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September 21, 2001

HAND DELIVERED

Ms. Lori Wrotenbery, Director
Oil Conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: **Request for Stay of Division Order No. R-11652**

New Mexico Oil Conservation Division Case 12587:

Application of Sapient Energy Corp. for an unorthodox well location and non-standard proration unit or in the alternative a 160-acre non-standard proration unit, Lea County, New Mexico.

New Mexico Oil Conservation Division Case 12605:

Application of Sapient Energy Corp. for special pool rules, Lea County, New Mexico.

Dear Ms Wrotenbery:

Enclosed is the Response of Conoco Inc. and Chevron U.S.A. Production Company to the Motion of Sapient Energy Corp. for Stay of Division Order No. R-11652. Conoco and Chevron object to a stay of Division Order No. R-11652 unless Sapient is required to obtain a surety bond and escrow all future production proceeds pending a final disposition of these cases.

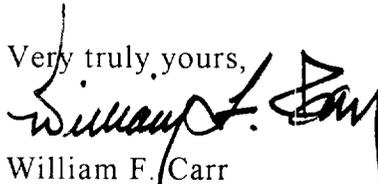
I have served a copy of this response on W. Thomas Kellahin, attorney for Sapient Energy Corp., and asked him to advise if Sapient is agreeable to the conditions on a stay which Conoco and Chevron are requesting. If no agreement can be reached as to these conditions and if the Division/Commission determine that a hearing on Sapient's Motion is needed, we request that it be set for Thursday September 28, 2001.

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September 21, 2001
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Your attention to this matter is appreciated.

Very truly yours,



William F. Carr

cc: David Brooks, Esq.
Oil Conservation Division

Stephen Ross, Esq.
Oil Conservation Commission

Bruce Connell, Esq.
Conoco, Inc.

Frank Cusimano, Esq.
Chevron U.S.A. Production Company

W. Thomas Kellahin, Esq.
Sapient Energy Corp.

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

**AMENDED APPLICATION OF SAPIENT
ENERGY CORP FOR AN UNORTHODOX
WELL LOCATION AND (i) TWO NON-
STANDARD 160-ACRE SPACING UNITS, OR IN
THE ALTERNATIVE, (ii) ONE NON-STANDARD
160-ACRE SPACING AND PRORATION UNIT,
LEA COUNTY, NEW MEXICO.**

CASE NO. 12587

**APPLICATION OF SAPIENT ENERGY
CORPORATION FOR SPECIAL POOL
RULES, LEA COUNTY, NEW MEXICO.**

CASE NO. 12605

ORDER NO. R-11652

**RESPONSE OF
CONOCO INC. AND CHEVRON U.S.A. PRODUCTION COMPANY
TO MOTION OF SAPIENT ENERGY CORP.
FOR STAY OF DIVISION ORDER NO. R-11652**

Conoco Inc. ("Conoco") and Chevron U.S.A. Production Company ("Chevron"), through their undersigned attorneys hereby respond to the Motion of Sapient Energy Corp. for Stay of Order No. R-11652 pending de novo review by the Oil Conservation Commission.

By Order No. R-11652, dated September 13, 2001, the Oil Conservation Division ("Division") denied the applications of Sapient Energy Corp. ("Sapient") in each of the above-referenced cases and ordered the Sapient Bertha J. Barber Well No. 12 ("Barber Well") be shut-in until all production from this well has been appropriately reallocated to all mineral and leasehold interest owners in a standard 160-acre spacing unit comprised of the NE/4 of Section 7, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico. Sapient seeks a stay of that order.

As set out herein below, Conoco and Chevron request that the Stay be denied or, in the alternative, that any stay of Order No. R-11652 provide (A) that all proceeds for production paid to Sapient after September 13, 2001 be disbursed to the proper interest

OIL CONSERVATION DIVISION
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owners as identified in the September 13, 2001 Order, subject to refund, or, in the alternative, be placed in escrow pending a final disposition of this matter and (B) that Sapient be required to post a bond in an amount of \$1,500,000.00 to assure that it can make a proper allocation of production revenues from the well after a final order is entered by the Commission.

BACKGROUND FACTS:

1. In August 1999, the Barber Well, a producing oil well located at a standard oil well location 330 feet from the North line and 990 feet from the East line of Section 7, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico was recompleted in the Tubb formation, West Monument-Tubb Gas Pool.

