

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

**APPLICATION OF RAPTOR RESOURCES INC.
FOR APPROVAL OF UNORTHODOX INFILL
GAS WELL LOCATIONS,
LEA COUNTY, NEW MEXICO**

CASE NOS. 12303 & 12304

OL 00 SEP 15 PM 2:44
OL 00 SEP 15 PM 2:44

**HARTMAN'S RESPONSE TO MOTION
TO QUASH IN PART SUBPOENA FILED BY
RAPTOR RESOURCES, INC.**

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

I.

INTRODUCTION

Raptor and another operator in the Jalmat Gas Pool, SDX Resources, Inc., have undertaken to secure numerous administrative approvals from the Division for infill drilling and recompletions in the Jalmat Gas Pool. During 1999, Raptor has submitted at least twenty-nine (29) separate applications for administrative orders for such wells. In some cases, including the two cases set for hearing January 6, 2000, Raptor has sought approval for both unorthodox locations for the infill wells and for simultaneous dedication of acreage already dedicated to multiple Jalmat gas wells. In some cases, approval of the Raptor applications will result in forty (40) acre spacing for Jalmat gas wells.

The Division has taken the position in orders issued that as long as setback requirements are met Division approval of such infill wells is automatic. Raptor apparently believes there is no limit on the number of wells an operator can put on a proration unit in the Jalmat Gas Pool, ostensibly because the Pool is prorated.

In fact, Hartman has demonstrated in his Response to Motion to Quash Subpoena filed by SDX Resources, Inc., that there are laws and rules which limit the number of wells which an operator can place on a G.P.U. in the Jalmat Gas Pool. The NMOCD has set for hearing these two cases involving Raptor applications, and Hartman is entitled, under fundamental concepts of administrative due process and fair play, to discover documents which relate not only to these applications, but also the general Raptor infill drilling program in the Jalmat Gas Pool, in order to prepare his case for the scheduled hearings. The requested documents are relevant.

Raptor, unlike SDX, has provided some documents responsive to the subpoena. Raptor has agreed to produce some well files, but not others. Its response does not clearly indicate whether the well files which Raptor does not agree to produce are the subject of the motion to quash. The real dispute between Hartman and Raptor involves request by Hartman for documents which show whether Raptor owns any Jalmat interests, Raptor's authorization as operator for the leases and units at issue, and documents involving reserve projections, drainage and pressure data, geological studies, engineering evaluations, and production data which concerns the need for

additional wells on the Raptor operated leases.¹ The specific documents at issue, and Raptor's objections, are addressed in Section IV, infra.

II.

SUMMARY OF HARTMAN'S POSITION IN THESE CASES

Hartman is filing simultaneously his Response to Motion to Quash Subpoena filed by SDX Resources, Inc. Hartman incorporates that pleading herein by reference, particularly Sections II on the Statutory Limitations on Division Authority and part III, the Regulatory History of the Jalmat Gas Pool. Hartman contends that there has been a pattern and practice of ignoring statutory mandates and Division rules by Raptor and SDX in initiating, and seeking administrative approval for, their dense Jalmat infill drilling programs. These programs apparently have received some sanction from the Division, based on a pronouncement by the Division Director that there is no limit on the number of wells an operator can put on a Jalmat gas proration unit because the pool is prorated.

Hartman does not oppose infill drilling per se in the Jalmat Gas Pool. He opposes the dense development of unnecessary wells proposed by Raptor, 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 advanced by Raptor, and apparently accepted by the Division, whereby applications for infill wells and simultaneous dedication are rubber stamped, even where they are completely devoid of evidence that the additional wells are necessary to efficiently and

¹ Raptor Resources owns no present interest in any of the G.P.U.s for which it has processed applications. The Lea County records show that foreign limited liability corporations are the actual working interest owners.

economically drain the acreage at issue. Hartman objects to the Division's issuance of administrative approvals where, as an offset operator, he was not given notice and opportunity to be heard. Hartman contends that the requirements of the New Mexico Oil and Gas Act ("OGA"), NMSA 1978, §§ 70-2-17 and 23 are still on the books and cannot be ignored by either the Division or Raptor. 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 Raptor and other operators who wish to initiate infill drilling projects in the Jalmat Gas Pool. It is operators such as Raptor, who wish to downsize the standard gas proration unit for the Pool, who should be responsible for moving to amend the Pool rules.

