

**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

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OIL CONSERVATION DIVISION

**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

**SDX RESOURCES INC.'S
MOTION TO QUASH
SUBPOENAS ISSUED AT THE REQUEST OF
DOYLE HARTMAN**

SDX RESOURCES INC. ("SDX Resources") by its attorneys, Kellahin & Kellahin, hereby moves the Division to Quash Subpoenas Duces Tecum issued by the Division on November 16, 1999 at the request of J. E. Gallegos, attorney for Doyle Hartman, Oil Operator (hereinafter "Hartman") in Case 12301 and in Case 12302 which Subpoenas command SDX Resources to appear at 9:00 a.m. on Wednesday, November 24, 1999, later extended to noon, Monday, December 6, 1999, to appear at the Division offices and to produce documents set forth in the Subpoenas Duces Tecum which was supplemented by two Amended Subpoenas Duces Tecum issued November 17, 1999 and November 18, 1999, and corrected by letter dated November 24, 1999.

As grounds for its Motion to Quash these subpoenas, SDX Resources states the following:

BACKGROUND

In Case 12301, SDX Resources seeks approval of the Division to drill its Jalmat Federal Com Well No. 2 at a unorthodox well location within a previously approved 114.41-acre non-standard gas spacing unit ("GPU") in the Jalmat Gas Pool consisting of Lots 3 and 4 of Section 31 and Lot 4 of Section 6, T25S, R37E. This well is unorthodox because it is located in a lot which contains only 38.12 acres making it impossible to locate this well at a standard location. Due to the location of existing pipelines, the well is proposed to be located approximately 598 feet from the eastern boundary of this GPU instead of 660 feet, thus encroaching towards Hartman's GPU. Hartman has filed an objection. The other Jalmat gas well in this GPU is the Jalmat Federal Com Well No. 1. Hartman has subpoenaed documents from both SDX wells in this GPU.

In Case 12302, SDX Resources seeks approval of the Division to drill its E. J. Wells No. 25 at a unorthodox well location within a previously approved 120-acre non-standard gas spacing unit ("GPU") in the Jalmat Gas Pool consisting of the N/2SW/4 and SW/4SW/4 of Section 5, T25S, R37E. This well is unorthodox because it is 460 feet from the north boundary of this GPU instead of 660 feet. However, it encroaches towards other GPU's operated by SDX Resources and away from GPU's operated by Hartman. Despite the fact that this well is located farther away than required from

Hartman's GPUs, Hartman has filed an objection. The two other Jalmat gas wells in this GPU are the E. J. Wells Well No. 13 and No. 16. Hartman has subpoenaed documents from all three SDX wells in this GPU.

On November 8, 1999, the Division issued administrative order SD-99-14 which approved SDX Resources' request to add the State A-32 Well No. 6 at a standard location within a previously approved non-standard 120-acre GPU in the Jalmat Gas Pool consisting of the W/2NW/4 and SW/4NW/4 of Section 32, T24S, R37E and which contains the State A-32 Well No. 4 and Well No. 5. The Division rejected Hartman's objection in this matter because "Mr. Hartman's letter of objection has no basis". Hartman's subpoena seeks SDX Resources documents for all three wells.

On November 8, 1999, the Division issued administrative order SD-99-15 which approved SDX Resources' request to add the Wells Federal Well No. 22 and Well No. 23, both located at a standard location within a previously approved non-standard 159.95-acre GPU in the Jalmat Gas Pool consisting of Lots 3, 4 and the S/2NW/4 (NW/4 equivalent) of Section 5, T24S, R37E and which contains the Wells Federal Well No. 4 and Well No. 15. The Division rejected Hartman's objection in this matter because "Mr. Hartman's letter of objection has no basis" However, Hartman now seeks to subpoena SDX Resources documents for all four wells.

In addition to these 12 wells, Hartman's subpoenas seek data from 8 more SDX Resources' wells, some of which are more than 2 miles away from the two wells for which unorthodox well locations are being sought.

Hartman's subpoena falls into the following categories:

- (1) data from the wells within the two GPU's in which the unorthodox wells will be located including well files, notices, staking, permits, drilling programs schedules, timetables contracts, correspondence and compliance with OCD rules;
- (2) data from seven GPU's operated by SDX Resources which contain "infill wells" including well files, notices, staking, permits, drilling programs schedules, timetables contracts, correspondence and compliance with OCD rules;
- (3) SDX Resources' petroleum engineering study concerning infill drilling;
- (4) all SDX Resources' data on its infill drilling program including reserves, drainage, deliverability and volumetrics;
- (5) all SDX Resources' data supporting more than one well per 640-acre GPU in the Jalmat Gas Pool, including geology, reserves, production, pressures and petroleum engineering studies;
- (6) all SDX Resources' land files, assignment files, contract files, list of interest owners and communications concerning transfer of interests for these 20 wells; and
- (7) all documents relating to SDX Resources communications with the Division, including meetings, expense accounts, telephone messages and correspondence concerning any of the 20 wells or infill drilling in the Jalmat Gas Pool.

