

CAMPBELL & BLACK, P.A.

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TELEPHONE: (505) 988-4421  
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August 20, 1991

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AUG 20 1991

OIL CONSERVATION DIVISION

William J. LeMay, Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
State Land Office Building  
Santa Fe, New Mexico 87503

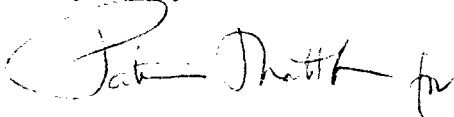
Re: Oil Conservation Commission Case No. 10251:  
In the Matter of the Application of Kaiser-Francis Oil Company for a Pool  
Creation, Eddy County, New Mexico

Dear Mr. LeMay:

Kaiser-Francis Oil Company respectfully requests that this matter which is currently set on the Commission docket for the August 29, 1991 hearings be continued to the Commission's September docket.

Your attention to this matter is appreciated.

Very truly yours,



WILLIAM F. CARR

WFC:mlh

cc: Mr. Jim Wakefield  
W. Thomas Kellahin, Esq.

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July 17, 1991

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OIL CONSERVATION DIVISION

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New Mexico Department of Energy,  
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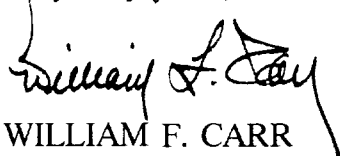
Re: Oil Conservation Commission Case No. 10251:  
In the Matter of the Application of Kaiser-Francis Oil Company for a Pool  
Creation, Eddy County, New Mexico

Dear Mr. LeMay:

Kaiser-Francis Oil Company respectfully requests that this matter which is currently set on the Commission docket for the July 18, 1991 hearings be continued to the next available Commission docket.

Your attention to this matter is appreciated.

Very truly yours,

  
WILLIAM F. CARR

WFC:mlh

cc: Mr. Jim Wakefield  
W. Thomas Kellahin, Esq.

**RECEIVED**

MAY 14 1991

OIL CONSERVATION DIV.  
SANTA FE

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:

NOMENCLATURE  
CASE NO. 10251 (DeNovo)  
ORDER NO. R-9476

APPLICATION OF KAISER-FRANCIS  
OIL COMPANY FOR POOL CREATION,  
EDDY COUNTY, NEW MEXICO.

MOTION TO QUASH SUBPOENA DUCES TECUM

CHI ENERGY INC., by and through its attorneys,  
Kellahin, Kellahin & Aubrey, moves the Commission to  
Quash the Subpoena Duces Tecum issued by the Director of  
the Oil Conservation Division on May 10, 1991, which  
subpoena commands Chi Energy Inc. to appear before a  
Hearing Examiner of the Oil Conservation Division on May  
16, 1991 and to produce those documents set forth in the  
Subpoena Duces Tecum.

As grounds therefor, Chi Energy Inc states:

BACKGROUND:

1. The subpoena power of the Commission and of the Division are set forth in Section 70-2-8 N.M.S.A. 1978, and incorporated into Division Rules 1211 and 1212.

2. On February 21, 1991, Division Examiner Catanach heard the Kaiser-Francis Oil Company application for a new Brushy Canyon-Delaware Gas Pool adjacent to an area being developed by Chi Energy's Delaware oil wells.

3. On March 26, 1991, the Division entered Order R-9476 denying the Kaiser-Francis Oil Company application based upon Chi Energy's data concerning its OXY State Well No. 1 and its Wiser State Well No. 1, located, respectively, in Units K and F of Section 9.

4. On April 11, 1991, Kaiser-Francis Oil Company filed an application for a Hearing DeNovo before the Commission which was set for hearing on May 9, 1991.

5. On May 9, 1991, at the Commission hearing, Kaiser-Francis Oil Company unilaterally continued its hearing.

6. On May 10, 1991, at the request of Kaiser-Francis Oil Company, Mr. William J. LeMay, as Director of the Division and not as Chairman of the Commission, issued the subject Subpoena.

OBJECTIONS:

1. The subpoena was improperly issued. As a result of Kaiser-Francis Oil Company's DeNovo application, jurisdiction of this case is with the Commission and not the Division. This subpoena was issued by the Division and not the Commission and accordingly is invalid.

2. The subpoena improperly requires production at an Examiner hearing scheduled for May 16, 1991. This case is pending a DeNovo hearing before the Commission and there is no proceeding taking place before the Division on May 16, 1991 involving this case. The subject subpoena improperly requires production before a Division Examiner when it should have required production at the next available Commission hearing of this case.

