

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

IN THE MATTER OF THE HEARING CALLED BY	)	
THE OIL CONSERVATION COMMISSION FOR THE	)	
PURPOSE OF CONSIDERING:	)	
	)	
AMENDED APPLICATION OF SAPIENT	)	CASE NOS. 12,587
ENERGY CORPORATION FOR AN UNORTHODOX	)	
WELL LOCATION AND (i) TWO NONSTANDARD	)	
160-ACRE SPACING UNITS, OR IN THE	)	
ALTERNATIVE, (ii) ONE NONSTANDARD	)	
160-ACRE SPACING AND PRORATION UNIT,	)	
LEA COUNTY, NEW MEXICO	)	
	)	
APPLICATION OF SAPIENT ENERGY	)	and 12,605
CORPORATION FOR SPECIAL POOL RULES,	)	
LEA COUNTY, NEW MEXICO	)	
	)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HEARING ON MOTION TO STAY ORDER NUMBER 11,652

BEFORE: STEPHEN ROSS, Deputy General Counsel, Energy,  
Minerals and Natural Resources Department

October 4th, 2001

Santa Fe, New Mexico

This matter came on for hearing before STEPHEN ROSS, Deputy General Counsel, Energy, Minerals and Natural Resources Department, on Thursday, October 4th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
(505) 989-9317

## I N D E X

October 4th, 2001  
 Examiner Hearing  
 CASE NOS. 12,587 and 12,605 (Consolidated)

	PAGE
EXHIBITS	3
APPEARANCES	4
OPENING STATEMENTS:	
By Mr. Kellahin	6
By Mr. Carr	10
APPLICANT'S WITNESS:	
<u>PAUL KYLE TRAVIS</u> (Engineer)	
Direct Examination by Mr. Kellahin	14
Cross-Examination by Mr. Carr	31
Examination by Mr. Ross	43
CHEVRON/CONOCO WITNESS:	
<u>TIM R. DENNY</u> (Geologist)	
Direct Examination by Mr. Carr	50
Cross-Examination by Mr. Kellahin	59
Examination by Mr. Ross	63
CLOSING STATEMENTS:	
By Mr. Carr	64
By Mr. Kellahin	70
REPORTER'S CERTIFICATE	75

\* \* \*

## E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	16	31
Exhibit 2	19	31
Exhibit 3	22	31
Exhibit 4	25	31
Exhibit 5	27	31
Exhibit 6	28	31
Exhibit 7	29	31

\* \* \*

Chevron/Conoco	Identified	Admitted
Exhibit A	52	53, 59

\* \* \*

Additional submission by Chevron/Conoco, not offered or admitted:

	Identified
Rule 62.D, Rules of Civil Procedure	68
70-2-27.B (Oil and Gas Act)	69

\* \* \*

## A P P E A R A N C E S

## FOR THE APPLICANT:

KELLAHIN & KELLAHIN  
117 N. Guadalupe  
P.O. Box 2265  
Santa Fe, New Mexico 87504-2265  
By: W. THOMAS KELLAHIN

## FOR CHEVRON U.S.A. PRODUCTION COMPANY and CONOCO, INC.:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR  
110 N. Guadalupe, Suite 1  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

\* \* \*

## ALSO PRESENT:

LORI WROTENBERY  
Director, NMOCD  
Chairman, NMOCC

DAVID BROOKS  
Attorney at Law  
Energy, Minerals and Natural Resources Department  
Assistant General Counsel  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

\* \* \*

STEVEN T. BRENNER, CCR  
(505) 989-9317

1           WHEREUPON, the following proceedings were had at  
2 11:17 a.m.:

3           EXAMINER ROSS: Okay, we're ready to roll on.  
4 This is Case Number 12,587 and Case Number 12,605, which  
5 are actually before the Oil Conservation Commission *de*  
6 *novo*, Applications of Sapient Energy. We're here on the  
7 motion to stay Order Number 11,652.

8           Counsel, would you please enter your appearances,  
9 please?

10          MR. KELLAHIN: Yes, Mr. Examiner, I'm Tom  
11 Kellahin of the Santa Fe law firm of Kellahin and Kellahin,  
12 appearing on behalf of Sapient Energy Corp. I have one  
13 witness to be sworn for this proceeding.

14          MR. ROSS: All right.

15          MR. CARR: My name is William F. Carr with the  
16 Santa Fe office of the law firm Holland and Hart, L.L.P.  
17 We represent Chevron U.S.A. Production Company and Conoco,  
18 Inc. I have one witness.

19          MR. ROSS: All right, thank you, gentlemen.

20                 I sent you both a letter on September 27th kind  
21 of outlining the ground rules for this proceeding. We're  
22 here to take testimony essentially in support of, or in  
23 opposition of, the motion.

24                 I understand the grounds for the motion are that  
25 were the well to be shut in as ordered by the Division, the

1 well would essentially be damaged in some respect, and  
2 there may be an issue raised by Mr. Carr concerning the  
3 appropriateness, factual appropriateness of the bonding.  
4 So I'd suggest we take testimony on those issues.

