

BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA

**FILED**  
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COURT CLERK'S OFFICE — OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICANT: CHESAPEAKE OPERATING, )  
INC. AND CHESAPEAKE )  
EXPLORATION, L.L.C. )

RELIEF SOUGHT: POOLING )

CAUSE CD NO.  
201003524

LEGAL DESCRIPTION: SECTION 16, TOWNSHIP 3 )  
NORTH, RANGE 16 EAST OF )  
THE I.M., PITTSBURG )  
COUNTY, OKLAHOMA )

APPLICANT: CHESAPEAKE OPERATING, )  
INC. AND CHESAPEAKE )  
EXPLORATION, L.L.C. )

RELIEF SOUGHT: POOLING )

CAUSE CD NO.  
201003846

LEGAL DESCRIPTION: SECTION 15, TOWNSHIP 3 )  
NORTH, RANGE 16 EAST OF )  
THE I.M., PITTSBURG )  
COUNTY, OKLAHOMA )

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON  
AN ORAL APPEAL OF MOTIONS TO SET ASIDE OR VACATE  
AND MODIFY ORDERS 579451 AND 579466**

These Motions came on for hearing before **Michael L. Decker**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 26<sup>th</sup> day of October, 2010, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for purpose of taking testimony and reporting to the Commission.

**APPEARANCES:** **Gregory L. Mahaffey**, attorney, appeared on behalf of Movant, Highland Oil & Gas, L.L.C. ("Highland"); **Richard K. Books**, attorney, appeared on behalf of applicants, Chesapeake Operating, Inc. and Chesapeake Exploration, L.L.C. ("Chesapeake"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his written report on the Motions on the 4<sup>th</sup> day of November, 2010, to which Oral Exceptions were timely lodged and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 24<sup>th</sup> day of November, 2010. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

### **STATEMENT OF THE CASE**

1) Chesapeake forced pooled Sections 15 and 16, T3N, R16E of the I.M., Pittsburg County, Oklahoma pursuant to unprotested hearings before an ALJ on October 4, 2010, and by the terms of Orders No. 579451 and No. 579466, issued October 12 and October 13, 2010, respectively. Highland was listed as a Respondent in each application. Gregory L. Mahaffey, attorney, had an appearance entered in each unprotested cause on behalf of Highland.

2) On October 21, 2010, Highland filed Motions to Set Aside and Vacate and Modify Orders No. 579451 and No. 579466 pursuant to OCC-OAC 165 :5-17-1. Both Motions were filed within 10 days of the orders.

3) On October 26, 2010, Highland presented the testimony of its petroleum land manager, Mr. Larry Coshow, to support the Motions to Set Aside and Vacate and Modify the orders. Highland contended that a letter agreement (Exhibit C) entered between Chesapeake and Highland, which was intended to supplement the terms of the pooling orders, referred to Highland's right to receive the "highest royalty farmout terms provided for in the Pooling Order." The orders, however, failed to contain farmout provisions providing for no cash and 1/4 royalty.

4) Highland contended the evidence adduced at the unprotested hearings failed to fully explain the circumstances regarding one farmout transaction in Section 9, T3N, R16E of the I.M., Pittsburg County, Oklahoma, which occurred in August 2010. This transaction involved the acquisition of ten acres of mineral rights for terms of no cash and 1/4 royalty. Since the transaction had occurred within one year of the filing of forced pooling applications in Sections 15 and 16, T3N, R16E of the I.M., Pittsburg County, Oklahoma, Highland's witness considered it relevant to the determination of fair market value in the

offset sections to Section 9. Although Chesapeake's petroleum land management witness had discussed the farmout transaction in testimony of the unprotested hearing for Section 16 (CD 201003524), there had been no testimony about the transaction in the unprotested hearing for Section 15 (CD 201003846).