Hartman has processed numerous applications for infill gas wells in the Eumont and Jalmat Gas Pools under the existing rules. 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 A. 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.

III.

RAPTOR'S UNAUTHORIZED AND WASTEFUL JALMAT GAS INFILL DRILLING PROGRAM

Beginning in 1999, Raptor undertook promotion deals with respect to leases in the Jalmat Gas Pool, including the leases at issue in these two cases. Raptor apparently does not own any interests in the G.P.U.s at issue. Presumably, Raptor is the operator of the properties though no documentation has been provided to the Division to prove that, so far as Hartman knows. Raptor, like SDX Resources, Inc., is apparently involved in a scheme to develop numerous wells to attract potential investors without any attention to the inability of this depleting reservoir to support the economics of the wells. One hundred percent interests in the G.P.U.s at issue were bought by Dervish Energy, LLC, which transferred a 50% interest to Orr Holdings, Ltd. in May, 1999.

Raptor failed to notify Hartman, an offset operator, of its applications for which administrative orders were issued in Cases SD-99-7, NSL-2872-C(SD), NSL-2723-D(SD), NSL-2816-C(SD) and NSL-2723-E. Attached as Exhibit B is the application Raptor filed for its planned recompletion of the State "A" A/C 2 Well No. 54 well, Case 12304. The Division should compare the two applications attached as Exhibits A and B, since both seek simultaneous dedication for an infill Jalmat gas well. 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. Raptor, as demonstrated on Exhibit B, submitted no evidence supporting the need for the infill well, offering only the conclusory representation in the application to the Division that the well was necessary to prevent waste.

The density of the proposed Raptor infill drilling program is egregious. Offsetting Hartman's State H well, which has 160 acres dedicated to it in Section 17, T-25-S, R-37-E, Raptor has proposed an infill program which would result in multiple Jalmat gas wells on Sections surrounding Hartman's well, a de facto downsizing to spacing from 43 to 128 acres for Jalmat gas wells. Offsetting Hartman's Hobbs Land K well on 160 acres in Section 12, T-25-S, R-37-E, Raptor has proposed infill drilling on two units adjoining Hartman's lease, which, if approved, would result in 48- and 53-acre spacing in the offsetting leases.

IV.

HARTMAN IS ENTITLED TO DISCOVERY IN THIS PROCEEDING

The Division, based on objections by Hartman, has set Cases 12303 and 12304 for hearing. The hearing is currently scheduled for January 6, 2000. These cases specifically involve the following infill Jalmat gas wells Raptor has proposed:

State "A" A/C Wells No. 30 and 48

State "A" A/C 2 Well No. 54

Raptor requests approval of an unorthodox locations and simultaneous dedication for all 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 Raptor which relate not only to the specific wells at issue in these applications, but also the Raptor Jalmat infill drilling program. A copy of subpoena Exhibit A, which sets out the requested documents, is attached as Exhibit C, so that the Division can refer to the document itself in determining the insufficiency of the Raptor objections.

1. **Well Files on the wells which are dedicated to the G.P.U.s at issue in the applications set for hearing are clearly discoverable**

Hartman's subpoena requested the production of all wells which are the subject of any 1999 Raptor application for administrative approval for unorthodox locations for simultaneous dedication for Jalmat infill wells in Sections 8 and 9, T-22-S, R-36-E, Lea County, New Mexico. In Case 12303, Raptor seeks to recomplete the State "A" A/C 2 Wells No. 30 and 48 at unorthodox locations, and to simultaneously dedicate those wells with wells 1, 4, 29, 38, 40, 57, 63, 67 and 72 on a 480 acre non-standard proration unit in Section 9, T-22-S, R-36-E. Raptor has agreed to produce its well files for Wells 4, 30 and 48, but says nothing with respect to the additional wells for which simultaneous dedication is requested.

Similarly, in Case No. 12304, Raptor seeks to recomplete the State "A" A/C 2 Well No. 54 at an unorthodox location and simultaneously dedicate with wells Nos. 3, 24, 25, 26, 43, and 70 on a 640-acre gas proration unit in Section 8, T-22-S, R-36-E. Raptor agrees to produce wells files for Wells 24, 25, 54 and 77, but its response and Motion say nothing about the additional wells in the proration unit.

