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

APPLICATION OF CHESAPEAKE ENERGY CORPORATION FOR CANCELLATION OF A PERMIT TO DRILL ISSUED TO COG OPERATING LLC, EDDY COUNTY, NEW MEXICO	DE NOVO CASE NO. 14323
APPLICATION OF COG OPERATING LLC FOR DESIGNATION OF A NON-STANDARD SPACING UNIT AND FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	DE NOVO CASE NO. 14365
APPLICATION OF COG OPERATING LLC FOR DESIGNATION OF A NON-STANDARD SPACING UNIT AND FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	CASE NO. 14366
APPLICATION OF CHESAPEAKE ENERGY CORPORATION FOR CANCELLATION OF A PERMIT TO DRILL ISSUED TO COG OPERATING LLC, EDDY COUNTY, NEW MEXICO	CASE NO. 14382

MOTION TO STAY OR CONTINUE
PENDING COMPLETION OF A RELATED RULEMAKING

COG Operating LLC, ("COG"), by and through its undersigned attorneys, Montgomery & Andrews, P.A., hereby requests the Commission or Commission Chairman enter an order staying or continuing these consolidated matters pending the completion of a substantively related rulemaking proceeding. In support, COG states:

In Case Nos. 14323 and 14382, Chesapeake has filed Applications that seek rescission of APDs previously approved by the BLM for COG's Blackhawk "11" Fed Com Well No. 1-H. and Blackhawk "11" Fed Com Well No. 2-H.

COG plans to horizontally drill the Blackhawk "11" Fed Com Well No. 1-H from a surface location 430' from the South line and 430' from the West line to a bottomhole location

330' from the South line and 330' from the East line to a depth sufficient to test the Abo/Wolfcamp formation. Four forty-acre tracts comprising the S/2 S/2 of Section 11 T16S R28E are dedicated to the non-standard spacing unit for the well. COG similarly plans to horizontally drill the Blackhawk "11" Well No. 2-H in the adjoining 120-acre non-standard unit to the north and comprised of the NE/4 SW/4 and N/2 SE/4 of Section 11. This well, too, has been permitted by the BLM.

In the case of the Blackhawk "11" Well No. 1-H, COG owns or controls 100% of the working interest in the S/2 SE/4 of Section 11 and since the time the APD was approved, COG obtained the joinder of at least one other working interest owner in the S/2 SW/4. Chesapeake owns a working interest in the S/2 SW/4 of Section 11, but contends that because it has not committed its interest to the well, the APD should not have been approved since the horizontal wellbore will traverse its acreage. A substantially identical fact situation exists for the acreage dedicated to COG's Blackhawk "11" Well No. 2-H. (See attached land plat exhibit.) Neither well has been drilled. Chesapeake asserts that COG improperly certified on the Division's C-102 form that it owns a working interest in the lands or at the bottom hole location for the wells. COG refutes Chesapeake's interpretation, and contends its certifications are proper. Devon Energy Production Corporation has entered its appearance in these cases, but on information and belief, Devon is taking a neutral position.

Chesapeake's Applications are apparently motivated by the company's experience in drilling the KF "4" State Well No. 1 in 2005, a vertical well drilled to the Morrow formation.[1] In the case of the KF "4" State Well No. 1, the owners of three leases in the E/2 of Section 4, T21S

[1] NMOCC Case No. 13492 (De Novo): Application of Samson Resources Company, Kaiser-Francis Oil Company and Mewborne Oil Company for Cancellation of Two Drilling Permits and Approval of a Drilling Permit, Lea County, New Mexico.

R35E, dedicated their interests to a 320-acre "stand-up" unit under a communitization agreement. Samson Resources was to drill and operate the KF "4" well from a location in the SE/4. Chesapeake owned no interest in the E/2 of Section 4, but did control 160 acres in the SW/4. Chesapeake filed and obtained approval of an APD for a 320-acre S/2 unit and moved-on to drill at the location in the SE/4 before consolidating the working interests in the "lay-down" unit. Samson, et al. applied to the Division for the rescission of Chesapeake's APD.