2. The West Monument-Tubb Gas Pool is governed by the general rules of the Oil Conservation Division of the New Mexico Department of Energy, Minerals and Natural Resources ("Division"). Division Rule 104 C(3) provides for gas wells to be located on spacing units consisting of 160 contiguous surface acres, substantially in the form of a square, which is a quarter section and a legal subdivision of the U. S. Public Lands Survey and that wells be located no closer than 660 feet to any outer boundary of such unit.

3. Sapient and/or the prior operators of the Barber Well have filed Division forms which indicate a non-standard gas spacing unit comprised of the E/2 E/2 of Section 7 is dedicated to the well.

4. Sapient owns all of the working interest in the E/2 E/2 of Section 7 and the production proceeds from the Barber Well have been paid to the owners of the E/2 E/2 of Section 7 as if a non-standard unit comprised of this acreage had been properly formed and dedicated to the well.

5. Between September 1, 1999 and March 1, 2001 the Barber Well produced over 470 MMSCF of natural gas and continues to produce large quantities of natural gas.

6. Sapient has retained all proceeds for production from the Barber Well and has disbursed these funds to the owners of oil and gas interests in the E/2 E/2 of Section 7.

7. Conoco and Chevron own working interest in the W/2 NE/4 of Section 7. Pursuant to Order No. R-11652, Conoco and Chevron are entitled to their respective shares of the production from the Barber Well from the date of first production.

8. In Case 12587, Sapient sought approval of the unorthodox gas well location for the Barber Well in the Tubb formation and the creation of two non-standard 160-acre gas spacing units one comprised of the E/2 E/2 of the Section and the other comprised of the W/2 W/2 of the Section. In Case 12605, Sapient sought the

**RESPONSE OF CONOCO INC. AND
CHEVRON U.S.A. PRODUCTION COMPANY**

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promulgation of Special Pool Rules for the West Monument-Tubb Gas Pool which would provide for 80-acre spacing units.

9. By Order No. R-11652, the Division found that "Sapient and its predecessors have failed to apply for and obtain administrative approval of the unorthodox well location for the Bertha J. Barber Well No. 12, in violation of Division Rule 104.B (2) and are illegally producing this well." The Division also found that "...Sapient and its predecessors have assigned the Bertha J. Barber Well No. 12 an unapproved non-standard 160-acre spacing unit, in violation of Division rules." (Finding 14).

10. The Division has ordered Sapient to shut-in the Bertha J. Barber Well No. 12 "until such time as all production from the well has been appropriately reallocated to all leasehold and mineral interest owners in the standard 160-acre unit comprised of the NE/4 of Section 7 either by voluntary agreement of all such owners or by a compulsory pooling order." (Finding 15)

11. Sapient has requested de novo review of Order No. R-11652 by the Oil Conservation Commission and seeks a stay of Order No. R-11652 until an order is entered by the Commission after the de novo review of this matter to protect the rights of the interest owners' in the spacing unit comprised of the E/2 E/2 of Section 7.

ARGUMENT:

Sapient's Motion for Stay of Order No. R 11652 pending a final determination of their appeal -- something which could take many months -- is just another sorry chapter in the Sapient saga whereby it has ignored the rules of the Division for the purpose of producing and converting the production of others.

Sapient's stated reason for its Motion for Stay is to prevent damage of the Barber Well. Sapient has recently acidized the well and contends that it has not yet cleaned up sufficiently for the well to be shut-in without risking damage to the well. Sapient supports its contention with certain well data which is attached to its motion. This data has been reviewed by Conoco and Chevron and each believes that it does not support a stay of Order No. R-11652. Specifically, once the fluids used in the acidization process are recovered (i.e. within the next few days), the well can be shut-in without harm to the reservoir or to subsequent production. Furthermore, the effect of this stay would enable it to continue to illegally produce the Barber Well and improperly share the

production proceeds with the owners of the E/2 E/2 of Section 7 at the expense of the mineral owners in the standard spacing unit required by Division rules.¹

Even if the well is allowed to continue physical production, there is no basis for staying that part of the Order requiring Sapiant to pay money to the legal owners for past and future production. Payment of money can be reversed and does not constitute irreparable harm, particularly given the creditworthiness of Conoco and Chevron. Should Sapiant prevail, refunds would be made. This remedy is necessary to ensure that Sapiant does not delay the process.