5 The Director is actually present in the room, and  
6 hopefully we can expedite some decision on this, but we do  
7 intend also to expedite the transcript and get that  
8 prepared as quickly as possible, because we understand  
9 there's some urgency concerning this motion.

10 So with that, would you call your first witness?

11 MR. KELLAHIN: May it please the Examiner, I  
12 would like to make a brief opening statement at your  
13 pleasure. Perhaps you'd like to swear the witnesses before  
14 I do that. I'll make a short opening statement with your  
15 permission, and then we have a short evidentiary  
16 presentation from the president of Sapient Energy  
17 Corporation.

18 MR. ROSS: All right, thank you. Maybe we should  
19 get the witnesses sworn.

20 (Thereupon, the witnesses were sworn.)

21 MR. ROSS: You may proceed.

22 MR. KELLAHIN: Thank you, Mr. Ross.

23 Without describing the details specifically of  
24 the case that is the subject of this matter, let me simply  
25 briefly tell you that the Division on September 13th

1 entered Order Number R-11,652. The results of that  
2 decision are adverse to the position taken by Sapiient.

3           What it required is the Barber 12 well be shut in  
4 and that there be a balancing of the account for the  
5 production from that well, from its inception, among the  
6 appropriate parties in a spacing unit that would include  
7 the northeast quarter of Section 7. It would be for Tubb  
8 gas production. Tubb gas production at that depth is  
9 generally spaced on 160 acres, and under Rule 104, it's in  
10 the shape of a square. For your information, the square is  
11 divided east half and west half.

12           The well was acquired by Sapiient through a series  
13 of transactions. It was originally recompleted by Cross  
14 Timbers for production, I believe, in August of 1999. The  
15 well was then sold to Falcon Creek, and then Sapiient  
16 acquired the wellbore.

17           In the paper trail of activities, Cross Timbers  
18 filed for a spacing unit that would include the east half  
19 of the east half of the section, and production was  
20 apportioned and distributed in that fashion.

21           For your information, the east half of the east  
22 half is one single leasehold, so the interest owners are  
23 the same.

24           The decision was entered on September 13th.

25           On September 19th, on behalf of Sapiient, we filed

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 for a *de novo* hearing before the Commission. In addition,  
2 I filed a motion to stay the Examiner Order.

3 For your information, Mr. Ross, the practice  
4 before the Division has been, the filing of a *de novo*  
5 application is presumed not to immediately or automatically  
6 stay the Examiner Order. It requires something else. And  
7 pursuant to that practice, then, I filed the something  
8 else.

9 The something else was that Sapiient is prepared  
10 to demonstrate to you this morning that if the well is shut  
11 in damage will occur to the wellbore. That damage is  
12 significant, the well is sensitive to shut-in, and it would  
13 be wasteful to do so.

14 What we contend is, if Sapiient ultimately loses  
15 before the Commission with an adverse decision, it becomes  
16 an accounting problem. We're going to have to re-balance,  
17 if you will, the gas production.

18 The custom and practice of the industry is to  
19 balance gas under a gas balancing agreement where parties  
20 sign an operating agreement and the industry uses the  
21 custom and practice of gas balancing.

22 We would propose to engage in that solution if  
23 Sapiient ultimately loses.

24 The issue before you, then, is whether the well  
25 should be shut in or not and, in addition, whether or not a

1 bond should be posted to ensure the satisfactory  
2 performance by Sapient of a compliance procedure to  
3 rebalance the equities.

4 It is our position that a bond would be an  
5 extraordinary solution. To the best of my recollection, I  
6 cannot think of an occasion where that's happened. It may  
7 have occurred. If so, it would be unusual.

8 We are opposed to establishing a bond, we're  
9 opposed to posting it, we're opposed to having a letter of  
10 credit to guarantee the performance, and here's the reason  
11 why.

12 Sapient has brought their reservoir engineer,  
13 their petroleum engineer before you, but he's also  
14 president of the company. He will demonstrate to you that  
15 they have the financial capacity to perform the  
16 requirements that the Division or the Commission may  
17 ultimately decide are necessary, and they're a viable  
18 entity.

19 In addition, using Conoco's own testimony at the  
20 Examiner hearing, Conoco demonstrated by their own  
21 calculation that the well at that time still had two BCF of  
22 additional gas to be recovered. It is our position that  
23 there is sufficient gas to be recovered that we can enter  
24 into the custom and practice of the industry for gas  
25 balancing. It's a concept that Conoco suggested at the

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 Examiner Order to balance the equities. At that hearing  
2 they did not ask for a cash settlement or a check; they  
3 were talking about gas balancing. And so that's what I'm  
4 talking about.