Following an appeal from the Division, in 2007, the Commission issued Order No. R-12343-E and removed Chesapeake as the operator of the KF "4" State No. 1 well for the reason that it was unable to demonstrate it owned an interest in the land at the well location at the time it drilled the well. Correspondingly, the Commission directed the Division to include a provision for the operator's certification of an ownership interest on the form C-102 portion of the state APD. Under Order No. R-12343-E, Conclusion paragraph 33, the certification is to read as follows:

> **"I hereby certify...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"** (emphasis added).

The certification language, drafted in the context of a dispute over the issuance of an APD for a *vertical* well, continues in use on the State's prescribed C-102 APD form used for all wells and is reflected on the approved APD's for COG's Blackhawk "11" Well No. 1-H and 2-H.

COG has been compelled to file applications to obtain approval of the non-standard units for the two wells and for compulsory pooling of un-joined interests in the units. This should render Chesapeake's Applications moot. Further, Chesapeake's Applications do not allege harm

to its interests, actual or potential. Neither has it alleged that granting its Applications will prevent waste, protect correlative rights or promote conservation. It has no competing applications for drilling permits and has not sought to force pool any interests. Correspondingly, COG contends that at this point the dispute is only hypothetical. There is no presently justiciable controversy for the Commission to decide and therefore any decision issued on the horizontal well drilling permit question would be only advisory in nature.

Chesapeake's Issue Will Be Addressed In A Rulemaking Proceeding

Chesapeake is the first operator to question the process for obtaining approvals for APD's for horizontal drilling projects. By way of what is in reality a hypothetical dispute, Chesapeake seeks resolution of a matter that is best addressed through the rulemaking process. Seeking answers to a hypothetical question via a single adjudicatory proceeding is ill-advised. Chesapeake's application raises issues regarding horizontal drilling and development that have broad policy implications for all New Mexico oil and gas operators involved in horizontal drilling projects, in the Permian Basin as well as the San Juan Basin.

Before Chesapeake brought its Applications, an industry subcommittee was formed, at the request of the Division, to formulate proposals to modify or replace the Divisions rules on deviated wells, directional wells, project areas with multiple proration units (NMAC 19.15.16.1, *et seq.*) and other affected rules, including compulsory pooling. The operator certification on C-102's is also being addressed. The subcommittee has been working well over a year and has had numerous meetings. COG, Chesapeake and Devon have been active participants. It is anticipated that sometime in the very near future, an application for a rulemaking will be filed with the Commission.

Therefore, the Commission may address this issue either by attempting to adjudicate this specific dispute between two parties, or by allowing the rulemaking process to determine the outcome for the entire industry and the agency. As demonstrated below, rulemaking is the preferred method of deciding this question.

"The decision to make new law through rulemaking or adjudication is one that lies primarily in the informed discretion of the administrative agency." *Hobbs Gas Co. v. New Mexico Public Service Com'n*, 115 N.M. 678, 858 P.2d 54 (1993) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 67 S.Ct. 1575, 91 L.Ed. 1995 (1947)). That said, rulemaking is generally believed to be "a far better method for making public policies, especially those polices aimed at large groups," than ordermaking. Kenneth F. Warren, *Administrative Law in the Political System*, Fourth Edition, p. 272 (Westview Press, 2004). "Basically, rulemaking is preferred because it is perceived as a much more open, democratic process than order-making. That is, while agency adjudications are normally closed to interested outside parties that are not specific litigants in the dispute, the rulemaking process is open to all interested parties who want to influence the drafting of rules." *Id.* Accordingly, "a solid consensus of administrative law and public administration scholars believe that rulemaking should generally be preferred over ordermaking for promulgating public policies." *Id.; see also* Warren E. Baker, *Policy by Rule or Ad Hoc Approach--Which Should It Be?,* 22 L & Contemp Probs 658, 671 (1957) (concluding that rulemaking should be preferred over ad hoc decisionmaking).