5) Through cross-examination, Chesapeake offered the proposal letters (Exhibits D and E), which had been sent to Respondents with respect to the forced pooling applications for Sections 15 and 16, T3N, R16E of the I.M., Pittsburg County, Oklahoma. These proposal letters listed options of (1) a bonus of \$350 an acre with an 87.50% NRI; or (2) a bonus of \$250 an acre with an 81.25% NRI. The options would be paid as compensation in lieu of an election to participate in the proposed wells. Highland had received timely notice of the forced pooling applications. In response to the applications, Mr. Coshow negotiated with Chesapeake regarding the terms of the forced pooling orders and the supplemental letter agreement of October 6, 2010 resulted. A primary focus of the negotiations had been Highland's effort to ensure terms in the forced pooling orders according to the letter agreement. Highland also wanted the option to assume operations in each spacing unit if Chesapeake failed to commence wells within a certain time period.

6) Mr. Coshow had not been present for the unprotested hearings, but had reviewed the audio recordings and was aware that the Chesapeake witness discussed the Section 9 farmout transaction in the testimony for Section 16 (CD 201003524) and distinguished its relevance to determination of fair market value for Sections 15 and 16. Although no testimony occurred about the Section 9 farmout in the unprotested hearing for Section 15 (CD 201003846), the same ALJ had conducted the hearings back to back on October 4, 2010. Mr. Coshow admitted there were other farmout transactions involving no cash and 1/4 royalty provisions in the vicinity of Sections 15 and 16, but none had occurred within one year of the filing of the instant applications. Most of the farmout transactions providing for no cash and 1/4 royalty had occurred two or three years in the past.

7) The letter agreement of October 6, 2010 demonstrated the farmout term of no cash and 1/4 royalty had been contemplated by the parties to provide a farmout option to Highland; however, the forced pooling orders failed to include such terms. Highland owned substantial acreage in Sections 15 and 16 with an 80% NRI. Without farmout terms of no cash and 1/4 royalty in the orders, Highland could not elect compensation in the form of the "highest royalty farmout terms provided for in the Pooling Orders," if it elected to not participate in the subject wells.

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

1) **ALJ Michael Decker** reported that the Motions should be granted insofar as the causes should be reheard by the initial ALJ so that evidence regarding the letter agreement of October 6, 2010 and its relevance to the inclusion of farmout terms offering no cash and 1/4 royalty can be considered with respect to Order Nos. 579451 and 579466. Likewise, the causes should be reheard, so the initial ALJ can consider the terms of the proposal letters and Highland's actions in context of the instant proceedings; and determine as the trier of fact, whether Highland waived its right to request inclusion of the farmout term in Order Nos. 579451 and 579466. The ALJ found that the initial ALJ should have the opportunity to: (A) learn more about the Section 9 transaction; (B) learn more about why it is not relevant to fair market value in Sections 15 and 16; and (C) learn more about why the ancillary letter agreement of October 6, 2010, demonstrated the clear intention of the parties to include a farmout term in the pooling orders; while, at the same time, Chesapeake failed to include such terms in Orders No. 579451 and 579466.

2) ALJ Decker found that OCC-OAC 165:5-17-1 provides:

**(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order.** However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state

(1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.

(2) The specific modifications or other relief sought by the motion.

(3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. A copy of the motion, including notice of the date set for hearing, shall be

served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents listed on the affidavit of mailing and all parties of record. (Emphasis added.)

3) Pursuant to OCC-OAC 165 :5-17-1(a), ALJ Decker recommended that the Motions be granted in the form of an order requiring the rehearing of CD 201003846 and CD 201003524 before the initial ALJ who opened the proceedings on October 4, 2010.

4) Pursuant to the Motions, ALJ Decker examined the letter agreement marked Exhibit C and listened to the audio recordings of the initial hearings in CD 201003646 and 201003524 conducted by the initial ALJ on October 4, 2010. It is apparent that the letter agreement contemplated that a farmout term would be available under the provisions of the pooling orders, since at several places the agreement refers to Highland's right to receive the "highest royalty farmout terms provided for in the Pooling Orders ."

5) The initial hearing testimony of Chesapeake's land management witness discussed the no cash and 1/4 transaction that occurred in Section 9, T3N, R16E of the I.M. Pittsburg County, Oklahoma, during testimony in the Section 16 hearing in CD 201003524. The witness related that 10 acres was involved in the transaction and that it occurred in August 2010, but provided no details except that it should not be considered fair market value in Section 16. Also, comment was made that another ALJ had determined the transaction was not relevant to establish fair market value in Section 9 when that unit was forced pooled prior to the October 4th hearings.

