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

IN THE MATTER OF THE APPLICATION OF SDX RESOURCES INC. FOR AN UNORTHODOX WELL LOCATION FOR ITS JALMAT FEDERAL COM WELL NO. 2 LEA COUNTY, NEW MEXICO

CASE 12301

IN THE MATTER OF THE APPLICATION OF SDX RESOURCES INC. FOR AN UNORTHODOX WELL LOCATION FOR ITS E.J. WELLS WELL NO. 25 LEA COUNTY, NEW MEXICO

~~CASE 12302~~

99 DEC 15 PM 2:14 OIL CONSERVATION DIV.

HARTMAN'S RESPONSE TO MOTION TO QUASH SUBPOENA FILED BY SDX RESOURCES

Doyle Hartman ("Hartman"), by his attorneys, the Gallegos Law Firm, P.C., hereby responds to the Motion filed by applicant SDX Resources, Inc. ("SDX") to quash subpoenas issued in these cases at the request of Hartman.

I.

INTRODUCTION

SDX offers several objections to the documents requested by Hartman in connection with a hearing currently scheduled for January 6, 2000 on these applications. The gravaman of SDX's position is that it is not required to produce any documents related to these applications, or other Jalmat Gas Pool infill wells SDX has drilled and developed recently, because SDX has an absolute right to drill as many wells on a gas proration unit ("G.P.U.") in the Jalmat Gas Pool as it pleases; therefore there is no standard and there is nothing at issue before the Division.

SDX has more fully set out its position in this matter in a letter dated December 6, 1999, from its counsel to Lori Wrotenbery, the Director of the Division, copy attached as Exhibit A:

> There is no basis for or means by which Mr. Hartman can object to these wells being "infill wells". Neither the Division rules nor the Jalmat Gas Pool rules provide for objections to "infill wells". In fact, the Division rules do not even require that an operator request "simultaneous dedication" nor require that the Division issue administrative "simultaneous dedication" orders.

SDX contends there are no rules on the subject of infill wells and simultaneous dedication. Why, then, has SDX recently submitted eighteen (18) applications seeking administrative orders authorizing simultaneous dedication of Jalmat Gas Pool infill wells?

In fact, as Hartman will demonstrate, infra, there are rules which limit the number of wells which an operator can place on a G.P.U. in the Jalmat Gas Pool, even though the pool is prorated. The NMOCD has set for hearing these two cases involving SDX applications, and Hartman is entitled, under fundamental notions of administrative due process and fair play, to discover documents which relate not only to these applications, but also the general SDX infill drilling program in the Jalmat Gas Pool, in order to prepare his case for the scheduled hearings. The requested documents are relevant. The fact that SDX would move to quash the entire subpoena, and object to the production of any and all requested documents, demonstrates bad faith on the part of SDX.

Hartman wishes to correct at the outset several misconceptions advanced by SDX in its Motion. First, Hartman does not oppose infill drilling per se in the Jalmat

Gas Pool. He opposes the dense infill drilling program proposed by SDX, downsizing spacing to as few as 40 acres per gas well. He opposes dense infill drilling unsupported by sound technical engineering data. Hartman opposes the procedure trumpeted by SDX, and apparently accepted by the Division, whereby applications for infill wells and simultaneous dedication are rubber stamped though completely devoid of evidence that the additional wells are necessary to efficiently and economically drain the acreage at issue. Hartman contends that the requirements of the New Mexico Oil and Gas Act ("OGA"), NMSA 1978, § 70-2-17 are still on the books and cannot be ignored by either the Division or SDX. Finally, Hartman does not seek a revision of the Jalmat Gas Pool rules. Hartman simply wants the rules as presently codified, including Division Rule 104, applied to SDX and other operators who wish to initiate infill drilling projects in the Jalmat Gas Pool. It is operators such as SDX, who wish to downsize the standard gas proration unit for the Pool, who should be responsible for moving to amend the Pool rules.

II.

