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July 17, 2001

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

HAND DELIVERED

Mr. Michael E. Stogner, Hearing Examiner

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

**Re: MOTION FOR AN EMERGENCY ORDER
STAYING DIVISION ORDER R-11580
NMOCD Case 12560
Application of David H. Arrington Oil and Gas, Inc.
for compulsory pooling, directional drilling
and an unorthodox subsurface well location,
Lea County, New Mexico**

**Re: NMOCD CASE (pending) 127 0
Application of Chesapeake Exploration L.P.
for a determination that its interest is
not subject to Division Order R-11580.**

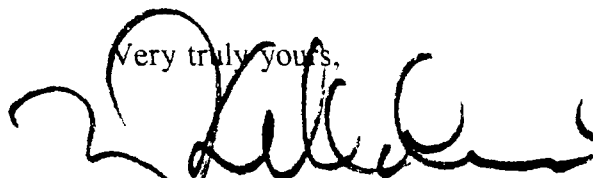
Gentlemen:

On behalf of Chesapeake Exploration, L.P., an adversely affected interest owner, please find enclosed:

(a) our motion for an emergency order to stay the referenced order; and

(b) application which we request be set for hearing at the next available examiner's docket now set for August 9, 2001.

Very truly yours,



W. Thomas Kellahin

cc: William F. Carr, Esq.
Attorney for David H. Arrington Oil & Gas, Inc.
Chesapeake Exploration, L.P.
Attn: Lynda Townsend

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

**IN THE MATTER OF THE APPLICATION
OF DAVID H. ARRINGTON OIL & GAS INC.
FOR COMPULSORY POOLING, DIRECTIONAL
DRILLING AND AN UNORTHODOX WELL LOCATION,
LEA COUNTY, NEW MEXICO**

CASE NO. 12560

**CHESAPEAKE EXPLORATION, L.P.'S
MOTION FOR AN EMERGENCY ORDER
STAYING
DIVISION ORDER R-11580**

Comes now Chesapeake Exploration L.P. ("Chesapeake"), by its attorneys, Kellahin and Kellahin, enters its limited appearance in this case for purposes of seeking an emergency order pursuant to Division Rule 1202 staying Division Order 11580 pending a determination by the Division as to whether David H. Arrington Oil & Gas Inc. ("Arrington") has properly pooled Chesapeake's interest in the NW/4 of Section 31, T15S, R36E, Lea County, New Mexico to either a 160-acre unit consisting of the NW/4 or a 40-acre spacing unit consisting of the SE/4NW/4 of this section to be dedicated to Arrington's Royal Simulator Well No. 1. (API No. 30-025-35284) and as ground therefore states:

RELEVANT FACTS:

(1) Division Rule 1207.A.(1) requires the applicant in a compulsory pooling case to send notice to "any owner of an interest in the mineral estate whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application..."

(2) On October 3, 2000, Arrington proposed the drilling of its Royal Simulator Well No. 1 to the following interest owners in the NW/4 of Section 34, T15S, R36E:

Mattie Pou
Thelma Champion
Anson Energy Corporation

(3) Arrington failed to propose this well to Chesapeake which acquire its 0.97656% working interest on July 11, 2000 and record its assignment of that interest with the Lea County Clerk on September 18, 2000. **See Exhibit 1.**

(4) On November 29, 2000, Arrington filed a compulsory pooling application seeking to pool uncommitted interests including the NW/4 of Section 34, T15S, R36E to a spacing unit for its Royal Simulator Well No. 1.

(5) Prior to July 5, 2001, Arrington had not proposed this well to Chesapeake or sent it notice of any hearing.

(6) On December 16, 2000, Arrington spudded the Royal Simulator well and after failing to reach the Morrow/Mississippian formations, chose to complete the well for oil production from the Wolfcamp formation of the Caudill Permo-Upper Pennsylvanian Pool.

(7) On December 21, 2000, Arrington's pooling application was heard by Examiner Michael E. Stogner. At that hearing, Dale Douglas, testifying as Arrington's landman, testified that the only parties with whom Arrington had not yet reached a voluntary agreement were Matty Pou (sp), Thelma Champion and Anson Energy Corporation. **See Transcript page 9 lines 12-17**

(8) In addition, while Arrington had commenced drilling this well on December 16th, none of his witnesses at the hearing on December 21st disclosed that fact to Examiner Stogner. Instead, Arrington attempted to obtain the maximum 200 % risk factor penalty despite the fact that Arrington had assumed the risk of drilling the well prior to obtaining a compulsory pooling order.