6) Further, the audio recording from the October 4, 2010 unprotested hearings, demonstrates that the initial ALJ who conducted the October 4th hearings asked no questions about the fair market value issue in either hearing, even in light of the land witness' comment about the no cash and 1/4 royalty transaction in the context of the CD 201003524 hearing.

7) In light of the terms of the October 6, 2010 letter agreement, which clearly indicated the intention of the parties to include a farmout term in the provisions of the pooling orders, it was the recommendation of ALJ Decker that the motions for rehearing be granted . The initial ALJ should be provided the information about the terms of the October 6th letter agreement as well as more detail about the 10 acre no cash and 1/4 royalty transaction in Section 9 that occurred in August 2010, so that a more complete determination about fair market values for Sections 15 and 16 can be made.

8) The proposal letters for Section 15 and 16, T3N, R16E, Pittsburg County, Oklahoma did not list the no cash and 1/4 royalty farmout option, but neither letter was admitted as an exhibit before the initial ALJ. Chesapeake contended the proposal letters are dispositive of the issue since Highland knew about the omission of the farmout term but did not attend the initial hearings. If Highland waived its right to complain about omission of the farmout terms from the orders, such would be a question of fact to be determined by the initial ALJ. The initial ALJ had neither the proposal letters nor information about the impending letter agreement before him. The causes should be reheard by the initial ALJ, so that Exhibits C, D , and E can be considered, and the issues in dispute can be determined by the trier of fact.

9) It was the recommendation of ALJ Decker therefore that the initial ALJ should have the opportunity: (1) to learn more about the Section 9 transaction; (2) to learn more about why it is not relevant concerning fair market value in Sections 15 and 16; and (3) to learn more about why the ancillary letter agreement of October 6, 2010 demonstrated the clear intention of the parties to include a farmout term in the pooling orders; while, at the same time, Chesapeake failed to include such terms in Orders No. 579451 and No. 579466.

## POSITIONS OF THE PARTIES

### CHESAPEAKE

1) **Richard K. Books**, attorney, appearing on behalf of Chesapeake, stated the issues here concern two separate pooling orders covering Sections 16 and 15 respectively. Chesapeake does not believe either pooling order should be vacated, rather examined separately on appeal.

2) Chesapeake notes Highland's hired counsel entered Highland's appearance in the unprotested causes yet declined to appear at the hearing on October 4, 2010. Chesapeake notes on October 1<sup>st</sup>, prior to the unprotested merit hearing, the parties negotiated via telephone. The parties two days after the unprotested hearing on October 6th entered the letter agreement Exhibit C concerning delayed elections, delayed payments, casing point elections, pooled acreage, well data, subsequent well operations and change of operator provision.

3) Chesapeake asserts Highland had the opportunity to negotiate prior to the hearings yet Highland opted not to attend and then attempted negotiations after the record had been closed. Chesapeake believes that Highland should not be allowed to attack these pooling orders. Chesapeake asserts that

Highland never stated they wished to have no cash and a ¼ royalty in their pre or after-hearing discussions or agreements.

4) Chesapeake points out the letter agreement (see Exhibit C) was dated October 6<sup>th</sup>, two days after the merit hearing. Chesapeake does not believe a contract after the merit hearing has closed can be retroactively applied to allow Highland to bootstrap themselves into extra hearings.

5) Chesapeake noted that Exhibit C referenced the highest royalty farmout term to be provided in the pooling orders to issue. Chesapeake concurs that Exhibit C is a multi-page agreement that neglects to cover the real issues in these causes. Chesapeake believes the draft of Exhibit C after the merit hearing's record had closed is an invalid reason to vacate the above pooling orders.

6) Chesapeake notes that pooling Order No. 579466 reflects Section 16 (CD 201003524) and Order No. 579451 reflects Section 15 (CD 201003846). In Section 15 Chesapeake's witness was clear that the cash bonus was not mentioned by Highland. Chesapeake disagrees there should be a no cash type transaction here. Chesapeake believes that the inclusion of a cash bonus was not specified by Highland in its after-hearing negotiations.