STATUTORY LIMITATIONS ON DIVISION AUTHORITY

The Division, as an administrative agency, is a creature of statute, and has only such powers as are granted it by the legislature. Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962). The protection of correlative rights and the prevention of waste is of paramount interest and importance under the OCD. The protection of correlative rights is an integral part of the legislature's charge to the Commission and the Division. Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963). The Division has the authority under Section 70-2-17B to establish a

proration unit for each gas pool. A proration unit is defined by statute as "meaning the area that can be efficiently and economically drained and developed by one well. . . " (Emphasis added.) The statute says one well. The statute does not authorize or permit two wells, or three wells, etc., for a proration unit. The Division is expressly required by statute to consider the economic loss caused by the drilling of unnecessary wells, and the protection of correlative rights, in establishing a proration unit for a gas pool.

The legislature, and constitutional due process considerations, also apply to Division proceedings. The New Mexico Oil and Gas Act provides that before the Division can make any rule, regulation or order, a public hearing shall be held after first giving reasonable notice to any persons having an interest in the subject matter of the hearing and allowing such persons to be heard. NMSA 1978, § 70-2-23 (1995 Repl.) In Udhen v. New Mexico Oil Conservation Commission, 112 N.M. 528, 817 P.2d 721 (1991), the Supreme Court affirmed that an owner of an oil and gas estate was entitled to actual notice of a lessee's application for an increase in well spacing and that failure to give notice deprived the owner of property without due process of law:

> The due process requirements of fairness and reasonable as stated in Mullane are echoed in the case law of this state. Administrative proceedings must conform to fundamental principles of justice and the requirements of the due process of law. A litigant must be given a full opportunity to be heard of all rights related thereto. The essence of justice is largely procedural. Procedural fairness and regularity are of the indispensable essence of liberty.

112 N.M. at 530-31. Similarly, in Johnson v. New Mexico Oil Conservation Commission, 127 N.M. 120, 1999-NMSC-021, the Supreme Court held that the Commission violated its own rules by failing to provide actual notice of a hearing requested by Burlington Resources Oil & Gas Company to change from 640 acres to

160 acres the spacing requirements for deep wildcat wells in certain areas of the state.

The holding in Johnson expressly affirmed the mandate of Section 70-2-23 as follows:

> The language of Section 70-2-23 of the OGA plainly states that, except for emergencies, the requirement of "reasonable notice" applies to hearings regarding "any rule, regulation or order, including revocation, change, renewal or extension thereof."

978 P.2d at 333.

III.

REGULATORY HISTORY OF THE JALMAT GAS POOL

The Jalmat Gas Pool was created in 1954. The Jalmat Gas Pool is prorated. Acreage alone determines the amount of gas which can be produced from a G.P.U. Rules relating to the Pool were recodified and combined in Division Order R-8170, issued in March, 1986, as subsequently amended. Order R-8170 established a standard gas proration unit for the Jalmat Gas Pool of 640 acres.[1] Allowables were set based on a 640 acre proration unit. By Order R-8170-J, the Division established a minimum allowable for a 160 acre G.P.U. in the Jalmat Gas Pool of 600 mcf of gas per day, with 2,400 mcf of gas per day for a standard 640 acre G.P.U.

The fact that the Jalmat Gas Pool is prorated does not mean that there are no limits on the number of wells which an operator can have on a G.P.U. By definition, when the Division established the Jalmat Gas Pool G.P.U. of 640 acres, it determined that 640 acres was the acreage which one Jalmat gas well could effectively and efficiently drain. NMSA 1978, § 70-2-17B. Order R-8170 defined a G.P.U. as "the

[1] For each gas pool, the Division by Order R-8170 established standard proration units, i.e., the acreage to be dedicated to one well, with the language "A standard gas proration unit in the . . . pool shall be [150] [320]]640] acres."

acreage allocated to a well . . . ". This satisfied the legislative mandate in § 70-2-17, and established a limit, absent authorized and supported exceptions, of one gas well per G.P.U. The Jalmat Special Pool rules, as set forth in Rule R-8170, do not authorize the drilling of additional or infill wells on a G.P.U. The Jalmat Special Pool Rules do not authorize more than one well per standard 640-acre G.P.U. The General Rules of Order R-8170 do, however, permit more than one well on 640 acres. That is done by obtaining authorization from the Divisions after notice and hearing, for proration units of less than 640 acres, i.e., non-standard proration units.

