230 (Colo. 1987). In Grynberg,

the Colorado Supreme Court held that only the mineral owner or its lessee could authorize geological testing, noting that "the recognition of the exclusivity of the right of the mineral owner to consent to such exploration is based upon the central importance of information concerning mineral deposits to the value of the mineral estate." Grynberg v. City of Northglenn, at 234. It is clear under the facts of this case that the data derived from drilling, including geologic data, are owned by SG as well as XTO. Correspondingly, XTO is simply not in a position to assert the exclusivity of trade secrets privilege under Rule 11-508.

In certain past cases, this agency has utilized a relevance standard in determining whether materials subpoenaed should be produced and it has rejected objections based on the proprietary or confidential nature of the materials, even in those cases where clearly proprietary information such as seismic data are sought. (See May 22, 1998 letter decision in NMOCC Case No. 11724 (*de novo*); Application of Gillespie Crow, Inc.; See, also the Commission's Motion to Dismiss and Reply in *EEX Corporation vs. Oil Conservation Commission*). In other cases, the Division has acted to protect against the disclosure of a party's analysis of data. But, having assumed the ability in the past to act in either circumstance, it is unquestionably the Division's view that it has the jurisdiction to resolve such disputes.

Here, by law, the Division is obliged to make findings of ultimate facts materials to the issues before it. Further the Division's findings are required to have substantial support in the record and must also disclose the reasoning of the Division. See Fasken v. Oil Conservation Comm'n., 87 N.M. 292, 532 P.2d 588 (1975). This the Division cannot do without receiving evidence from the materials to be produced pursuant to the subpoena. Accordingly, absent full and complete compliance with the subpoena it is not likely that the parties will be able to make a complete presentation of relevant evidence to the Division and due process will be disserved as a

result. This is the very form of injustice that the law instructs adjudicators to avoid when resolving objections based on an assertion of a privilege.

Applicable Division Precedent

Compelling the production of subpoenaed well data is the exact result reached by the Division in precedent cases with fact backgrounds strikingly similar to this case. In 2005, Chesapeake Operating, Inc. drilled a well before commencing compulsory pooling proceedings. As here, one of the other working interest owners in the spacing unit obtained a subpoena duces tecum from the Division seeking well logs and well data. Chesapeake3 objected on the grounds of relevance and trade-secret privilege. The Division threw-out Chesapeake's objections and ordered it to honor the subpoena. (Case No. 13492; *Application of Mewbourne Oil Company for Cancellation of Two Drilling Permits and Approval of a Drilling Permit, Lea County, New Mexico; Order No. R-12343-A*, Exhibit "A", attached.)

More recently, in 2006, Devon Energy Corporation and LCX Energy LLC both filed competing compulsory pooling applications, each seeking to pool the same acreage. However, LCX Energy was compelled to commence drilling before the compulsory pooling proceedings were complete in order to save an expiring lease. Devon obtained a subpoena for the well data on the LCX well. LCX moved to quash4 and objected to producing well data as follows:

> 2. Copies of all well logs, completion reports related to the drilling and completion of the 1725 Federal Com Well No. 61 (API No. 30-015-34340) drilled from a surface location located in the NW/4 NW/4 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico.
>
> LCX objects to this subpoena item for the reason that it seeks the disclosure of proprietary and confidential business and privileged trade secret information. LCX further objects to this subpoena item for the reason that it is not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-033(B)(1).

3 Through Mr. Kellahin.
4 Yours truly.

3. All reservoir pressure information from the 1725 Federal Com Well No. 61 including all bottomhole pressure tests and build-up test results, current well rates, flowing tubing pressures and choke sizes on the 1725 Federal Com Well No. 61.

LXC objects to this subpoena item for the reason that it seeks the disclosure of proprietary and confidential business and privileged trade secret information. LCX further objects to this subpoena item for the reason that it is not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-033(B)(1).

Remaining consistent with agency precedent, the Division overruled these objections and ordered well data to be produced. (Case No. 13603; *Application of Devon Energy Corporation for Compulsory Pooling*; consolidated with Case No. 13628; *Application of LCX Energy LLC for Compulsory Pooling, Lea County, New Mexico; Order No. R-12511*, Exhibit "B", attached.) These prior orders of the Division have not been overruled or distinguished and their closely analogous fact circumstances warrant their application here.