7) Chesapeake points out that proper notice of oil and gas hearings is vital so all affected parties have an opportunity to have their comments heard. Chesapeake finds the notice was proper to Highland. Chesapeake notes that Highland is a sophisticated oil and gas company who for their own reasons did not attend the merit hearings covering Sections 15 and 16. Chesapeake believes that a party, sophisticated or not, has the right to be apprised of the merit hearing possibly affecting their interests.

8) Chesapeake agrees that the Commission is correct that proper notice must be enforced so people can protest accordingly to their interests. Chesapeake believes that parties have the right to proper notice of hearing that may affect their mineral or property rights. Chesapeake points out that Highland had proper notice of the unprotested hearings yet Highland chose not to appear at the hearings on October 4<sup>th</sup>.

9) Chesapeake's initial proposal letter in July 2010 showed alternatives of \$350 and 1/8<sup>th</sup> royalty and \$250 and 3/16<sup>th</sup> royalty. Chesapeake believes that the Section 16 pooling had proper notice yet Highland chose not to appear at the hearing. Chesapeake notes prior to the Section 16 hearing there had been much discussion on the issues between the parties.

10) Chesapeake submits the Commission must make certain that notice is good with all parties having full opportunity to make their objections known at the merit hearing prior to granting a motion to set aside or vacate and modify pooling orders. Chesapeake would agree that where a party has

inadequate notice of a hearing that affects their interest that possibly vacating an order might be warranted. Chesapeake believes here that Highland had adequate notice and does not deserve a second chance to attack approved Commission pooling orders.

11) Chesapeake notes the Section 16 hearing discussed the Section 9 farmout transaction. Following that hearing, the Section 15 case was heard and for reasons unknown, neither Chesapeake nor the ALJ brought up this farmout transaction.

12) Chesapeake notes the ALJ was cognizant of the Section 9 farmout in the Section 15 hearing due to the previous Section 16 case being heard. Chesapeake believes there is a distinction between the two causes heard consecutively on the merits. Chesapeake notes the previously mentioned Section 9 farmout was not raised in the Section 15 hearing. Chesapeake is aware that Highland wishes the Section 9 farmout to be included in these issued pooling orders.

13) Chesapeake notes the ALJ presiding over the Section 16 pooling hearing found the transaction to be not fair market value, thus, the issue was dealt with by the Court, contrary to what Highland believes. Chesapeake does not find it odd that the ALJ, if he had heard the repetitive information about the Section 9 farmout in the Section 15 hearing, would have decided the case any differently. Chesapeake observes while there is a factual difference between the Section 15 and Section 16 pooling hearings, Chesapeake feels the result would have been the same outcome.

14) Chesapeake notes the Section 9 offsetting farmout transaction related to Section 16 pooling was fully investigated by the Court. Chesapeake notes this particular transaction had been discounted in an early pooling cause not presently before this Court. Chesapeake believes Highland filed this motion in an attempt to relitigate this issue which Chesapeake finds to be improper.

15) Chesapeake disagrees with the ALJ that the causes should be reopened to consider if the letter contract agreement meets the definition of a waiver. Chesapeake believes that Highland's absence foregoes their chance to be heard. Chesapeake requests the ALJ be reversed and the Section 15 pooling Order No. 579451 and Section 16 pooling Order No. 579466 be granted.

### **HIGHLAND**

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Highland, stated the Commission must be cognizant of the facts involved here in order to

protect the sanctity of the pooling orders. Highland does not think the Chesapeake witness clearly explained the 1/4<sup>th</sup> royalty transactions in the Section 15 pooling hearing.

2) Highland agrees with ALJ Decker that the Section 16 pooling was not fully litigated, contrary to Chesapeake's belief. Highland notes the initial ALJ failed to ask any questions regarding any of the recent or past royalty transactions. Highland notes Chesapeake left out transactions that were over one year ago in age.

3) Highland observes Section 9 is diagonal to Section 15, i.e. sitting on top of Section 16. Highland notes Section 9 is also contiguous to both Sections 15 and 16.

4) Highland notes in the offset unit there were 10 acres taken at no cash and a 1/4<sup>th</sup> five weeks prior to the July 2010 proposal letters. Highland notes Chesapeake did not mention this 10 acre transaction. Highland notes Chesapeake only presented what was shown in the July 2010 proposal letters (see Exhibits D and E).