SDX cannot cite any specific provision of Order R-8170, or any statute or rule or regulation, for its unsupportable proposition that there are no limits to the number of wells that can be drilled on a G.P.U. in the Jalmat Gas Pool, because no such adopted or promulgated rule exists.[2] The logic of SDX is that when the law or rules say one well per proration unit it really means all the wells you want per proration unit.

The lack of authorization for infill wells in the Jalmat Gas Pool rules is particularly notable because in the same Order R-8170, the Division did authorize the drilling of additional or infill wells in other prorated gas pools. See Special Rules and Regulations for the Blanco-Mesaverde Gas Pool (specifically recognizing the propriety of drilling an infill well in Rule 2(b)(2)). The fact that the Division recognized and authorized infill wells in some prorated gas pools, but not in the Jalmat Gas Pool, clearly indicates that in 1986, when the Division promulgated Order R-8170, additional or infill gas wells in the Jalmat Gas Pool were not expressly authorized by that Order.

[2] Assuming for the sake of argument only that the Jalmat Gas Pool rules do not limit the number of wells per G.P.U., Amended Rule 104.C(3) would provide for 160-acre spacing units for the pool.

While the Jalmat Pool rules do not expressly approve infill wells, the Division has developed procedures to allow for infill well developments in New Mexico Gas Pools. By Order R-6013-A, the Division adopted special rules and regulations for the approval of infill wells on existing G.P.U.s and designation of the wells as new onshore production pursuant to the Natural Gas Policy Act of 1978. The special rules observe fundamental principles of due process in that applicants are required to give notice to offset operators and to make an evidentiary showing on a case-by-case basis of the need of the infill well to efficiently and economically drain the G.P.U.

The Division has never amended Order R-8170 to adopt a different standard G.P.U. for the Jalmat Gas Pool. The standard G.P.U. remains to this day at 640 acres. The reality, however, is that there are few Jalmat wells dedicated to 640 acres. The Division has addressed infill wells by the procedure for forming a non-standard proration unit, described by Rule 104 of the Division Rules and Regulations. Rule 104, which was recently amended by the New Mexico Oil Conservation Commission ("Commission"), authorizes administrative approval of non-standard proration units (less than 640 acres for the Jalmat) where the operator provides a written consent by all offset operators or establishes that offset operators were notified of the application by failed to object within the time provided by rule. In either of these cases, the holding of an unopposed public hearing on the administrative application is unnecessary. The rule provides, however, that if there is an objection from an offset operator, a public hearing is required. If an application for approval of an non-standard proration unit is opposed, an operator is required to present evidence justifying the need for the non-standard G.P.U.

Recently amended Rule 104.D(3) provides that "Exceptions to the provisions of statewide rules or special pool orders concerning the number of wells allowed per spacing unit may be permitted by the Director only after notice and opportunity for hearing." (Emphasis added.)

The Division has also authorized infill wells in gas pools, including the Jalmat Gas Pool, through a policy of "simultaneous dedication" of acreage. There is no provision for "simultaneous dedication" under Order R-8170 or Rule 104. Such authorizations have been handled by the Division procedurally like applications for the formation of non-standard proration units. Prior to 1999, the Division maintained the integrity of its charge under § 70-2-17 with the procedure of simultaneous dedication under two memoranda issued by then-Division Director William LeMay dated July 27, 1988 and August 3, 1990. These Division memoranda interpreted prior Rule 104 regarding the location of wells and additional wells on a G.P.U.:

> Applications for additional wells on existing proration units will be approved only on the understanding that upon completion of the well the operator shall elect which well will be produced and which will be abandoned. Application to produce two wells will be approved only after notice and hearing and upon compelling evidence that the applicant's correlative rights will be impaired unless both wells are produced.

The Division Memoranda also recognized that the drilling of unnecessary wells constitutes waste, and that the Division was obligated to consider that issue in acting on applications for simultaneous dedication. Copies of the Memoranda are attached as Exhibit B.