(9) In addition, while Arrington had assumed the risk of commencing this well before obtaining a compulsory pooling order, none of his witnesses at the hearing on December 21st disclosed that fact to Examiner Stogner.

(10) On January 31, 2001, Arrington finished drilling the well and the drilling rig released.

(11) On May 2, 20001, the Division issued its pooling order R-11580.

(12) On May 14, 2001, Arrington reported the first oil production from the well with first gas delivered from the well on May 7, 2001.

(13) By letter dated July 5, 2001, Arrington, in a failed attempt to comply with Paragraph (5) of Order R-11580, sent notice to Chesapeake that it within 30 days following reasonable well costs determination to had to pay its share of the actual costs of the well.

(14) Paragraph (5) states in part that Arrington must send notice "Within 30-days after the effective date this order (May 2, 2001). Arrington's election letter failed to comply with the order.

(15) Paragraph (6) of Order R-11580 provides that any non-consenting working interest owners may file an objection with the Division within 90 days

ARGUMENT

Unless this order is stayed as to Chesapeake, then Chesapeake's rights to due process will have been violated by denying to Chesapeake the right to notice and participation at the pooling hearing. In addition, Chesapeake must pay its share of the costs of the well before the Division can decide the following issues raised in Chesapeake's application:

- (a) whether Chesapeake's interest is subject to Order R-11580;

- (b) the appropriate allocation of costs between the owners in a 160-acre unit and the 320-acre unit;
- (c) the appropriate allocation of risk between the owners in a 160-acre unit and the 320-acre unit; and
- (d) the appropriate percentage of risk factor penalty.

Contrary to the custom and practice before the Division and in violation of Section 70-2-17(C) NMSA (1978) and Division Rule 1207.A.(1), Arrington obtained a compulsory pooling order which it now is attempting to assert against Chesapeake without first making a "good faith" effort to include Chesapeake's interest in a spacing unit on a voluntary basis for the drilling of Arrington well and without including Chesapeake among the parties to be pooled. Section 70-2-17(C) NMSA 1978 is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. It is impossible to have exhausted a good faith effort to reach a voluntarily agreement if Arrington ignores Chesapeake's interest and then after the well is drilled and completed attempts to require Chesapeake to pay "its share" of the well. **For example, see NMOCD Case 11434, Order R-10545 and NMOCD Case 11107, Order R-10242.**

Division Rule 1207.A(1) is also very specific and requires Arrington to send notice to Chesapeake because its interest was of record as of the date of the application. **See Division Order R-10672-A (Branko, Inc. Strata Production Company, Mitchell Energy Corporation).**

It is no solution to suggest that this fatal flaw can be fixed by simply allowing Chesapeake to file an objection to the actual costs of the well. **See NMOCD Case 11434, Order R-10545.** Such action simply ignores the requirements of Section 70-2-17(C) NMSA 1978 and will encourage others to violate the due process rights of interest owners whom it wants to pool.

Unless this stay is granted the Division will be establishing a precedent which will allow applicants to avoid complying with Section 70-2-17(C) NMSA 1978.


WHEREFORE Chesapeake Exploration L.P. requests that the Division Hearing Examiner grant this motion and stay Oil Conservation Division Order R-11580 pending the entry of an order on Chesapeake's application.



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was transmitted by facsimile to counsel for William F. Carr, Esq. attorney for David H. Arrington Oil & Gas Inc. this 17th day of July, 2001.



W. Thomas Kellahin

ASSIGNMENT OF OIL & GAS LEASE

L 343 65

WHEREAS, on the 20th day of June, 2000, a certain Oil & Gas Lease was made and entered into by and between BUCKNER BAPTIST BENEVOLENCES, A CORPORATION, ("Lessor"), and CHALFANT PROPERTIES, INC., MIDLAND, TEXAS, ("Lessee"), covering certain lands and leases in the County of Lea and State of New Mexico, to-wit:

Township-1S-South, Range-36-East, N.M.P.M.
Section 31: Lots 1, 2 & E/2NW/4

WHEREAS, The said Oil & Gas Lease and all rights thereunder or incident thereto are now owned by CHALFANT PROPERTIES, INC.