3. The subject subpoena fails to comply with the Commission decision entered in Case 10211, copy attached. Kaiser-Francis Oil Company seeks a "shopping expedition" through the files of Chi Energy Inc. on all of its wells in Section 9. Accordingly, the Subpoena is too broad and beyond the scope of the discovery guidelines established by the Commission.

4. Kaiser-Francis has failed to show justification for the issuance of the subpoena. Kaiser-Francis has

failed to show that the information sought cannot be obtained from OCD records or data generally available to the industry. All of the data which would be responsive to the Subpoena has been sent to the OCD as required by Division rules. That data is available to Kaiser-Francis from the OCD without requiring Chi Energy Inc. to expend its time, effort and money doing Kaiser-Francis' research for them.

5. Any data sought that has not been released to the OCD, constitutes trade secrets, confidential information and data proprietary to Chi Energy, Inc.

6. Kaiser-Francis Oil Company's use of a subpoena in this case will require disclosure by Chi Energy Inc. of confidential data to its offsetting competitor, Kaiser-Francis Oil Company.

7. A confidentiality order by the Commission will not protect Chi Energy Inc. from disclosure of data that can be used by Kaiser-Francis Oil Company for its own purposes in competing with Chi Energy Inc.

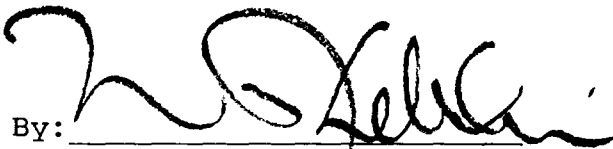
8. Kaiser-Francis Oil Company waived its opportunity to have Chi Energy Inc. release the subpoenaed data to Kaiser-Francis Oil Company when Kaiser-Francis Oil Company failed to obtain this information from the Chi Energy Inc. witness when he

testified at the Examiner hearing held on February 21, 1991.

WHEREFORE, Chi Energy Inc. requests that the Commission quash the Division's Subpoena Duces Tecum.

Respectfully submitted,

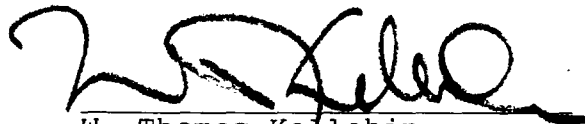
KELLAHIN, KELLAHIN & AUBREY

By: 

W. Thomas Kellahin  
Post Office Box 2265  
Santa Fe, New Mexico 87504  
(505) 982-4285

CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the foregoing Motion was hand-delivered to William F. Carr, Esq, Attorney for Kaiser-Francis Oil Company at 110 North Guadalupe, Santa Fe, New Mexico and to Robert G. Stovall, Esq, Division Attorney, State Land Office, Santa Fe, New Mexico on this 14 day of May, 1991.

  
W. Thomas Kellahin

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

Case 10211

APPLICATION OF SANTA FE ENERGY OPERATING  
PARTNERS, L. P., FOR COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO, BEING HEARD BY THE  
COMMISSION AS AN INTERLOCUTORY APPEAL FROM AN  
ORDER OF THE EXAMINER SUSTAINING CERTAIN PORTIONS  
OF A SUBPOENA DUCES TECUM.

RULING OF THE COMMISSION

BY THE COMMISSION:

This matter came before the Oil Conservation Commission of New Mexico hereinafter referred to as the "Commission" at 9:00 a.m. on January 17, 1991, at Santa Fe, New Mexico.

NOW, on this 15th day of February, 1991, the Commission, a quorum being present, having considered the argument of counsel and being fully advised in the premises,

FINDS THAT:

(1) The Commission has jurisdiction of this cause and the subject matter thereof, and no additional notice is required for this interlocutory-type hearing.

(2) Santa Fe Energy Operating Partners, L.P. ("Santa Fe") filed an application with the Division seeking to compulsory pool mineral interests, including those of Hanley Petroleum, Inc., in the W/2 NW/4 of Section 8, Township 18 South, Range 3 East, NMPM, Lea County, New Mexico; said proration unit to be dedicated to the Kachina "8" Federal No. 2 to be drilled at an orthodox location in a separate proration unit.

(3) On January 3, 1991, at the request of Hanley Petroleum, Inc. and pursuant to Division Rule 1211, the Director signed a Subpoena (attached hereto as Exhibit A) directing Santa Fe to produce certain documents, as identified in the separate paragraphs, relating to information on the Kachina "8" Federal Well No. 1, a tight hole, located in



Case 10211

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the NE/4 NW/4 of Section 8, Township 18 South, Range 33 East, NMPM, Lea County, New Mexico.