Conclusion

The XTO objection/motion directly contravenes the well-established authority requiring compliance with a pre-hearing discovery subpoena. The objection/motion should be rejected and the materials ordered immediately produced.

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Certificate of Service

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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 TWO DRILLING PERMITS AND APPROVAL OF A DRILLING PERMIT, LEA COUNTY, NEW MEXICO

CASE NO. 13492
Order No. R-12343-A

ORDER ON PRE-HEARING MOTIONS

BY THE DIVISION;

This matter came before the director of the Oil Conservation Division (Division) on the following **pre-hearing** motions: 1) Chesapeake Operating **Inc.'s** Motion to Dismiss; 2) Chesapeake Operating Inc.'s Motion to Quash Subpoenas Issued at the Request of Kaiser-Francis Oil Company; 3) Joint Motion of Kaiser-Francis Oil Company and Samson Resources to Limit Drilling Operations; and 4) Joint Motion of Kaiser-Francis Oil Company and Samson Resources for Temporary Suspension of APD. All motions have been fully briefed by the parties, and argument on the first three motions was heard on May **16, 2005** at Santa Fe, New Mexico, before Examiner William V. Jones

NOW, on this 24th day of May, **2005,** the Division Director, having considered the pleadings of the parties, and the recommendations of the Examiner,

FINDS THAT;

(1) This matter is before the Division pursuant to the application of **Mewbourne** Oil Company **("Mewbourne")** for cancellation of two drilling permits issued to Chesapeake Operating Inc. ("Chesapeake") for **Chesapeake's KF** "4" State Well No. 1 (API No. 30-025-37129) and proposed Cattleman "4" State **Comm** Well No. 1 (API No. 30-025-37150), both to be located on tracts in the east of irregular Section 4, Township 21 South, Range 35 East, **NMPM** in Lea County, New Mexico. **Mewbourne's** application also seeks approval of a drilling permit for Mewbourne's proposed Osudo "4" State Com Well No. 1 to be located in a tract in the southeast of irregular Section 4.

(2) Chesapeake does not claim it has an interest in the drill sites for its proposed wells. Chesapeake claims that Chesapeake Permian, L.P. owns the lease covering tracts in irregular Section 4 that could be pooled with the drill site tracts to form standard spacing units, and that Chesapeake Permian, L.P. has proposed that Chesapeake Operating Inc. operate those units.

Exhibit A

(3) Chesapeake Permian, L.P. has filed an application for compulsory pooling seeking to create a standard lay-down 320-acre spacing unit consisting of the geographical south 1/3 of irregular Section 4 to be dedicated to the KF "4" State Well No. 1, designating Chesapeake Operating Inc. as the operator. Chesapeake Operating Inc. has begun drilling the KF "4" State Well No. 1.

(4) Chesapeake Permian, L.P. has filed an application for compulsory pooling seeking to create a standard stand-up 320-acre spacing unit consisting of the northern 2/3 of the eastern half of irregular Section 4 to be dedicated to its proposed Cattleman "4" State Com Well No. 1, designating Chesapeake as the operator of the unit. Chesapeake Operating Inc. has not begun drilling the Cattleman "4" State Com Well No. 1.

(5) Mewbourne, Kaiser-Francis Oil Company (Kaiser-Francis) and Samson Resources (Samson) seek to create a standard 320-acre stand-up spacing unit consisting of the southern 2/3 of the eastern half of irregular Section 4. The proposed unit is subject to a **Communitization** Agreement approved by the Commissioner of Public Lands effective April 1, 2005, and a Joint Operating Agreement dated March 24, 2005. Mewbourne applied for a permit to drill its proposed Osudo "4" State Com Well No. 1, but the Division denied the application because it had already issued permits to drill to Chesapeake in the same tract.

Chesapeake Operating Inc.'s Motion to Dismiss

(6) On May 10, 2005 Chesapeake moved to dismiss Mewbourne's application. As grounds, Chesapeake relies on Order R-12108-C (**Yates-Pride** Case); Order R-11700 (**TMBR/Sharp-Ocean** Case); and Order **R-12343,** denying Mewbourne's application for an emergency order in the instant case to halt drilling of the KF "4" State Well No. 1 pending the hearing on the merits.