5) Highland is uncertain if the initial ALJ was aware that the offset Section 9 unit was related to both Sections 15 and 16 pooling hearings. Highland notes ALJ Decker observed that there was no details as to why the initial ALJ did not consider the Section 9 farmout. Highland notes the initial ALJ had no questions of the witness. Highland notes ALJ Decker felt the initial ALJ needed more data to properly determine fair market value in Sections 15 and 16.

6) Highland notes that Exhibit C was started prior to the hearings and negotiations not totally finalized until after the record was closed. Highland notes the clear language of Exhibit C would lead to an understanding that no cash and a quarter should be included in the pooling orders. Highland believes ALJ Decker saw through the Exhibit C. Highland notes the transaction predates the proposal letters in both Section 15 and Section 16.

7) Highland notes there was no attempt by Chesapeake to explain why the Section 9 farmout was not discussed in the Section 15 hearing. Highland notes that the Chesapeake witness believed there were possible 1/5<sup>th</sup> leases in surrounding Sections 14 and 11, as well as in Sections 15 and 16. Highland notes one transaction was over a year ago at \$650 and 1/5<sup>th</sup>.

8) Highland believes by reopening the causes here it will protect the parties' interests even if the initial ALJ's decision remains the same. Highland does not believe Chesapeake can pick and choose which section transactions to discuss when determining fair market value.

9) Highland is not here to bootstrap in, as Chesapeake alleges. Highland, in hindsight, admits it should have been more prepared. Highland notes if the Chesapeake witness had laid all the nearby transactions on the table for all to view the initial ALJ would have had better data in which to form a proper decision and this hearing today would not have been necessary.

10) Highland believes the Commission orders need to be on fair and reasonable terms per fair market value. Highland does not think it is proper for a party to selectively pick at random the transactions needed to confirm fair market value options. Highland believes the proper method is to give the initial ALJ the transaction data. Highland further notes that some of these transactions are multi-units and may not be fair market value.

11) Highland believes ALJ Decker did not abuse his discretion here, rather believing the Court should learn more about the Section 9 transactions. Highland finds this data is relevant to Section 15 and 16's fair market value. Highland wonders why the farmout terms were not included in the pooling orders that issued.

12) Highland notes there is no evidence that Chesapeake has any pressing drilling plans or proof of financial loss that would prevent a reopening to confirm the fair market value of Sections 15 and 16. Highland requests the Court to affirm the ruling of ALJ Decker.

### **RESPONSE OF CHESAPEAKE**

1) Chesapeake chooses to focus on Section 16 here. Chesapeake notes Highland needs to know why the Section 9 farmout transaction was not considered to be fair market value by the initial ALJ.

2) Chesapeake believes Highland received proper notice yet believed the ALJ made a poor decision. Chesapeake finds Highland wants a new trial due to Highland's lack of attendance at the hearing. Chesapeake submits the Court should not buy into this as a reason to disallow the Section 16 pooling order.

3) Chesapeake believes the purpose of proper notice is to apprise parties of possible affected interests. Chesapeake disagrees that a party can disagree with the initial ALJ's ruling because the party opted to not attend the hearing and instead requested a reopening to ask questions that should have been asked at the merit hearing.

4) Chesapeake observes there was a discussion had about the Section 9 farmout transaction, albeit, not a full discussion in the Section 16 hearing. Chesapeake notes it was brought to the attention of the initial ALJ.

Chesapeake notes the Commission discussed fully the only transaction within the nine unit area of Section 16 for the past 12 months. Chesapeake would agree that a fuller discussion should probably have been had by the Court and the parties, yet this was not done. Chesapeake does not know the reason why the ALJ declined to ask any questions about the Section 9 farmout in the Section 15 hearing.

5) Chesapeake notes that the ALJ heard the cases separately, Section 16 first, followed by Section 15. Chesapeake notes that ALJ Decker merged the two hearings together unlike the initial ALJ at the merit hearing.

6) Chesapeake believes the Section 16 pooling is proper under the circumstances. Chesapeake notes the Commission had jurisdiction to issue the two pooling orders; that proper notice was given to all parties; and that Highland opted not to attend the hearings. Chesapeake requests the Court view the pooling orders as separate cases and consider the facts in each in its final determination on appeal.