5 In addition, regardless of what happens, Sapiant  
6 and the interest owners in the east half of the spacing  
7 unit, if it's to be a square, are still entitled to half.  
8 The other half will be distributed in such a fashion that  
9 if Conoco prevails they'll have 18.7 percent of the  
10 production, and Chevron will have 9.35

11 So that's our position, that we're opposed to  
12 posting a bond, we'll present evidence with regards to  
13 those issues, we'll talk about the concept of gas  
14 balancing, but foremost we think it is in no one's interest  
15 to shut the well in, and we will have that proof for you in  
16 just a moment.

17 MR. ROSS: Thank you. Mr. Carr?

18 MR. CARR: Mr. Ross, on September 13th, the  
19 Division determined that Sapiant was illegally producing  
20 this well. The next thing Sapiant does is ask that you  
21 permit them to continue to produce the well, in violation  
22 of that Order, because of things they have recently done to  
23 that well.

24 They sought a stay. We looked at the data, we  
25 could not see that it warranted special relief again for

1 Sapiient to let them just go forward and continue to produce  
2 a well and drain reserves from us. We're not the operator,  
3 we don't have the information available to us, either  
4 Conoco or Chevron, that's available to Sapiient, and so  
5 we're here today to hear what it is they think has put this  
6 well in risk.

7 If you decide to stay the Order and let them  
8 continue to produce, we are here asking you to require  
9 adequate sureties to indemnify all persons who may suffer  
10 damage by Sapiient by its continuing to produce the Bertha  
11 J. Barber Well Number 12 and retaining all the proceeds.

12 To succeed in obtaining this stay, there are  
13 certain standards, certain things they are required to  
14 show. One is likelihood that they will prevail on the  
15 merits on appeal. We'd like to see what it is they think  
16 they're going to show that would dictate a different result  
17 from what they obtained below.

18 They have to make a showing of irreparable harm,  
19 and that's when we're going to be interested in what they  
20 say they've done to the well.

21 They have to show there's no substantial harm to  
22 any other interested party. And we submit that we continue  
23 after two years to sit with production being drained from  
24 us, with no assurance that, based on past performance,  
25 there's ever going to be anything but a legal fight over

1 whether or not they're entitled or going to be required to  
2 pay, and we have no guarantee that the company, if it's  
3 sound today, will be sound when we get to that point in  
4 time, and they have to show there will be no harm to the  
5 public interest.

6           What we do know is that since August of 1999,  
7 Sapiient has been producing this well from the Tubb  
8 formation. And what seems to be forgotten in this whole  
9 argument is that today, as in August of 1999, there is a  
10 spacing unit for the well. If I drilled a well in this  
11 room it would be in a spacing unit, because we are pre-  
12 spaced. And that spacing unit stands until a different  
13 spacing unit has been approved, and none has ever been  
14 approved for the Bertha Barber Well Number 12. And that  
15 spacing unit was, and is, the northeast quarter of Section  
16 7. And Sapiient only owns half of that. Conoco and Chevron  
17 owns approximately 30 percent of the production from the  
18 well. We own it today. The production has been taken, it  
19 has been sold, and we have not been paid. And now you have  
20 found they're illegally producing.

21           As we look at this we've concluded that just  
22 being entitled to a volume balancing after the fact isn't  
23 enough, because they've taken the production, they've sold  
24 it at times when the market was strong and the prices were  
25 high, and we're seeking a cash balancing, and if we have to

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 we will resolve that in the District Court of Lea County.

2 But now they want to appeal the ruling. They  
3 have the right to do that at the Division. They stand  
4 before you, though, producing a well on a spacing unit  
5 that's never been approved, with a well that was at an  
6 unorthodox location for over two years, and I guess they're  
7 trying to stay the Order as it relates to that location.

8 And now they don't even want to post a bond, they  
9 say it's extraordinary. And we'll show you, and as Mr.  
10 Brooks pointed out in an earlier case today, there may not  
11 be anything directly on point in the rules and regulations  
12 of the Oil Conservation Division, but when we look at the  
13 Rules of Civil Procedure we see that when you're appealing  
14 an order, a bond is generally a condition, and a condition  
15 precedent, to an effective stay.

16 So we're here today, we're interested in hearing  
17 what they have to say about the damage to the well, and if  
18 you determine that the Order has to be stayed to protect  
19 that well, we're going to ask you to require as a condition  
20 of that staying a posting of a bond as the past production  
21 and an order that requires future production proceeds be  
22 escrowed.

23 MR. ROSS: Thank you.

24 Call your witness?

25 MR. KELLAHIN: Yes, sir, we call Mr. Kyle Travis.

1                                    PAUL KYLE TRAVIS,

2    the witness herein, after having been first duly sworn upon  
3    his oath, was examined and testified as follows:

4                                    DIRECT EXAMINATION

5    BY MR. KELLAHIN:

6            Q.    Mr. Travis, sir, for the record, would you please  
7    state your name and occupation?

8            A.    Paul Kyle Travis. I'm president of Sapient  
9    Energy Corp.

10          Q.    Where do you reside, sir?

11          A.    Tulsa, Oklahoma.

12          Q.    Do you hold any professional degrees, Mr. Travis?

13          A.    I'm a petroleum engineer by degree and a  
14    registered petroleum engineer in the State of Oklahoma.