Hartman has processed numerous applications for infill gas wells in the Eumont and Jalmat Gas Pools. In each case, Hartman gave notice to offset operators.

When no objection was raised to the infill well, or where consents were signed, administrative approvals were issued. However, in each administrative application Hartman prosecuted, whether contested or not, Hartman provided the Division with extensive technical data supporting the need for the additional or infill well. See Hartman's Administrative Application for infill Well and Simultaneous dedication for E.J. Well No. 16, Section 5, T-25-S, R-37-E, copy attached as Exhibit C. In cases where the application was opposed, Hartman appeared at a public hearing before the Division and offered competent, technical evidence to support the application.

IV.

SDX'S UNAUTHORIZED AND WASTEFUL JALMAT GAS INFILL DRILLING PROGRAM

Beginning in 1998, SDX[3] undertook promotion deals with respect to leases in the Jalmat Gas Pool, including the leases at issue in these two cases. SDX Resources does not own any interests in the G.P.U. at issue. Presumably SDX Resources is the operator of the properties though no documentation has been provided to the Division to prove that, so far as Hartman knows.

It appears that ownership is not uniform in several of the non-standard proration units which are the subject of SDX applications, and there is no evidence of a unitization by agreement or pooling order covering these leases. Thus, there is a violation of § 70-2-18. Apparently, SDX has sought to develop Jalmat leases by promoting properties by making them attractive to potential investors on SDX's ability to drill and develop a substantial number of infill gas wells. Eighty percent interests in

[3] "SDX" refers to both SDX Resources, Inc. and SDX Natural Gas Partners, LLC, which is entity which actually owned and later transferred interests in several of the Jalmat leases at issue and the SDX Jalmat infill development program.

portions of the G.P.U.s at issue were sold to St. Anselm 99-A Partners, LLP and William S. Montgomery, Jr. in May 1999.

Hartman has discovered approximately eighteen such administrative applications for infill Jalmat Gas wells which SDX has filed. In some areas, approval of the wells would result in 40-acre spacing. Attached as Exhibit D is the application SDX filed for its EJ Wells Well Fed. No. 25, located in the same section that was the subject of Hartman's administrative application outlined in Exhibit C. The Division should compare the two applications, since both seek simultaneous dedication for an infill Jalmat gas well on the same acreage, with Hartman seeking a second well but SDX a third. Hartman provided the Division with substantial technical data supporting the need for the first infill well, and demonstrated that that well would efficiently drain the non-standard proration unit. SDX, as demonstrated on Exhibit D, submitted no technical data supporting the need for the infill well, and in fact did not even bother to make any representation in the application to the Division that the well was necessary to prevent waste or protect correlative rights. Based on Exhibit C, Order NSL-1823 and the SDX application, there exists at the very least contradictory evidence in the Division's own files on the need for another infill well on this proration unit.

The density of the proposed SDX infill drilling program is egregious. Offsetting Hartman's F.M. Burleson No. 2 well, which has 160 acres dedicated to it in Section 8, T-25-S, R-37-E, SDX has proposed an infill program which would result in 14 Jalmat gas wells on the 640 acres of Section 5, a de facto downsizing to 45 acre spacing for Jalmat gas wells. Offsetting Hartman's Skelly "M" State well on 120 acres in Section 32, T-24-S, R-37-E, SDX has proposed a total of seven Jalmat gas wells on

280 acres in Section 32, T-24-S, R-37-E and Section 5, T-25-S, R-37-E, for a downsizing to 40 acre spacing in this area.

V.

HARTMAN IS ENTITLED TO DISCOVERY IN THIS PROCEEDING

The Division, based on objections by Hartman, has set Cases 12301 and 12302 for hearing. The hearing is currently scheduled for January 6, 2000. These cases specifically involve the following infill Jalmat gas wells SDX has proposed:

Federal Com. Well No. 2

E.J. Wells Well No. 25

SDX requests approval of an unorthodox location and simultaneous dedication for both of these wells, which are proposed for G.P.U.s currently dedicated to existing Jalmat Gas wells.