7) Chesapeake agrees with Highland that the sanctity of a pooling order should be upheld, particularly with regard to Section 16 which Chesapeake believes was fully litigated. Chesapeake finds the sanctity of pooling orders should be protected on both ends. Chesapeake does not believe a party apprised with full notice of a hearing should be able to come back and request a reopening due to their dislike of the ALJ's decision, or due to the party not attending the hearing to make their objections timely known.

8) Chesapeake believes the fact situation of the two pooling orders are different and requests the Court look at them separately as opposed to being heard together.

## **CONCLUSIONS**

**The Referee finds the Oral Report of the Administrative Law Judge should be affirmed.**

1) The Referee finds ALJ Decker's recommendations to grant the Motions to Reopen to take further evidence are supported by the facts and circumstances adduced before the ALJ and free of any abuse of discretion on the part of the ALJ. The ALJ heard the motion as an experienced jurist and has considered the arguments and facts presented. The Referee, upon review, can find no reason to vary that determination. The Referee notes that the granting of a Motion to Reopen is discretionary on the part of the Commission.

2) The Referee notes ALJ Decker relies upon OCC-OAC Rule 165:5-17-1(a) which provides:

Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order...

3) Pursuant to the motions, ALJ Decker examined the letter agreement marked Exhibit C and listened to the audio recordings of the initial hearings in CD 20103846 and 201003524 conducted by the initial ALJ on October 4, 2010. It is clear and apparent that the letter agreement, Exhibit C, contemplated that a farmout term would be available under the provisions of pooling Order No. 579466 and pooling Order No. 579451, since at several places in the letter agreement, Exhibit C, it refers to Highland's right to receive the "highest royalty farmout term provided for in the Pooling Order."

4) As ALJ Decker reflects, the testimony of Chesapeake's land management witness during his testimony in the Section 16 hearing in CD 201003524 discussed the no cash and 1/4<sup>th</sup> transaction that occurred in Section 9, T3N, R16E, Pittsburg County, Oklahoma. The witness testified that 10 acres was involved in the transaction and that it occurred in August 2010 but provided no details, except that it should not be considered fair market value in Section 16. There was further testimony also that another ALJ had determined the transaction was not relevant to establish fair market value in Section 9 when that unit was forced pooled prior to the October 4<sup>th</sup> hearings. Further, ALJ Decker determined by listening to the audio recordings of the initial hearings in both causes that the initial ALJ asked no questions about the fair market value issue in either hearing.

5) The Referee agrees with ALJ Decker that in light of the terms of the October 6, 2010 letter agreement (Exhibit C) which clearly indicated the intention of the parties to include a farmout term in the provisions of the pooling orders that the motions for reopening of these causes should be granted. Upon the reopening the initial ALJ can be provided with the information about the terms of the October 6<sup>th</sup> letter agreement, Exhibit C, as well as more information and detail about the 10-acre no cash and 1/4<sup>th</sup> royalty transactions in Section 9 that occurred in August 2010.

6) The Referee also agrees with ALJ Decker that the proposal letters for Sections 15 and 16, Exhibits D and E, did not list the no cash and a 1/4<sup>th</sup> royalty farmout option, but neither letter was admitted as an exhibit before the initial ALJ. Chesapeake contends that the proposal letters are dispositive of the issues since Highland knew about the omission of the farmout term but did not attend the initial hearings. Whether Highland had waived its right to complain about the omission of the farmout terms in the initial hearings would

be a question of fact to be determined by the initial ALJ upon reopening the case.

7) It is therefore the recommendation of the Referee that ALJ Decker's recommendation that the initial ALJ reopen the case to consider the motions should be granted. The initial ALJ would then have the opportunity as ALJ Decker states to learn more about the Section 9 transaction; to learn more about why it is not relevant to fair market value in Sections 15 and 16; and to learn more about why the letter agreement of October 6, 2010 demonstrated the clear intention of parties to include a farmout term in the pooling orders, Exhibit C, and why Chesapeake failed to include such terms in Order No. 579451 and No. 579466.

**RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> day of February, 2011.**

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy  
Commissioner Cloud  
Commissioner Anthony  
Jim Hamilton  
ALJ Michael L. Decker/OAP Director  
Gregory L. Mahaffey  
Richard K. Books  
Office of General Counsel  
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