(7) In the **TMBR/Sharp-Ocean** Case, the Oil Conservation Commission ("Commission") stated that the operator filing an application for a permit to drill **("APD")** must do so under a good faith claim of title and a good faith belief that it is authorized to drill the well applied for. (Order **R-11700-B,** Finding 28.)

(8) In the **Pride-Yates** Case, the Division found that an owner who would have a right to drill at its proposed location in the event of a voluntary or compulsory pooling of the unit it proposes to dedicate to the well has the necessary good faith claim of title to permit it to file an APD even though it has not yet filed a pooling application. (Order R-12108-C, Finding 8(i).)

(9) The Division may revoke an APD after notice and hearing if it determines that the APD was improvidently granted. The cases provide examples of good cause for revoking or denying an APD, including the following:

(a) A demonstration that the holder of the APD does not have a good faith claim of title. (Order R-11700-B (TMBR/Sharp-Ocean Case).)

(b) A demonstration that the applicant for the APD does not have authority for surface uses that will be required to conduct operations. (Order R-12093-A. Application of Valdes (sic) Caldera Trust).)

(c) A demonstration that the acreage can be developed better by inclusion in a different unit. (Order R-12108-C, Finding 8(i) (Pride-Yates Case).)

(10) In the instant case, Mewbourne applied for an emergency order to halt the drilling of the KF "4" State Well No. 1 pending the hearing of the case on the merits. Mewbourne argued that the Division's approval of Chesapeake's APD did not give Chesapeake the right to drill a well on land where it did not have an ownership interest prior to securing either voluntary or compulsory pooling. The Division denied Mewbourne's request because Mewbourne did not make a showing that cancellation of the APD prior to hearing on the merits was necessary to prevent injury to the correlative rights of any party, prevent waste, or protect human health, safety or the environment. Order R-12343. That Order did not, however, preclude Mewbourne from challenging the APD at the hearing on the merits.

(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.

(12) Chesapeake's Motion to Dismiss should be denied.

Chesapeake Operating Inc.'s Motion to Quash Subpoenas Issued at the Request of Kaiser-Francis Oil Company

(13) On May 10, 2005, Chesapeake filed a motion to quash the subpoenas duces tecum issued by the Division on May 5, 2005 at the request of Kaiser-Francis Oil Company, on the grounds that the documents sought were irrelevant and protected from discovery by the trade secret privilege, and that Order R-12343 rendered the subpoenas moot.

(14) As discussed above, Order R-12343 did not render moot Mewbourne's arguments that Chesapeake does not have a good faith claim of title and authority, and that the acreage can be developed better by inclusion in Mewbourne's proposed unit.

(15) The documents requested by Kaiser-Francis' 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 issue of good faith claim of title.

(16) Chesapeake cannot assert a trade secret privilege against Kaiser-Francis regarding documents related to the drilling of the KF "4" State Well No. 1. Kaiser-Francis holds the lease to the tract on which the KF "4" State Well No. 1 is located, and with it, the right to explore for minerals and conduct geologic investigations.

(17) Further, the trade secret privilege is available only "if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." Rule 11-508 NMRA 2004. Drilling data from the KF "4" State Well No. 1 may prove central to the determination of unit orientation and, therefore, to the question of whether **Chesapeake's** APD should be cancelled. 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.

(18) **Chesapeake's** motion to quash should be denied.

Joint Motion of Kaiser-Francis Oil Company and Samson Resources to Limit Drilling Operations

(19) On May 11, 2005 Kaiser-Francis and Samson filed a joint motion requesting an order limiting drilling operations by Chesapeake at the KF "4" State Well No. 1. The **Movants** sought to prevent Chesapeake from completing, testing and producing the well, and requested an active supervisory role for Movants in drilling operations, including dictating the types of open hole logs to be run and the casing to be set.

(20) Movants argued that granting the motion would maintain the status quo pending resolution of disputes determining the operator of the well, the ownership of data obtained by drilling and the ownership of the wellbore itself. Movants argued that operators may disagree on the appropriate means of testing and completing a well, and there is a substantial risk that an improperly planned or executed completion would result in damage to the well or the potential loss of reserves, resulting in waste and potential damage to **Movants'** correlative rights.

