

**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.

(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-1 1700-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.CNMAC.

(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.

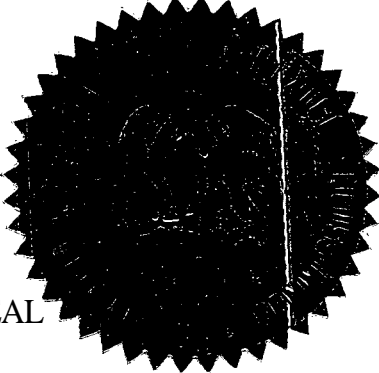
(3) The joint motion of Kaiser-Francis Oil Company and Samson Resources Company for an order limiting drilling operations is granted as to the request to prohibit production from the KF "4" State Well No. 1 prior to issuance of an approved unit; the remainder of the joint motion is denied.

(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