15          Q.    What is it that you do for your company, sir?

16          A.    I am, as I stated, president. I also act as  
17    operations manager, if you will. All the engineers and  
18    field personnel are under my direction.

19          Q.    So when I describe to Mr. Ross the position  
20    Sapient has taken concerning the sensitivity of this  
21    wellbore to shut-in, that would be within the scope of your  
22    expertise and responsibility?

23          A.    Yes, it would.

24          Q.    In addition, when we talk about the financial  
25    viability to properly perform the requirements under a

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 Commission order, should it be adverse to Sapiient, that  
2 would be something within the scope of your knowledge and  
3 experience?

4 A. Yes, it is.

5 Q. When we talk about the concept of the industry  
6 practice to engage in gas balancing for gas production, is  
7 that also something within your knowledge and expertise?

8 A. Yes, it is.

9 MR. KELLAHIN: We tender Mr. Travis as an expert  
10 witness.

11 MR. ROSS: Objection?

12 MR. CARR: No objection.

13 Q. (By Mr. Kellahin) Let's talk about the well, and  
14 then we'll talk about the other issues, Mr. Travis.

15 A. All right.

16 Q. Are the engineering exhibits that we're about to  
17 look at exhibits that were prepared by you directly or  
18 under your direction and supervision?

19 A. Yes, they were.

20 Q. In addition, is the data for the well that we're  
21 about to show data that is generated in the normal course  
22 of business for managing and operating a well such as this?

23 A. Yes, it is.

24 Q. Let's turn to Exhibit 1 and have you identify  
25 that for us.

1           A.   Exhibit 1 is a rate-versus-time graph of the  
2 Barber 12 well in Monument Field.

3           Q.   When we look at the rate, on what scale do we  
4 find the rate?

5           A.   The rate would be on the left-hand side. The red  
6 line is a gas production, monthly gas production, presented  
7 in MCF per month.

8           Q.   The two lower lines, there's one that is a light  
9 black line. What does that represent?

10          A.   That's a GOR curve that shows the gas-oil ratio.

11          Q.   And the bottom plot is a green line. What does  
12 that represent?

13          A.   That represents oil production.

14          Q.   All right. When you look at this data as  
15 displayed, what engineering issues are important to you?  
16 What do you see?

17          A.   The reason this graph was shown is, I'm showing  
18 what happened to the well back in May and June where the  
19 solid vertical line is that's drawn around the first of  
20 May, and in May the gas purchaser curtailed our production.  
21 They were having plant problems or something and curtailed  
22 our production and had us choke the well back from -- it  
23 had been producing about 1100 MCFD, and had us choke it  
24 back to between 500 and 750 MCFD. And so that was the  
25 latter part of May and the first part of June.

1           And then at a point in June they said, Okay,  
2           Sapient, we've got our problem fixed, you can bring your  
3           well back up. And we opened the choke back up, thinking  
4           the well would return to its previous established rate, and  
5           it did not. It produced at about 850 MCFD at that point.  
6           Could not get back -- Prior to that, as I said, it had been  
7           producing close to 1100 MCFD.

8           So something, you know, had occurred to the well  
9           to damage it.

10          Q. Did you attempt to investigate, to the best of  
11          your engineering ability, what was the cause for the  
12          inability of the well to return back to its accustomed  
13          daily performance rate prior to the purchaser requiring you  
14          to restrict production?

15          A. Yes, we did. We had seen, in some previous work  
16          on the well, scaling tendencies in some of the surface  
17          equipment, so we suspected that we might have a scaling  
18          problem. And that's a problem that we've seen in other  
19          wells in the Permian Basin when you have curtailments,  
20          either by pipeline problems or electrical storms that knock  
21          your wells down for a day or two. Sometimes when you bring  
22          them back on they don't come back on at the previous rates.

23          Q. What does "scaling" mean?

24          A. Scaling is the formation of solids, usually  
25          either calcium carbonate or calcium sulfate, that develops

1 in areas where there's a pressure drop, sometimes at the  
2 formation face, sometimes on your downhole equipment and  
3 your pump and your perforated subs and sometimes at the  
4 surface where this solid material plates out and restricts  
5 flow into your well. It's normally associated in wells  
6 that make either some water, either small quantities or  
7 large quantities of water.

8 We had the water analyzed in this well, and it  
9 indicated that there were both calcium carbonate and  
10 calcium sulfate scaling tendencies of the water. So at  
11 that point we thought we had a scale problem.

12 Is there established practice within your  
13 profession on how to remediate or attempt to clean the well  
14 when it's subject to scaling?

15 A. Yes, calcium carbonate is normally acidized with  
16 hydrochloric acid, and it will usually dissolve the calcium  
17 carbonate scale. Calcium sulfate requires a different  
18 chemical, you approach the two problems differently. So at  
19 this point we did not know which we had or -- you know,  
20 there's always the possibility that we even had a  
21 combination.