There is certainly the potential that Chesapeake's Applications may result in a decision that is inconsistent with the rulemaking effort. Further, given the pendency of the significant efforts to support the rulemaking process, a hearing on Chesapeake's adjudicatory applications is an inefficient use of the Commission's administrative resources.

Wherefore, COG Operating LLC requests the entry of an order staying or continuing Chesapeake's Applications in this matter and providing such other relief as deemed appropriate.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: _____

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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 31st day of December, 2009 as follows:

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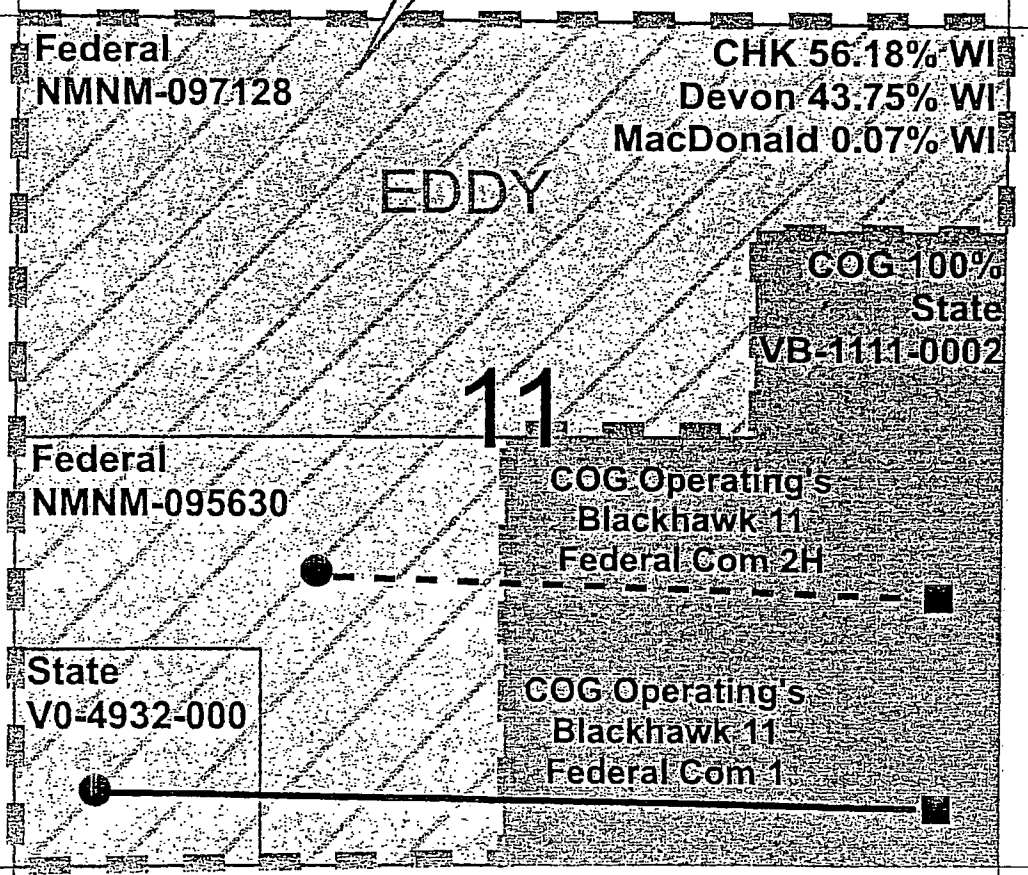
00149770

JOA Dated January 26, 1998
Contract Area:
All of Section 11 from surface to base of Morrow
Leases not subject to JOA:
#VB-1111-0002, covering SENE & SE



16S 28E

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EXHIBIT A

NMOCD Case No. 14323
August 20, 2009
COG Operating LLC Ex. No. 4

Legend
- BHL
- SHL

Permits
- APD Approved
- APD Not Approved

Owners
- CHK
- COG
- Devon

Section 11 APDs
11-16S-28E
Eddy Co., New Mexico

Scale: 1:4,368	Projection:GCS North American 19
Date: 4/22/2009	Author: Erin Fay