If the exclusion of the additional wells in Raptor's response was in error, and Raptor will agree to produce wells files for all wells on the proration units at issue in these applications, then the Division need do nothing further with respect to the subpoena. However, if by omitting those well files from its response Raptor intended to seek protection from production for those files, Hartman is at least entitled to a statement from Raptor as to the basis for the protection requested.

All requested well files that relate to the proration units at issue in these applications should be produced. In any application for approval for additional infill Jalmat gas wells in existing proration units, Raptor as the applicant has the burden to establish that the approval of the additional wells is necessary to prevent waste and protect correlative rights. Raptor is also required to establish that the drilling of these wells will not create waste in the form of unnecessary wells. The Division, likewise, is required under Section 70-2-17 to make those corresponding findings before approving an infill well in the Jalmat Gas Pool. Hartman contends, and the evidence will show, that additional infill wells on these proration units are not necessary to efficiently and economically drain the acreage at issue. The drilling of these wells will itself constitute economic waste in the form of unnecessary wells, which is prohibited by Section 70-2-17. Moreover, given the proximity of the wells, and the clusters close to Hartman's offset acreage, approval of additional infill wells on these proration units will violate Hartman's correlative rights. Well file information on all these wells is relevant to these questions.

Production of documents for all wells in the G.P.U.s at issue in these applications is particularly relevant in light of Order R-9073, issued December, 1989. By

that Order, the Division authorized Hal J. Rasmussen Operating Inc., a predecessor in interest to Raptor, to utilize a gas gathering system which ultimately encompassed both units at issue in this application. Under Order R-9073, the operator is not required to meter gas production from individual wells, but rather meters total gas production from the units. Production is then allocated back to each well by means of supposed periodic testing of the wells. Thus, under this Order, Raptor as the operator is already working under a procedure whereby all of its wells are treated as part of a single production unit.

To the extent Raptor intends to argue, as SDX has, that it can drill as many wells on a proration unit in the Jalmat Gas Pool as it wants because correlative rights are protected by prorationing, G.P.U. level production information is absolutely essential in order to determine whether, by the allowance of additional wells on this unit, Raptor will or may probably exceed the allowable for each G.P.U. Hartman has no knowledge as to whether Raptor has been allocating production from the units back to each of the wells, or whether the periodic testing through the test meters required by Order R-9073 has been conducted. Given the risk, particularly with the number of wells Raptor is proposing for each of these G.P.U.s, that production from the unit may exceed the allowable, and in light of the Division's obligation to make that determination in connection with these applications, file data, production data, and data from the gathering system utilized by Raptor for all Raptor wells is relevant and essential to this proceeding.

Hartman's request for all well files is particularly critical with respect to the application pending in Case 12303, involving the State "A" A/C-2 well No. 54 in Section 8. In June, 1999, Raptor filed an application for administrative approval for the

recompletion of State "A" A/C-2 well No. 3 and for simultaneous dedication to an existing 640 acre proration unit in this section. Under circumstances regarding which Hartman is still uninformed, the Division granted that application on June 30, 1999, prior to the expiration of the twenty (20) day protest period authorized by the Division's rules. Hartman, as an offset operator, was not notified of that administrative application. Raptor's application did not even make a representation about the need for the additional well. The application was granted by Administrative Order SD-99-7. Only four months later, Raptor sought administrative approval to recomplete its State "A" A/C-2 well No. 54 and again requested simultaneous dedication with the existing proration unit. Why suddenly are two additional infill wells needed on this unit? Why does Raptor provide no technical data to support the additional infill wells? It is circumstances such as this which confirm that all of Raptor's administrative applications are inter-related, and that documents concerning all proposed and previously approved infill wells be made available in light of the upcoming hearing.

2. Engineering and Reserve Data are Relevant in These Cases

The administrative applications filed by Raptor in this case seek approval for unorthodox well locations and simultaneous dedication. However, Raptor 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.

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.

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 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.

Raptor cannot rely upon a rule such as "there is no limit on the number of wells on a G.P.U. in the Jalmat Gas Pool" for withholding production without citing to the particular statute, rule or regulation that supports that ruling. Surely, Raptor 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.