22 Q. Did you engage in remedial action on the well to  
23 attempt to restore it to its original level of  
24 productivity?

25 A. Yes, we did.

1 Q. And when did you commence that effort?

2 A. We started that work in August, and on August  
3 24th we pumped 2000 gallons of a chemical called X-25,  
4 which is a sodium hydroxide chemical which we had tested  
5 some of the calcium sulfate scale that we found on the  
6 equipment, we tested that in that liquid, and it was  
7 successful in dissolving that scale. So we pumped 2000  
8 gallons of that chemical down our tubing.

9 Q. Let me direct your attention, Mr. Travis, to what  
10 has been marked Exhibit 2 for the purposes of the hearing  
11 today. It also shows an Exhibit 1 sticker. This first  
12 page was attached to the motion to the Division to ask for  
13 a stay. The subsequent attachments represent an updated  
14 data sheet, if you will, that's been supplemented since  
15 it's been filed with the Division; is that not true?

16 A. That is correct.

17 Q. The only changes that have occurred are towards  
18 the end of the exhibit where there have been additional  
19 daily data put on the tabulation?

20 A. That is correct, it's updated --

21 Q. Everything else is the same?

22 A. Right, updated through October 2nd.

23 Q. And this letter purports to be signed by you.

24 Was it, in fact?

25 A. Yes, it was.

1 Q. Without going through the specifics of the data,  
2 can you draw our attention to conclusions that you can make  
3 based upon that data?

4 A. Yes. It's my belief that this well has indicated  
5 its sensitive nature based on the way it produces. On the  
6 situation that I described in May and June when the well  
7 was just curtailed, it was unable to come back again. This  
8 is not an entirely unique situation, it's the same  
9 situation we've seen in other wells. But I think if we  
10 were to shut this well in at this point, when we brought it  
11 back on it would not be the same well that we had when we  
12 shut it in. And furthermore --

13 Q. Is that an incident where it is a temporary  
14 postponement of production, or are you truly affecting the  
15 ultimate recovery from the well?

16 A. It could be permanent. At best you would have to  
17 overcome the damage by pumping another treatment, and you  
18 would certainly hope that it would come back to its  
19 previous established rate, but there's no guarantee.  
20 Again, I've seen wells that have not.

21 Q. In May and June, then, when the pipeline  
22 purchaser required you to curtail it, your curtailment was  
23 down to approximately 500 to 750 a day?

24 A. That is correct.

25 Q. And subsequent to that, you were not able to

1 restore it to its original rate of 1100 a day?

2 A. That is correct.

3 Q. Let's talk about what's happened since the  
4 treatment.

5 A. Okay.

6 Q. Now, let's talk first of all, the cost involved.  
7 What is the approximate cost of engaging in this kind of  
8 remedial activity?

9 A. Oh, depending on the type of treatment and size,  
10 typically going to spend somewhere between \$10,000 and  
11 \$20,000 on treatment.

12 Q. All right, the well's been treated. What's  
13 happened?

14 A. Okay, after we pumped that 2000 gallons, the well  
15 locked up and was unable to produce anything. By pumping  
16 this treatment we had created more problems than we solved  
17 with the chemicals. So it became apparent to us that we  
18 had more than just a calcium sulfate problem.

19 We tried to pump some KCl water, thinking that  
20 there was a chance that our rock salt that we had pumped as  
21 a diverter may be blocking up our perforations, just hoping  
22 to dissolve that. That did not work.

23 And we got samples out of the well, we were able  
24 to swab the well, and we got samples of very dirty-looking  
25 water, black and gray water that had solids suspended in

1 it, and we ran various tests on different fluids to see  
2 what would break that down, thinking that we could pump  
3 that down the well and hopefully dissolve whatever damaging  
4 material had been created by pumping the other fluid.

5 And we determined that hydrochloric acid worked  
6 good, and we pumped a remedial treatment of 2000 gallons of  
7 15-percent HCl down the well and nitrified it to give it  
8 energy just to clean up quicker.

9 Q. Let me ask you to turn your attention to Exhibit  
10 Number 3. After engaging in the remedial activity, did you  
11 return the well to production?

12 A. We did, the second treatment was successful.  
13 With a little swabbing it kicked off and started flowing.  
14 Immediately it jumped up around the 600 MCFD range and then  
15 steadily improved on a daily basis after that.

16 This Exhibit 3 is a graphical presentation of the  
17 production on a daily basis -- these are MCFDs on the left  
18 and dates on the bottom -- where we are showing graphically  
19 that this production has improved daily, typically 3 to 6  
20 MCFD each day that it allows to produce.

21 And that fluid that's coming back is still very  
22 dirty, it's -- By virtue that the well is improving each  
23 day, it's obvious that it's continuing to clean up. I  
24 mean, if a well was cleaned up where at its normal  
25 producing rate it would be steady or declining slightly --

1           Q.    What's currently being reported to you as the  
2 description of the fluids being recovered from the well at  
3 this point?