(21) Chesapeake argued that Chesapeake Permian, L.P. leases a tract included in its proposed spacing unit, with the right to drill and operate the well under the name Chesapeake Operating Inc. Chesapeake argues that it is meeting or exceeding all of the drilling, evaluation and completion procedures suggested by Movants and that its drilling, logging, completion and testing programs are equal to or greater than those used by Mewbourne for the comparable Osudo "9" Well No. 1 and industry custom and practices. Chesapeake also argues that it will incur significant harm, including monetary damages and damage to its correlative rights, if drilling operations are halted.

(22) Movants have not shown that Chesapeake is not competent to drill and complete the well, or that Chesapeake's proposed drilling, completion and testing procedures will result in damage to the well or loss of reserves.

(23) To resolve issues related to unit configuration, it is important to both Movants and Chesapeake that information be obtained from drilling, completing and testing the KF "4" State Well No. 1. That information will be available to Movants through Kaiser-Francis' subpoenas.

(24) Allowing Chesapeake to produce from the KF "4" State Well No. 1 before a unit has been approved would violate 19.15.13.1104.C NMAC.

(25) Movants' request that Chesapeake be prevented from producing the KF "4" State Well No. 1 before a unit has been approved should be granted; the remainder of Movants' motion to limit drilling operations should be denied.

Joint Motion of Kaiser-Francis Oil Company and Samson Resources for Temporary Suspension of APD

(26) On May 13, 2005 Samson and Kaiser-Francis moved the Division to enter an order temporarily suspending the APD issued to Chesapeake for the Cattleman "4" State Com Well No. 1. The well has been staked but not spudded.

(27) Chesapeake has voluntarily agreed that it will not commence building a location or spud the Cattleman "4" State Com Well No. 1 until the Division has entered an order deciding the orientation of the spacing unit for the K-F State "4" Well No. 1, and requests that its APD not be suspended.

IT IS THEREFORE ORDERED THAT;

(1) The Motion of Chesapeake Operating, Inc. to dismiss the Application of Mewbourne Oil Company is denied.

(2) The Motion of Chesapeake Operating, Inc. to quash subpoenas issued at the request of Kaiser-Francis Oil Company is denied. Parties to case 13492 are directed to limit the use of the materials obtained under the subpoenas to the preparation and presentation of this case.

(3) The joint motion of Kaiser-Francis Oil Company and Samson Resources Company for an order limiting drilling operations is granted as to the request to prohibit production from the KF "4" State Well No. 1 prior to issuance of an approved unit; the remainder of the joint motion is denied.

(4) The joint motion of Kaiser-Francis Oil Company and Samson Resources Company for an order temporarily suspending the APD issued to Chesapeake Operating Inc. for the Cattleman "4 State Com Well No. 1 is denied, however, Chesapeake is

directed not to commence building a location or spud the Cattleman "4" State Com Well No. 1 until the Division has entered an order deciding the spacing unit orientation in this case.

(5) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director

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

IN THE MATTER OF THE PROCEEDING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING PRE-HEARING MOTIONS RELATING TO: 1) THE APPLICATION OF DEVON ENERGY CORPORATION IN CASE NO. 13603 FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO; AND 2) THE APPLICATION OF LCX ENERGY, LLC IN CASE NO. 13628 FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

CASE NO. 13603
CASE NO. 13628
ORDER NO. R-12511

ORDER ON PRE-HEARING MOTIONS

BY THE DIVISION:

This matter came before Examiner David R. Catanach on February 16, 2006 for the purpose of hearing oral arguments regarding the following pre-hearing motions filed by Devon Energy Corporation ("Devon") and LCX Energy, LLC ("LCX Energy") in Cases No. 13603 and 13628: 1) Subpoena Duces Tecum issued by the Division on January 11, 2006 on behalf of Devon, and subsequently served on LCX Energy; 2) LCX Energy's Motion to Quash Devon's Subpoena Duces Tecum dated January 18, 2006; and 3) Devon's Response to LCX Energy's Motion to Quash dated January 26, 2006.