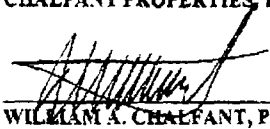
NOW, THEREFORE, for and in consideration of One Dollar (and other good and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owner of the said Oil & Gas Lease, and all rights thereunder or incident thereto, does hereby bargain, sell, transfer, assign and convey all rights, title and interest of the original lessee and present owner in and to said Oil & Gas Lease and rights thereunder, together with all personal property used or obtained in connection therewith to CHESAPEAKE EXPLORATION, L.P., P.O. BOX 18496, OKLAHOMA CITY, OK 73154-0496, and its successors and assigns.

And for the same consideration, the undersigned for himself and his successors and assigns, does covenant with the said assignee its successors, or assigns, that Chalfant Properties, Inc. is the lawful owner of the said Assignment of Oil & Gas Lease and rights and interests thereunder and that the undersigned has good right and authority to sell and convey the same, and that the undersigned will warrant and defend the same against those claiming by, through or under it but not otherwise.

In Witness Whereof, The undersigned owner and assignor has signed this instrument as of the 11th day of July, 2000.

CHALFANT PROPERTIES, INC.

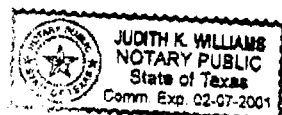
Record & Return To:
Chesapeake Operating, Inc.
P.O. Box 18496
Oklahoma City, OK 73154


WILLIAM A. CHALFANT, PRESIDENT

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 11th day of July, 2000, by William A. Chalfant, President of Chalfant Properties, Inc., on behalf of said corporation.




Notary Public in and for the State of Texas

Notary's Printed Name:

JUDITH K WILLIAMS

My Commission Expires:

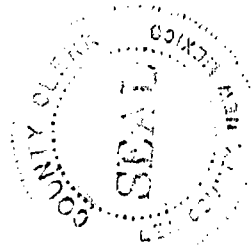
2/7/2001

NM 700 0177-001

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

SEP 18 2000

at 8:45 o'clock A M
and recorded in Book 1038
Page 537
Pat Chappelle, Lea County Clerk
By [Signature] Deputy



BOOK 1038 PAGE 537

EXHIBIT

2

63944

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

**IN THE MATTER OF THE APPLICATION
OF CHESAPEAKE EXPLORATION L.P.
FOR A DETERMINATION THAT ITS INTEREST
IS NOT SUBJECT TO DIVISION ORDER R-11580
LEA COUNTY, NEW MEXICO**

CASE NO.

12710

APPLICATION

Comes now Chesapeake Exploration L.P. ("Chesapeake"), by its attorneys, Kellahin and Kellahin, and applies to the New Mexico Oil Conservation Division ("Division") for an order determining that Chesapeake's mineral interest in the NW/4 of Section ³⁴~~34~~, T15S, R36E have not been properly pooled into a spacing unit by David H. Arrington Oil & Gas Inc. ("Arrington") for Arrington's Royalty Simulator Well No. 1 and is not subject to Division Order R-11580; and as ground therefore states:

(1) Division Rule 1207.A.(1) requires the applicant in a compulsory pooling case to send notice to "any owner of an interest in the mineral estate whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application..."

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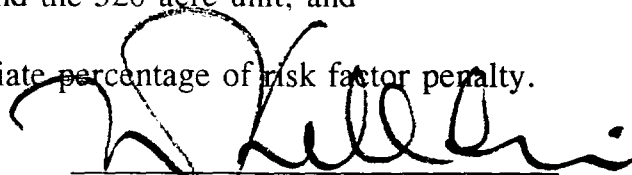
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(15) Paragraph (6) of Order R-11580 provides that any non-consenting working interest owners may file an objection with the Division within 90 days to dispute well costs.

WHEREFORE, Chesapeake Exploration L.P. request that the Division grant a hearing to determine the following issues:

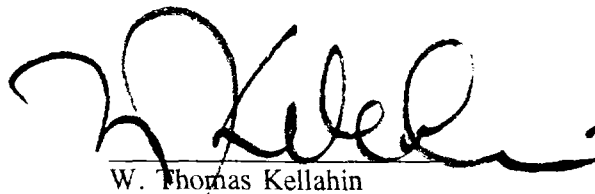
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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was hand delivered to counsel for William F. Carr, Esq. attorney for David H. Arrington Oil & Gas Inc. this 17th day of July, 2001.



W. Thomas Kellahin