4           A.    The fluids are described as blackish-gray with  
5 suspended solids that, if left alone or heat applied to  
6 them, these particles settle out in an estimated 1-percent  
7 sediment.  So --

8           Q.    What does that tell you?

9           A.    That tells me that this fluid down there is still  
10 -- the particulates and the fluid that were pumped down the  
11 hole, there's still residue down there that needs to come  
12 out of the well to enable it to produce at its full  
13 capability.  Again, if we were to shut the well in at this  
14 point while the well is still cleaning up and these  
15 damaging fluid and particles are down there, there's a good  
16 chance they'll be entrained in the pore throats and cause  
17 damage.

18                    In that situation it's entirely possible that if  
19 the fluids are entrained in the pore throats and change the  
20 relative perm to gas, that again you could cause permanent  
21 damage that may not be able to be rectified by a treatment.

22           Q.    Under the current cleanup procedure for the last  
23 remedial action, do you have an estimate or an  
24 approximation about how much longer you'll have to consider  
25 to produce the well to the point where you think you have

1 accomplished all you can, based upon that last treatment?

2 A. At this current rate of improvement of 3 to 4  
3 MCFD improvement per day, I would guess at least a couple  
4 of months to get back up to that 1100.

5 Q. And there is no indication at this point as to  
6 whether the well will return to that capacity or not?

7 A. There's no guarantee, but the trend is certainly  
8 encouraging as it continues to improve each day.

9 Q. All right. My question, is it premature to know,  
10 based upon the current data, as to whether you can restore  
11 this well to the 1100-a-day rate that it enjoyed in May?

12 A. It is premature to know that.

13 Q. What is your professional judgment and opinion to  
14 the Examiner concerning shutting the well in?

15 A. It's my opinion that shutting the well in will  
16 certainly cause damage, that to allow the well to continue  
17 to produce harms no one, to shut it in introduces a high  
18 degree of risk that the well will be damaged, and possibly  
19 permanently damaged.

20 Q. Let's turn to another chapter, or topic.

21 A. All right.

22 Q. Let's talk about what your records show in terms  
23 of production from the well on a monthly basis and your  
24 estimates as to the value of that production. And to  
25 illustrate this topic, let me direct your attention to

1 Exhibit Number 4. Was this an exhibit prepared by you or  
2 under your direction and supervision?

3 A. Yes, it was.

4 Q. Before we talk about the details, tell us how to  
5 read the display.

6 A. Okay, this table is broken into three different  
7 time periods. I have the months shown on the left-hand  
8 column. The first group is subtotaed with Cross Timbers  
9 data. That is, Cross Timbers was the company that deepened  
10 this well, recompleted it and sold it to Falcon Creek.

11 The next four lines constitute the period of time  
12 when Falcon Creek operated it prior to their merger with  
13 Sapiient Energy.

14 So then the last group of data is the period of  
15 time that Sapiient has operated this well.

16 So as you move across the right, we have both gas  
17 volumes and oil volumes and then sales proceeds, taxes,  
18 then the net is only the value less the tax. Nothing has  
19 been shown on here in terms of operating costs or the costs  
20 to deepen and recomplete the well.

21 Q. All right, let me make sure I understand what net  
22 means to you on this display. Net is simply taking the  
23 value less the tax, gets the net?

24 A. Correct.

25 Q. This net does not reflect any contribution by

1 interest owners for the cost of the wellbore or the  
2 recompletion into the Tubb?

3 A. That is correct.

4 Q. And it doesn't take into consideration the  
5 operational costs that were generated by the various  
6 operators to the well?

7 A. That is correct.

8 Q. All right, what happens in the last two columns?

9 A. The last two columns, that net figure is split  
10 into royalty and working interest net revenue, just for the  
11 purpose of showing the Division the royalty owners and  
12 working interest owners.

13 Q. All right. If we look down through the display,  
14 then we can see on a monthly basis the gas volumes, the  
15 value and read through the chart and have that information?

16 A. Correct.

17 Q. All right, let's set this aside for a minute.  
18 We'll come back to it later. Let's set that aside.

19 I represented to Mr. Ross that Sapient had the  
20 financial ability to satisfy the performance required if  
21 the Commission order is ultimately adverse to your  
22 position. Do you agree with what I said?

23 A. That is certainly correct.

24 Q. Do you have an exhibit that illustrates and  
25 demonstrates that fiscal or financial ability?

1           A.    Yes, we've got Exhibit 5 prepared here, which is  
2 a summary of our financials, which shows Sapiient to be in  
3 very sound financial shape, a very profitable company, a  
4 company that could -- although we think we are going to win  
5 this case, could easily endure the financial requirements  
6 if we were to lose and have to pay as Conoco requests.