Administrative proceedings must conform to the fundamental principles of justice and due process requirements. This requires that the administrative process authorize pre-hearing discovery under appropriate circumstances such as exist here. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M 5, 546 P.2d 70 (1975). Discovery procedures are expressly authorized under NMSA 1978 § 70-2-8 (1995 Repl.), which authorizes the Division to subpoena witnesses and to require the production of books, papers, and records in any proceeding before the Commission or the Division. See also Rule 1211 of the Division's Rules and Regulations.

Hartman has attempted to subpoena numerous documents from SDX which relate not only to the specific wells at issue in these applications, but also the SDX Jalmat infill drilling program. A copy of the Amended Exhibit A, which sets out the

requested documents, is attached as Exhibit E, so that the Division can refer to the document itself in determining the insufficiency of the SDX objections.

1. **Well Files on the wells which are subject to the applications set for hearing are clearly discoverable**

SDX has become so enamored of its argument in its Motion to Quash that it fails to state any competent objection to producing the well files for the wells which are at issue in the applications which are set for hearing. Those applications seek approval for unorthodox locations for wells which offset acreage owned by Hartman. The subpoena seeks documents which describe how the well locations were selected, and documents which show SDX's efforts to comply with NMOCD rules and regulations in connection with the wells. SDX contends that there are objective reasons for the unorthodox locations, yet refuses to produce documents which would either confirm or deny that representation. Clearly, Hartman is entitled to documents from the SDX files which support or contradict the publicly stated basis for the request for approval of unorthodox locations for the proposed E.J. Wells Well No. 25 and the Federal Com. Well No. 2.

With respect to the E.J. Wells Well No. 25, SDX contends that Hartman is entitled to no documents, because Hartman cannot object in this proceeding because the well does not encroach toward a lease operated by Hartman. This is a novel and spurious objection. There is no provision in the Division rules and regulations which authorizes only those offset operators toward whom an encroachment extends to object. Instead, the Division rules authorize any offset operator to object. With respect to the Jalmat Federal Com. Well No. 2, SDX baldly contends that Hartman does not need SDX data to prepare for the case. This is incorrect. Hartman is entitled to SDX

documents which will either justify or controvert the representations SDX has made to Hartman in the Division.

2. Engineering and Reserve Data are Relevant in These Cases

The administrative applications filed by SDX in this case seek approval for unorthodox well locations and simultaneous dedication. However, SDX provides no technical or substantive basis upon which the Division can determine whether the authorization of these additional infill Jalmat gas wells will prevent waste and protect correlative rights. In fact, the very drilling of these wells will constitute economic waste in the form of drilling of unnecessary wells. Hartman has requested reservoir, drainage area, deliverability, volumetric and other studies, as well as reservoir projections, corresponding pressure data, geological studies, economic projections and production data which would support the request for unorthodox location and simultaneous dedication for the wells which are subject of these applications. This is information the Division typically looks at in determining whether to authorize simultaneous dedication for infill wells.

The Division cannot grant an application for approval of an infill well and simultaneous dedication, whether in a contested hearing or in an administrative proceeding, without determining that the approval or denial of the request would prevent waste and protect correlative rights. Failure by the Division to undertake such analysis would violate the mandate the Legislature has given the Division under Section 70-2-17.

It is not enough to contend, as both SDX and the Division have, that there is no limit on the number of wells an operator can drill on a G.P.U. in a prorated gas pool. First, as Hartman has established, there is a limitation on the number of wells

absent notice, hearing, and a finding by the Division that additional infill wells are necessary to prevent waste and protects correlative rights. Either Order R-8170 establishes a limit of one gas well per 640 acres, with exceptions as provided subject to notice and hearing, or the provisions of amended Rule 103(C)(3) provide for 160 acre spacing for such wells. In either event, under Section 70-2-23 and Rule 104.D(3), exceptions to the provisions for the number of wells allowed per spacing unit "may be permitted by the Director only after notice and opportunity for hearing" subject to the provisions of Section 70-2-17. If, as SDX implies, the Division simply rubber-stamps applications for infill wells and simultaneous dedication in prorated gas pools, such conduct would clearly violate the Division's mandate in Section 70-2-17.