It is difficult to imagine that an operator such as Raptor would even initiate dense development in the Jalmat Gas Pool without having first undertaken the type of analysis which would be reflected documents that have been requested. No competent operator acting in good faith and according to industry standard practice would propose and initiate dense infill drilling without engineering and reserve data to support such drilling. Why would not Raptor want to come forward to reveal that its wells are necessary to drain the proration units? Raptor's recalcitrance strongly infers that the engineering, reserve and economic data in this case will only confirm that the proposed infill drilling in the Jalmat Gas Pool is wasteful. The Jalmat reservoir is composed of sandstone formations which have sufficient permeability and conformity so that one efficient gas well is capable of draining a large acreage area. That quality of permeability results in the ready migration of gas within the formations of the pool such that withdrawal of gas by a well drains the gas from and reduces the productive ability of offset wells. Where, as here, an operator has sought to initiate infill drilling, the Division should, and offset owners are entitled, to review the technical data, if any, which the operator utilized to support the proposed infill drilling program in the first place. If the operator undertook no technical analysis prior to filing an application, that should be strong evidence to support denial of the application.

Raptor has indicated a willingness to reconsider this request and produce documents subject to a protective order which would protect Raptor's proprietary interests in this case, including provisions which prohibit the disclosure of produced

information to any person or entity not a party to the case, and which would prohibit the use of produced information outside the context of this case, Hartman is agreeable to entry of an appropriate protective order on these grounds.

The question of mutuality which Raptor raises is a little more troubling. Hartman has no objection to an arrangement whereby both Hartman and Raptor exchange technical data to be relied upon at hearing prior to the hearing itself. However, it is Raptor which seeks to initiate dense infill drilling in the Jalmat Gas Pool. The question posed by these applications is whether, under Section 70-2-17, Raptor can meet its burden to establish the necessity of those infill wells. Under the circumstances, Raptor's discovery obligations are clearly greater than those of Hartman. Hartman is not requesting any approvals by the Division.

It is Raptor's obligation, in the first place, to produce documents upon which they based their infill drilling program for the Jalmat Gas Pool, or admit that no such documents or data exist. If Raptor has specific requests, Hartman will consider them.

3. **Raptor has no valid objection to documents concerning ownership in the proration units which are the subject of these applications**

Raptor objects to producing any and all documents which relate to the ownership of interests in the subject area, including the proration units which are the subject of these applications. While Raptor's objection may be valid in the ordinary case before the Division, this is not an ordinary case. Hartman has already developed evidence which demonstrates that Raptor is engaged in some manner in promotion projects with respect to its Jalmat infill development program. Raptor has no ownership interest in these units. Interests are owned by Dervish Energy, LLC and Orr Holding,

Ltd. Raptor has filed the subject applications with the Division, but does not indicate the ownership in the units. Hartman assumes that Raptor is entitled to status as operator of the properties under some arrangement with Dervish and/or Orr, though Hartman is not aware of any documentation which so provides. There is consequently a question as to whether Raptor even has standing to prosecute these applications. The requested documents will either confirm or deny Raptor's standing.

4. Hartman Seeks Documents in Raptor Files, and is not Requesting that Raptor Search the Public Record to Respond to the Subpoena

Raptor objects to the production of documents provided to the New Mexico Conservation Division or the United States Bureau of Land Management on the grounds that such documents are part of the public record, and that Raptor should not be required to such public records for an opposing party. Response and Motion, p. 3. 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 Raptor files. Hartman simply asks that Raptor produce those documents in its possession, custody and control.

V.

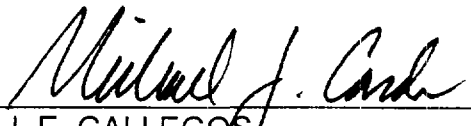
CONCLUSION

It is time for the Division to honor its statutory mandate and require that Raptor satisfy the Division that all of its proposed and previously approved infill Jalmat wells are necessary to economically and efficiently drain the G.P.U.s and to prevent waste and protect correlative rights. Hartman is entitled to prepare for the upcoming Division hearings, and the Division is entitled to discover the truth about the Raptor

Jalmat infill drilling program. Raptor 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 in Part Subpoena filed by Raptor Resources, Inc. 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