NOW, on this 20th day of February, 2006, the Division Director, having considered the pleadings of the parties and the recommendations of the Examiner,

FINDS THAT:

(1) This matter is before the Division pursuant to: 1) the application of Devon in Case No. 13603 to compulsory pool all mineral interests from the surface to the base of the Wolfcamp formation underlying the W/2 and the NW/4 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, to form standard 320-acre and 160-acre, respectively, spacing and proration units for all formations and/or pools spaced on 320 and 160 acres within this vertical extent. These units are to be dedicated to the 1725 Federal Com Well No. 61 (API No. 30-015-34340) which has been drilled by LCX Energy as a horizontal well from a surface location 660 feet from the North line and

Exhibit B

760 feet from the West line (Unit D) to a bottomhole location approximately 660 feet from the South line and 760 feet from the West line (Unit M) of Section 6; and 2) the application of LCX Energy in Case No. 13628 to compulsory pool all mineral interests from the surface to the base of the Wolfcamp formation underlying the W/2 and the NW/4 of Section 6, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, to form standard 320-acre and 160-acre, respectively, spacing and proration units for all formations and/or pools spaced on 320 and 160 acres within this vertical extent. These units are to be dedicated to the aforesaid 1725 Federal Com Well No. 61.

(2) Cases No. 13603 and 13628 are currently scheduled to be heard by the Division on March 2, 2006.

(3) LCX Energy applied to the United States Bureau of Land Management ("BLM") for a drilling permit for the 1725 Federal Com Well No. 61 on July 21, 2005. The permit to drill was approved by the BLM on September 14, 2005.

(4) LCX Energy spudded the 1725 Federal Com Well No. 61 on October 7, 2005, and as of this date, has completed drilling operations.

(5) LCX Energy and Devon own 65% and 35%, respectively, of the interest within the W/2 of Section 6.

(6) Prior to commencing drilling operations on the 1725 Federal Com Well No. 61, LCX Energy made no well proposals nor attempted to consolidate the interest within the W/2 of Section 6 for the purpose of drilling the subject well.

(7) LCX Energy contends that due to lease expirations within the W/2 of Section 6, it was necessary to commence drilling the subject well prior to initiating negotiations with Devon.

(8) Negotiations have ceased between LCX Energy and Devon with regards to Devon's participation in the drilling of the subject well.

(9) Devon contends that the information it seeks from LCX Energy is necessary in order to effectively prepare for the presentation of Case No. 13603.

(10) LCX Energy contends that much of the information Devon is seeking is either: 1) unavailable; 2) available from public or Division records; or, 3) proprietary in nature.

(11) LCX Energy further contends that the well information may be kept confidential for a period of 90 days from the date of completion of the well pursuant to Division Rule 19.15.13.1105(C).

(12) Division Rule 19.15.13.1105(C) is intended to restrict general public access to certain data, but does not limit the power of the Division to require production of data by subpoena in an appropriate case.

(13) Devon's request to obtain drilling and completion information from LXC Energy regarding the 1725 Federal Com Well No. 61 is justified and should therefore be approved. Accordingly, Requests No. 2 and 3, which relate to well logs, completion reports, reservoir pressure information, bottomhole pressure tests, buildup tests, current well rates, flowing tubing pressures and choke sizes, should be provided to Devon by LXC Energy.

(14) The remainder of information Devon seeks (Requests No. 1 and 4 through 10) is deemed by the Division to be either unavailable or not necessary to Devon to prepare its Case No. 13603 for presentation. Accordingly, LCX Energy's Motion to Quash Devon's Subpoena Duces Tecum with regards to Requests No. 1 and 4 through 10, is hereby granted.

IT IS THEREFORE ORDERED THAT:

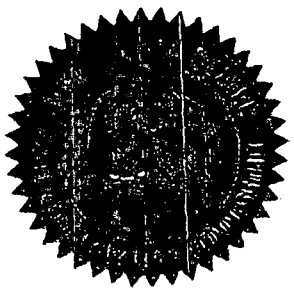
(1) LCX Energy, LLC's Motion to Quash Devon's Subpoena Duces Tecum is hereby granted as to Requests No. 1 and 4 through 10.

(2) LCX Energy, LLC's Motion to Quash Devon's Subpoena Duces Tecum is hereby denied as to Requests No. 2 and 3.

(3) LCX Energy, LLC shall furnish Devon Energy Corporation with all information required by Requests No. 2 and 3 by 5:00 p.m. on February 24, 2006.

(4) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director