While Sapiant is concerned about the wellbore, Conoco and Chevron are concerned that Sapiant will not be financially able to account for and pay their respective shares of the production proceeds from the well unless as a condition of any stay Sapiant be required to post a bond to cover past obligations to the interest owners of the standard 160-acre spacing unit comprised of the NE/4 of Section 7 and also be required to escrow all production proceeds to satisfy its future payment obligations from the Barber Well.

Conoco and Chevron have been informed and believe that Sapiant is selling some of its assets and, although the Section 7 property may not be part of this sale, each is concerned about the ability of Sapiant to properly reallocate the production proceeds from this well after a final order is entered in these cases. The wording of the Motion for Stay suggests that Sapiant believes that the only remedy available to Conoco and Chevron for the reallocation of the production proceeds from this well will be out of the future production this well² Furthermore, Conoco and Chevron are also concerned that the results of Sapiant's recent acidization of the well suggests that simply waiting until a distant future date and then trying to reallocate interests from future production from the well could be meaningless.

¹ The interest owners in the W/2 NE/4 of Section 7 who have not shared in the production from the Barber Well and their respective shares of the working interest in this acreage are as follows:

Conoco, Inc.	37.41862%
Phillips Petroleum Company	25.00000%
Atlantic Richfield Company Now BP Amoco	18.70931%
Chevron USA Production Company	18.70931%
James Burr	0.06511%
Larry Nermyr	0.06511%
Ruth Sutton	0.03255%

² Sapiant states on page 3 of its motion that the correlative rights of Conoco will be protected because "there is sufficient remaining recoverable gas to be produced from the Barber Well, provided it is not shut-in, that should Conoco ultimately prevail then it can receive its appropriate share of both and past and future production." It is the position of Conoco and Chevron that the illegal production and sale of reserves owned by it during a time of high gas prices will require a cash balancing for these reserves based on the higher of the actual value received for this gas or the fair market (index) value at the time of production.

Oil Conservation Division Rule 1220.B provides that “The Director may grant stays ... if such stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party.” (emphasis added)

While a stay would protect Sapiant, to prevent gross negative consequences on Conoco and Chevron, any order staying Order No. R-11652 must also provide that all payments for production from the Barber Well received by Sapiant after September 13, 2001 be paid subject to refund or be placed in escrow and that Sapiant also be required to obtain a surety bond in the amount of \$1,500,000.00 to assure that the production proceeds from the Barber well can be properly reallocated after a final order is entered.

Any other result allows Sapiant, for the indefinite future, to benefit from its violation of Division rules at the expense of other interest owners in the standard spacing unit for the Bertha J. Barber Well No. 12 and could leave Conoco and Chevron in a position where, after affirmation of the Division order is affirmed, they may not be able to recover from Sapiant their respective share of the production proceeds from the well.

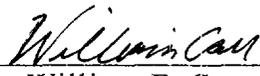
Sapiant’s other arguments in support of a stay are specious, their likelihood of success is premised on their right to ignore and circumvent the Rules of this Division. Similarly, their purported reliance on actions by the Hobbs District office would also require ignoring the Division’s Rules.

WHEREFORE, Conoco, Inc. and Chevron U.S.A. Production Company hereby request that:

1. the Motion of Sapiant Energy Corp. for Stay of Division Order No. R-11652 be denied or, in the alternative, that
2. any stay of Division Order No. R-11652 require:
 - A. that until a final order is entered in these cases, Sapiant Energy Corp. should pay lawful owners amounts due, subject to refund or place in escrow all proceeds for production from the Bertha J. Barber Well No. 12 received after September 13, 2001, AND
 - B. That Sapiant be required to obtain and file with the Division a surety bond in the amount of \$1,500,000.00 to assure that it will be able to properly reallocate the production from this well to all interest owners in the standard spacing unit comprised of the NE/4 of Section 7, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico.

Respectfully Submitted,

HOLLAND & HART LLP
AND
CAMPBELL & CARR

By: 
William F. Carr

ATTORNEYS FOR CONOCO, INC.
AND CHEVRON U.S.A.
PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document has been hand delivered to W. Thomas Kellahin, Esq., Attorney for Sapient Energy Corp., on the 21st day of September 2001.



William F. Carr