(4) On January 9, 1991, Santa Fe Energy Operating Partners, L.P. filed a motion to quash the aforementioned Subpoena.

(5) On January 10, 1991, the Examiner heard argument of Counsel on the Motion to Quash the Subpoena in Case No. 10211 and ruled orally that Hanley was not entitled to receive those items requested in the Subpoena which were the result of Santa Fe's interpretation of data or information which was available from other sources, including Oil Conservation Division records. The Examiner therefore quashed the request for item no. 6 reserve calculations, item no. 7 reservoir studies, item no. 8 economic studies, and item no. 10 geologic interpretations. The Examiner further ruled that Hanley was entitled to receive and the Subpoena should stand with respect to requests for raw data which include item 1 pressure data, item 2 mechanical and mud logs, item 3 gas-oil ratio tests, item 4 specific gravity information, item 5 production information, and item 9 daily drilling and completion reports, as those items relate to the Kachina "8" Federal Well No. 1. The Examiner further ordered that these items be produced and made available to Hanley under an order of confidentiality and that Hanley be prohibited from disclosing this information to any other person.

(6) On January 14, 1991, Santa Fe requested from the Division, that the Commission consider an appeal of the Examiner's decision, reverse the Examiner and quash the Subpoena in toto. All parties involved concurred with the request for an appeal to the Commission to consider the matter.

(7) There are no expiring leases in Section 8 requiring a well to be drilled expeditiously.

(8) The Division recognizes that it has been industry practice to honor and to hold confidential information which a party has acquired by drilling a well and to allow that party spending their money to acquire that information the opportunity to use it for their competitive advantage.

(9) Rule 1212 of the Rules and Regulations of the Oil Conservation Division states that the rules of evidence normally applicable in court proceedings can be relaxed where the ends of justice can be better served, and the Commission has implemented this concept by limiting the discovery principal in its application to very explicit areas involving waste and correlative rights.

(10) Santa Fe argues that because it has offered to make the information requested available to Hanley if Hanley will commit beforehand to either farm-out or to join in the drilling of the well, that it should not

be required to disclose the information prior to Hanley making that commitment.

(11) Hanley was unwilling to commit its interest to the well in any manner without receiving the information from Santa Fe and Santa Fe therefore filed this forced pooling application pursuant to the Oil & Gas Act asking the Division to use the police powers of the State to force a private property interest to be committed to this drilling venture. As a result, Hanley is forced to decide between accepting Santa Fe's farm-out offer, joining in the drilling of the well by paying its proportionate share of costs in advance or being force pooled and allowing Santa Fe to recover out of production Hanley's proportionate share of drilling and completing and equipping the well, plus a risk penalty established by the Division, without having access to information about a direct offset well operated by Santa Fe which information is now available only to Santa Fe.

(12) When a party asks the Division to use the police power of the State to impose a burden upon a private property interest, minimum due process requires a departure from usual industry practice with respect to the disclosure of the information, and Hanley should be allowed access to the raw data information from the offsetting Kachina "8" Federal No. 1 well which is not otherwise available from public sources, but it should not be allowed to compel Santa Fe to produce Santa Fe's interpretations of this data, whether or not those interpretations are based on information from just this well or from all of the available information.

(13) Rule 1105 of the Rules and Regulations of the Oil Conservation Division requires the filing of Form C-105 which includes all special tests conducted on the well (item 1, 3, 4, and 5 of the Subpoena), one copy of all electrical and radio-activity logs run on the well (part of item 2 of the Subpoena), which information becomes of public record immediately, or if so requested by the operator of the well, after being held confidential for 90 days. Daily drilling and completion reports (item 9 of the Subpoena) could be public record if they contain testing information. Rule 1105 further provides that the data may be introduced in public hearing regardless of the request that it be held confidential.

(14) Santa Fe could keep all information on the Kachina "8" Federal No. 1 well confidential for 90 days from completion if it dismisses the pending application and does not seek to involve the police powers of the State to force pool Hanley.

(15) In order to comply with minimum due process requirements implicated by State action and to protect the correlative rights of Hanley, Santa Fe should be required to provide sufficient information for Hanley to make an informed decision as to which of the alternatives set forth above it elects to follow by having access to data which normally

Case 10211  
Page 4

accompanies Form C-105 but none of the interpretative information from the Kachina "8" Federal No. 1 well which is in the possession of Santa Fe and not normally a part of the public record. The information should be disclosed only to Hanley and subject to prohibition against Hanley revealing that information to any other person, provided however, that such data may be introduced at the hearing and become part of the public hearing record.