SDX Resources objects to producing any of the data/documents sought by Hartman and requests that the Division quash these subpoenas in the entirety for the following reasons:

ISSUES RELEVANT TO THE TWO UNORTHODOX WELL LOCATION CASES

The only relevant issue before the Division in the two SDX Resources cases is whether either of the two wells will be located closer to a gas spacing and proration unit ("GPU") in which Hartman has an interest or is the operator, and if so, would that encroachment impair the correlative rights of Hartman.

In Case 12302, the E. J. Wells Federal Well No. 25 does not encroach towards Hartman and therefore there is no basis for Hartman's objection.

In Case 12301, SDX Resources proposes to locate the Jalmat Federal Com Well No. 2 at a unorthodox well location due to surface/pipeline right of way limitations. SDX Resources has contacted the owner of the pipeline, which is no longer in use, and is in the process of obtaining approval to build its location on the right of way. Because this well is within Lot 4 of Section 31 which contains 38.12 acres, the well is to be relocated 598 feet from Hartman's GPU. If Hartman believes this minor encroachment will have an adverse affect on his correlative rights, then he does not need SDX Resources' data to prepare his case if he truly wants to focus only on the affect of this single well and its location. Instead, Hartman wants the SDX Resources' data for an entirely different purpose--to attack the Division's practice of allowing "ir.fill drilling" in the Jalmat Gas Pool.

HARTMAN'S SUBPOENAS SEEK PRODUCTION OF IRRELEVANT DOCUMENTS

Hartman seeks production of irrelevant documents. It is not relevant that these two wells also will be "infill wells" within existing Jalmat GPUs. There is no basis for or means by which 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. The Jalmat Gas Pool is a prorated gas pool and for more than 45 years, the rules governing this pool never restricted the number of producing gas wells within a GPU. The reason that these rules do not limit the number of wells with a GPU is because this is a prorated gas pool in which correlative rights are protected by restricting the amount of gas to be produced by a GPU regardless of the number of wells within that GPU. The rule is fair reasonable and equitable and has been used by Hartman on more than 40 instances when he has drilled multiple wells in a GPU.¹ Hartman's complaint with the Division over how the Division has regulated this pool is not relevant to SDX Resource's application for two unorthodox well locations. If Hartman's complaint is that the long

¹ For example, see Division Order NSL-1823 in which Hartman obtained approval for a second well at an unorthodox well location on the same 120-acre non-standard GPU which is now operated by SDX Resources and which is the subject of Case 12302.

established Jalmat Pool Rules are not appropriate, then the proper recourse for Hartman is for him to file an application to change the pool rules.

In fact, in November, 1990,² Hartman sought and obtained Division approval to establish a minimum gas allowable for GPUs in the Jalmat Pool because, in Hartman's opinion, the institution of a minimum allowable was necessary to "provide an incentive necessary to promote **field wide infill drilling**..." (emphasis added). In doing so, the Division also reaffirmed that the protection of correlative rights in the Jalmat Gas Pool was being addressed by prorationing controlling the amount of gas produced by each GPU based upon acreage and not based upon well density.³

In granting Hartman's application, the Division also found that:

"(6) Further evidence and testimony indicates that the production limitations imposed by the gas proration system may have discouraged and may continue to discourage further developmental drilling and attempted workovers of existing wells.

(12) Further evidence and testimony indicates that the applicant has drilled numerous infill wells in the Jalmat Gas Pool and as a result has substantially increased the recoverable gas reserves on each of said drilled leases or proration units."

² See Order R-8170-J entered January 8, 1991 in Case 10111, application of Doyle Hartman to amend Order R-8170 to establish minimum gas allowables in the Jalmat Gas Pool, heard November 14, 1990.

³ See Finding (20) Order R-8170-J

Then, at a Division hearing on February 17, 1994, Hartman returned to the Division in Case 10111 (Reopened) and presented further evidence in support of making the minimum 600 MCFPD allowable permanent including, among other things, evidence that there was an additional 438 BCF of gas which could be recovered only by infill wells. See Exhibit 8 in Case 10111 (Reopened).

It is not relevant to these two unorthodox well location cases for Hartman to now subpoena SDX Resources data on infill wells.

HARTMAN SEEKS IRRELEVANT GEOLOGIC AND ENGINEERING DATA

Hartman seeks production of SDX Resources' geologic and engineering data for the Jalmat Gas Pool which is irrelevant to the fact that these well are to be at unorthodox well locations because of topographical limitations within their respective GPUs. Hartman wants this data because he wants to argue about "infill drilling" in the Jalmat Gas Pool which is not the subject to these cases. These cases were set for hearing only because they each involved a well to be drilled at an unorthodox well location. But for that issue, these wells could be drilled without action by the Division.