7           Q.    Let's talk about what Conoco's requested.

8           A.    Yes, let's.

9           Q.    Let's turn to Exhibit 6, and let's --

10          A.    Just --

11          Q.    -- talk -- Excuse me.

12          A.    Before we leave Exhibit 5, I'd just like to point  
13 out -- I don't know, just to make sure the Examiner is  
14 aware of the units that we're talking about here, Sapiient  
15 has almost \$83 million in assets. We have a borrowing base  
16 from a bank of \$50 million, and we have only borrowed \$23  
17 million. So we have an unused line of credit of \$27  
18 million. So again -- And then in the last 12 months we've  
19 cash-flowed \$30 million. So I mean if it's -- a million,  
20 half million is very -- is a figure that we can handle.

21                   I'm sorry.

22          Q.    Let's go back to Exhibit 4 now, and if we look at  
23 the potential range of the value for the makeup gas, and if  
24 the remaining future recoverable gas under any gas  
25 balancing is insufficient to balance the account, in your

1 opinion does Sapiient have the necessary financial resources  
2 to cash balance on the remaining?

3 A. We certainly do.

4 Q. And that, in fact, is the custom and practice of  
5 the industry with regard to gas balancing, isn't it?

6 A. Yes, it is.

7 Q. Let's go on and talk about what Conoco has said.

8 A. All right.

9 Q. At the March 1st hearing, Conoco's engineer, Mr.  
10 Lowe, provided some reservoir engineering estimates using  
11 his own methodology on what he thought was the estimated  
12 ultimate recovery of gas from the Barber 12 well; is that  
13 not true?

14 A. That is correct. Mr. Lowe testified that it was  
15 his estimation that there were 2.8 BCF of ultimate  
16 recoverable reserves in this well.

17 Q. I'm directing your attention to Exhibit Number 6.  
18 Have you reviewed that portion of Exhibit 6 that refers to  
19 Mr. Lowe's testimony about his estimate of ultimate  
20 recovery?

21 A. Yes, I have.

22 Q. Now, let's put that in context, if you will, Mr.  
23 Travis. Approximately how much of the 2.8 BCF of  
24 recoverable gas has currently been produced from the well?

25 A. Okay, if you go back to Exhibit 4 and look at the

1 total line, it shows through July that about 756 million  
2 cubic feet had been produced. Since that time, you know,  
3 here we are, early October, so you have August and  
4 September production. Estimating volumes similar to July  
5 puts you at about .8 of a BCF of gas have been produced  
6 from this well.

7 Q. Let me direct your attention to Exhibit 7 now,  
8 which is that portion of the March 1st transcript in which  
9 Mr. Lowe again, on behalf of Conoco as their engineer, is  
10 talking about how to account to the parties in the event  
11 Conoco should prevail and there had to be a reallocation.  
12 Are you familiar with this portion --

13 A. Yes, I am.

14 Q. -- of the transcript?

15 What is Mr. Lowe describing here?

16 A. He's describing the industry practice of gas  
17 balancing, which is a routine and customary method that oil  
18 and gas companies use to resolve imbalances in gas  
19 production.

20 Q. Was Mr. Lowe asking for a cash payment?

21 A. No, he states specifically in his testimony that  
22 they did not seek a cash payment, that they sought gas  
23 balancing --

24 Q. Was Conoco worried --

25 A. -- in the event that they were successful.

1 Q. Was Conoco worried back in March about the  
2 financial viability of your company?

3 A. There was no indication of that.

4 Q. Were they asking in March that you post a bond in  
5 the event you should and have to indemnify performance?

6 A. No.

7 Q. Describe for us what you mean by gas balancing.

8 A. Gas balancing, again, is the usual and customary  
9 practice that -- Most modern joint operating agreements  
10 have a clause in there for gas balancing where the interest  
11 whose production is underproduced have the opportunity to  
12 make up that gas by taking portions of the overproduced  
13 party's gas, and those percentages can vary depending on  
14 the wording in the operating agreement.

15 It's our opinion, again, that we will win this  
16 hearing, but in the event that we were to lose, this  
17 accounting problem, this gas imbalance, could easily be  
18 handled with a mutually agreeable gas balancing language in  
19 the joint operating agreement. Again, it's the methodology  
20 that Conoco proposed at the hearing in March.

21 MR. KELLAHIN: Mr. Ross, that concludes my  
22 examination of Mr. Travis.

23 We would move the introduction of Sapiient's  
24 Exhibits 1 through 7.

25 MR. ROSS: Any objection?

1 MR. CARR: No objection.

2 MR. ROSS: They will be admitted.

3 Any cross?

4 CROSS-EXAMINATION

5 BY MR. CARR:

6 Q. Mr. Travis, I think Mr. Kellahin said the  
7 ownership under the east half, east half, was common; is  
8 that correct? Is the ownership in the east half of the  
9 northeast and the east half of the southeast the same?

10 A. That is correct.

11 Q. Do you know what the ownership is in the west  
12 half of the northeast?

13 A. No, I don't.

14 Q. You've indicated in some of these calculations  
15 that some royalty obligations have been met. Have you made  
16 any provision to pay royalty to any interest owner in the  
17 west half of the northeast?

18 A. No, we have not.

19 Q. You've talked about gas balancing in your  
20 testimony today, being the customary way that imbalances  
21 are handled in the industry. That's usually done by  
22 agreement between the parties, is it not?