SDX cannot trumpet a rule such as "there is no limit on the number of wells on a G.P.U. in the Jalmat Gas Pool" without citing to the particular statute, rule or regulation where the alleged rule is set out. Surely, SDX and the Division do not contend that the Division has been operating under unannounced, unarticulated, and unwritten rules concerning the Jalmat Gas Pool. That type of conduct would on its face constitute due process violations, and would be inconsistent with the limitations on the Division's authority under the OGA.

Similarly, it is not enough for SDX to contend that the setting of allowables in a prorated pool absolutely satisfies the Division's mandate to prevent waste and protect correlative rights when an operator in a prorated gas pool subsequently seeks approval for simultaneous dedication for infill wells. The prior setting of an allowable does nothing to allow the Division to determine whether the additional infill well is necessary. It is entirely possible, and true in this particular case, that the allowance of

multiple infill wells on a non-standard proration unit might result in a situation where the operator is still producing gas within the allowable limit, yet draining acreage owned by offset operators by virtue of the sheer number and location of additional wells. The Division need only look at the clusters of wells which SDX has proposed offsetting the F.M. Burleson and Skelly "M" wells to determine that the intent of well placement is, at least in part, to drain acreage owned by Hartman.

It is particularly notable that SDX would object to the production of these documents, since SDX has already apprised Hartman of an alleged "comprehensive evaluation" of the Jalmat drilling project. Attached as Exhibit F is a letter dated November 16, 1999 from SDX to Hartman which alludes to this alleged evaluation. Presumably, it is this evaluation which supports the proposed Jalmat infill drilling project initiated by SDX, including the wells at issue in these applications. It should be produced, along with other documents supporting the infill drilling program, so that all parties can evaluate the project prior to the January hearing. Hartman intends to introduce evidence at these hearings that will confirm that the SDX-proposed wells will drain Hartman's acreage, and that they are economically wasteful.

3. SDX has no valid trade secret objection

SDX objects to the production of all scientific or engineering data on the grounds that that material is a trade secret, but fails to specify the documents to which it contends trade secret protection should apply. SDX fails to specify any particular harm it would suffer from disclosure. Based on SDX's own letter of November 16, it is difficult to imagine that these could be trade secrets that need to be protected from Hartman, particularly where SDX has already admitted that it based its infill drilling program on the

success Hartman has previously had in the Jalmat Gas Pool developing infill wells! SDX has not established that the requested materials are entitled to trade secret protection. See NMRA 1999 1-026(C)(7); In re Remington Arms Co., Inc., 952 F.2d 1029, 1032 (8th Cir. 1991) (party asserting trade secret has burden to establish need for protection and that it will suffer some particular, serious harm from disclosure). SDX can meet neither burden regarding an infill drilling program in the developed Jalmat Gas Pool.

Moreover, if the materials are truly trade secrets, SDX cannot reveal them to the Division without waiving any trade secret protection to which they may be entitled. SDX cannot use parts of the evaluation, or select portions of reserve calculations, engineering data, economic projections etc., without providing them in discovery. If SDX uses all or part of these materials to support the applications, it waives any trade secret protection. If SDX does not use the materials to demonstrate the need for the additional infill wells, it cannot establish that the approval of the proposed infill wells is necessary to prevent waste and protect correlative rights. SDX will not be able to provide the Division with evidence that would allow the Division to grant these applications. These two cases consequently should be dismissed.

4. Hartman is Entitled to Documents Concerning Communications Between SDX and the Division

SDX advances the unsupportable proposition that SDX and its counsel are the final judges of the discoverability of documents involving communications between SDX and the Division on these applications. SDX contends that "The only relevant documents sought by this request are SDX Resources' two administrative applications . . . ". Motion to Quash, p. 12. While SDX concedes the existence of other documents, it makes the conclusory allegation that those other documents are not

relevant and should not be discovered, without providing any log or list of the documents at issue so that Hartman, his counsel, and the Division can make an independent determination as to the relevance of documents concerning other SDX communications with the Division.