**HARTMAN SEEKS DATA
WHICH IS CONFIDENTIAL IN NATURE
AND DESERVES TO BE PROTECTED
AS A TRADE SECRET**

SDX Resources has data which is the confidential business information and the trade secrets of SDX Resources. Although the Division is not required to strictly adhere to the New Mexico Rules of Evidence,⁴ Rule 11-508 of the New Mexico Rules of Evidence provides:

"a person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice..."

The basic purpose of this privilege is to foster technological advances and innovations. Although there is no definition of "trade secret" contained within the rule, an often cited definition from the **Restatement of Torts**, Section 575 Comment b (1939) is informative:

"A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which give him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers..."

⁴ OCD Rule 1212 provides in part: "In general, the rules of evidence applicable in a trial before a court without a jury shall be applicable, **provided that such rules may be relaxed, where, by so doing, the ends of justice will be better served.**" (emphasis added).

In addition, it is instructive to note that Congress in drafting the Freedom of Information Act ("FOIA"),⁵ which requires that every agency of the United States make available to the public certain information, found justification for withholding certain types of information from the public, including two specific types: (1) trade secrets and other confidential information, and (2) confidential geological and geophysical information. One of the major incentives for gas exploration is the opportunity to obtain exclusive knowledge concerning potential gas reserves. Without the additional incentive of having this data remain confidential, SDX Resources' development of its opportunity for gas in the Jalmat Gas Pool would be compromised. Such information meets the definition of a trade secret because it is information which SDX Resources which gives it an opportunity to obtain an advantage over competitors who do not have this data.

**HARTMAN WANTS PRODUCTION IN ORDER
TO ATTACK THE DIVISION'S
ACTIONS CONCERNING
PRORATIONING IN THE JALMAT GAS POOL**

Hartman wants production of SDX Resources' documents irrelevant to these two unorthodox well location cases in order to advance a collateral attack on the Division's regulation and management of the Jalmat Gas Pool. Hartman wants to deny to SDX Resources the opportunity to drill "infill wells" in the Jalmat Gas Pool despite the fact that Hartman has enjoyed and exercised the same opportunity for which he now complains.

⁵ **5 American Law of Mining** Section 186.01 (Matthew Bender 1994).

**HARTMAN SEEKS DOCUMENTS
AVAILABLE IN PUBLIC RECORDS**

Hartman wants data which is currently available to him in the public record, including but not limited to Division case files and records.

Hartman is asking SDX Resources to prepare Hartman's case and to do his research. All relevant data is available either in public records or is already in Hartman's possession. SDX Resources has no obligation or duty to do homework for Hartman.

**HARTMAN SEEKS SDX RESOURCES'
CONFIDENTIAL BUSINESS RECORDS**

Hartman seeks production of SDX Resources' internal economic/engineering documents concerning reserves, drainage, infill drilling, estimates of costs analysis which are not relevant. Hartman also seeks SDX Resources' title, contract and acquisition documents.

SDX Resources has no obligation to make or provide documents to assist Hartman in knowing how SDX Resources conducts its business.

These documents are not relevant to any decision the Division must make in these cases.

SUBPOENAS ARE BURDENSOME AND OPPRESSIVE

The subpoenas are oppressive and burdensome and would require weeks of preparation before SDX Resources could assemble and produce.

SUBPOENAS SEEK DOCUMENTS RELATING TO SDX RESOURCES' COMMUNICATIONS WITH THE DIVISION

Hartman wants SDX Resources to produce documents concerning any communications with the Division concerning the "Subject Well" and /or infill drilling in the Jalmat Gas Pool. The only relevant documents sought by this request are SDX Resources' two administrative applications for unorthodox well locations which are a matter of public record in the files of the Division and which are now docketed as Division cases 12301 and 12302 because of Hartman's protest. Hartman can copy those Division files at the Division. SDX Resources contends that any other documents Hartman is seeking in Item 7 of the Hartman subpoena is not relevant.

CONCLUSION

These are "plain vanilla" unorthodox well location cases which Hartman wants to use as a forum to engage the Division in a debate about "infill drilling" in the Jalmat Gas Pool. If Hartman is now opposed to the infill drilling program which he supported and promoted in 1990, then he needs to file an application to amend the pool rules and not attempt to address the "infill drilling" issue in these locations cases.

Hartman seeks documents irrelevant to any decision the Division must make in these cases. SDX Resources has no obligation to provide confidential data to assist Hartman in opposing "infill drilling".

SDX Resources requests that the Division quash the Hartman subpoenas in their entirety.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was hand delivered to counsel of record this 6th day of December, 1999 as follows:

J. E. Gallegos, Esq.
Michael J. Condon, Esq.
Gallegos Law Firm
460 St. Michaels Drive, Bldg 300
Santa Fe, New Mexico 87505

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan, PA.
110 N. Guadalupe
Santa Fe, New Mexico 87501



W. Thomas Kellahin