(16) The disclosure of information required by this order should only be available to parties to a case where property rights are immediately and directly affected by the imposition of police power on those rights.

IT IS THEREFORE ORDERED THAT:

(1) The order of the Examiner quashing the Subpoena with respect to items 6, 7, 8 and 10 is hereby upheld and the Subpoena is hereby quashed with respect to those items.

(2) The order of the Examiner holding the Subpoena and requiring the documents identified in paragraph (1), (3), (4) and (5) is upheld in its entirety.

(3) The order of the Examiner requiring the production with respect to items no. 2 and no. 9 is modified and Santa Fe must produce these documents requested in those paragraphs as follows:

(a) mechanical logs (all electrical and radio-activity logs); and

(b) any testing information contained in daily drilling and completion reports from inception to the latest available data.

(4) Santa Fe is hereby directed and required to produce to the Division within ten days from the date of this order for the use of Hanley Petroleum those documents identified in ordering paragraphs (2) and (3).

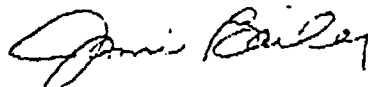
(5) This production and discovery shall be for the exclusive use of Hanley Petroleum, Inc. and Hanley shall not reveal any information produced in accordance with this order to any other person for any reason so long as such information is confidential pursuant to the Rules and Regulations of the Division.

Case 10211

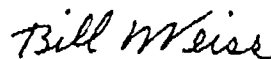
Page 5

(6) Done at Santa Fe, New Mexico, on the day and year hereinabove designated.

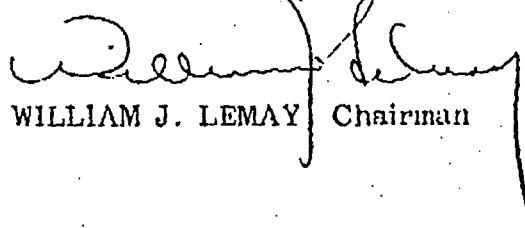
STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION



JAMI BAILEY, Member



WILLIAM W. WEISS, Member



WILLIAM J. LEMAY, Chairman

SEAL

dr/

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

IN THE MATTER OF THE APPLICATION  
OF KAISER-FRANCIS OIL COMPANY  
FOR POOL CREATION,  
EDDY COUNTY, NEW MEXICO.

CASE NO. 10251

**SUBPOENA DUCES TECUM**

TO: Chi Energy Inc.  
c/o W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
117 North Guadalupe Street  
Santa Fe, New Mexico 87501

RECEIVED

MAY 16 1991  
OIL CONSERVATION DIVISION

Pursuant to the power invested in this Division, you are commanded to appear and produce at 8:15 a.m., May 16, 1991 to the offices of the Oil Conservation Division, State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501 and make available for copying all the following documents under the possession or control of Chi Energy Inc., for the OXY State Well No. 1 located in Unit K and the Wiser State Well No. 1 located in Unit F and any other wells drilled on, operated, or currently being drilled in Section 9, Township 21 South, Range 26 East, N.M.P.M., in the East Cat Claw Draw-Delaware Pool.

Produce the following data:

1. All electric logs and porosity logs.

2. All production data including, but not limited to, all well check records, including gauge sheets and gas charts which show actual production of oil, gas and water of each well per day and per month.

3. Descriptions of and all test data from any and all tests on any and all zones in each well, including all gas-oil ratio tests. Identify the zone opened and tested in each instance.

### INSTRUCTIONS

This Subpoena Duces Tecum seeks all information available to you or in your possession, custody or control from any source, wherever situated, including but not limited to, information from any file, record, document, employees, former employees counsel and former counsel. It is directed to each person to whom such information is a matter of personal knowledge.

When used herein, "you" or "your" refers to the person or entity to whom this Subpoena Duces Tecum is addressed to include all of his or its attorneys, officers, agents, employees, directors or representatives, officials, departments, divisions, sub-divisions, subsidiaries, or predecessors.

### NEW MEXICO OIL CONSERVATION DIVISION

By: \_\_\_\_\_

William J. LeMay  
Director

ISSUED this 10<sup>th</sup> day of May, 1991 at Santa Fe, New Mexico.

CAMPBELL & BLACK, P.A.  
LAWYERS

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May 3, 1991

HAND-DELIVERED

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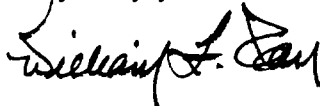
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