The objection by SDX to the production of those documents is absurd. If there is evidence of communications between SDX and the Division regarding these applications, there is no privilege which protects those documents from disclosure. It is entirely possible, in fact probable based on the SDX Motion, that other documents exist in SDX files that reflect communications between SDX and the Division on these applications, but which are not part of the Division's official files. Has SDX made other representations to the Division, or representations inconsistent with those in the applications themselves? If so, that would be clearly relevant. Have the Division and SDX already reached an accord on Jalmat infill drilling? Again, this is evidence that is relevant to the scheduled hearing on these applications, and the requested documents should be produced.

5. <u>Hartman Seeks Documents in SDX Files, and is not Requesting that SDX Search the Public Record to Respond to the Subpoena</u>

SDX throws out a red herring in contending that "Hartman wants data which is currently available to him in the public record . . . ". Motion to Quash, p. 11. What Hartman has subpoenaed, and what Hartman is entitled to, are copies of all relevant documents responsive to the subpoena which are currently maintained in the SDX files. To the extent those documents are in the public record, Hartman is entitled to all SDX copies, in order to determine if the public record accurately reflects or matches the record maintained in the SDX files. Hartman does not by any request ask

that SDX go to public record files and copy those documents in order to respond to the subpoena. Hartman simply asks that SDX produce those documents in its possession, custody and control.

6. Hartman is Entitled to File Materials on all of the Subject Wells

Hartman seeks in this proceeding to require SDX and the Division to comply with the statutory mandate set forth in Section 70-2-17, and require both SDX and the Division to comply with the requirements of administrative procedural due process. It is obvious that some scheme has been hatched by SDX with respect to dense, infill drilling in the Jalmat Gas Pool. Some of those tracts on which SDX seeks to initiate this program offset acreage owned by Hartman, and the additional infill wells are already draining, and threaten future drainage from Hartman's acreage. The Subject Wells as identified in Exhibit A to the subpoena are all wells Hartman has identified to date which are part of the SDX infill drilling program in the Jalmat Gas Pool.

It is entirely possible that the production of well files for all the subject wells, and the production of reserve data, economic projections, and geological data with respect to all of the wells involved in the infill drilling project, will confirm Hartman's contentions with respect to the wells at issue in these applications: that is, that the wells are economically wasteful, and unnecessary to drain the acreage in the proration unit, which can be efficiently and economically drained by the existing wells. Production of these additional documents may well confirm that SDX has planned all along an infill development program with the intention of either (a) violating the correlative rights of offset operators by stealing gas from offset acreage, or (b) using the wells, which are not themselves economically necessary, simply as props in promotion and development

schemes to make the well package attractive to potential investors like St. Anselm 99-A Partners, LLP and William S. Montgomery, Jr. Again, this is evidence with which the Division must be concerned.

VI.

CONCLUSION

SDX has pending before the Division two applications for Division approval of unorthodox locations and simultaneous dedication for infill wells in the Jalmat Gas Pool. To date, SDX has presented the Division with no evidence that any of its proposed (or previously approved) Jalmat infill wells are necessary to prevent waste or protect correlative rights. SDX has made representations about the need for unorthodox locations for the wells, but refused to produce any file documents which would confirm or deny the validity of those representations.

It is time for the Division to honor its statutory mandate and require that SDX satisfy the Division that all of its proposed and previously approved infill Jalmat wells are necessary to prevent waste and protect correlative rights. In fact, no such showing is possible. Hartman is entitled to prepare for the upcoming Division hearings, and the Division is entitled to discover the truth about the SDX Jalmat infill drilling program. SDX should produce all documents sought by Hartman's subpoena.

Respectfully submitted,

GALLEGOS LAW FIRM, P. C.

By _____
J. E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686
(505) 986-1367 Fax

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Hartman's Response to Motion to Quash Subpoenas filed by SDX Resources to be mailed on this 15th day of December, 1999, to the following counsel of record:

Thomas W. Kellahin, Esq.
Kellahin & Kellahin
117 N. Guadalupe
Santa Fe, New Mexico 87501

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan, P.A.
P.O. Box 2208
Santa Fe, New Mexico 87504-2208

_____
Michael J. Condon