23 A. That's correct.

24 Q. And are you aware of any circumstance where gas  
25 balancing was somehow ordered when one party was denying

1 the right of the others to share in the production at all?

2 A. Yes, I have.

3 Q. And when was that?

4 A. There are cases in Oklahoma where companies have  
5 been forced to gas balance when there was no language in  
6 the operating agreement.

7 Q. Are those cases after the fact when one party has  
8 denied the right of the other to share in the production in  
9 the first place?

10 A. Yes.

11 Q. And they were ordered after a proceeding in the  
12 district court, or in the courts?

13 A. In the courts, I don't know what level.

14 Q. And you understand this dispute is already in the  
15 courts between Conoco and Sapient?

16 A. Yes.

17 Q. When Mr. Kellahin was asking you questions about  
18 the testimony in March by Mr. Lowe, I don't recall that  
19 there was any issue in that case about the viability of  
20 Sapient financially. Do you recall that being an issue at  
21 all?

22 A. No, that was his point.

23 Q. It wasn't being discussed, it wasn't --

24 A. It was not an issue.

25 Q. One way or the other?

1           A.    If it was an issue to Conoco and Chevron, it was  
2 not voiced.

3           Q.    At that point in time there was no order from the  
4 Oil Conservation Division on any of the issues between us,  
5 was there?

6           A.    That is correct.

7           Q.    And there was no discussion concerning a bond at  
8 that time?

9           A.    That is correct.

10          Q.    At that time, then, we had certain numbers about  
11 the ultimate potential recovery from the Bertha J. Barber  
12 Number 12 well at what, 2.8 BCF?

13          A.    Mr. Lowe testified to 2.8 BCF.

14          Q.    There was no question at that time about whether  
15 or not the wellbore had been damaged; isn't that right?

16          A.    That is correct.

17          Q.    When we look at the wellbore and the decline that  
18 you show on Exhibit Number 1, it was clearly -- there was  
19 clearly a decline in the production rate. You're satisfied  
20 this isn't just the result of a pressure depletion; is that  
21 right?

22          A.    Which point are you talking about?

23          Q.    I'm looking at Exhibit Number 1 and the --

24          A.    Right.

25          Q.    -- decline we were seeing in May and June.

1 That's not pressure depletion of the reservoir?

2 A. I do not believe so at that time. I think the  
3 fact that the well is continuing to improve looks like it's  
4 going to come back up and hopefully intercept that previous  
5 established decline. I do not know.

6 Q. Why has it been taking so long for the well to  
7 clean up? Do you have an opinion on that?

8 A. "So long" is a relative term. Actually, we're  
9 quite pleased with the rate that the thing is cleaning up,  
10 so --

11 Q. Did you have sand in the wellbore at the time you  
12 acidized or anything that might slow down the recovery?

13 A. Prior to the acidization we had sand in the  
14 wellbore, which we cleaned out.

15 Q. Can you warrant that if this takes months or  
16 years to conclude, that in fact this well will be  
17 continuing to produce as projected?

18 A. I cannot warrant that. I can warrant to the  
19 financial stability of Sapient Energy.

20 Q. And looking at the data, if that is the accurate  
21 financial picture of Sapient -- I'm not challenging that --  
22 you could take that data and you could secure a bond, could  
23 you not?

24 A. Yes, we could.

25 Q. But you don't want to do that?

1 A. No, we don't.

2 Q. You don't want to shut in the well?

3 A. We do not want to shut in the well.

4 Q. You want to continue to produce the well until

5 there's a final resolution of this dispute, is that --

6 A. That is correct. We want to continue to produce  
7 the well till the well is plugged.

8 Q. Are you willing to place -- escrow the production  
9 proceeds until this matter is resolved?

10 A. We do not desire to do that as well.

11 Q. So you want to -- The OCD has ruled that you're  
12 illegally producing the well, we know that today, correct?  
13 That's the ruling of the Division.

14 A. Those are your words.

15 Q. Have you seen the Order from the Oil Conservation  
16 Division?

17 A. Yes, I have.

18 Q. Have you read Finding 14? Have you read the  
19 Order?

20 A. I've read it.

21 Q. Did you see the findings where it concluded that  
22 the well had been illegally produced?

23 A. If it's in there, then I read it.

24 Q. And yet you don't want to shut it in and you  
25 don't want to escrow the funds?

1 A. That is correct.

2 Q. And you don't want to post a bond?

3 A. That is correct.

4 Q. Are you interested in getting this to a quick  
5 resolution?

6 A. Yes.

7 Q. Is there any reason that you've filed for hearing  
8 *de novo* too late to get it on the October docket?

9 A. I did not file that. You'll have to ask our  
10 attorney.

11 Q. The longer the well produces, the more you will  
12 be draining the reservoir?

13 A. Let me say this, relating to the date again, that  
14 our attorney filed that. There was no effort on Sapien's  
15 part to delay that, there was nothing done intentionally to  
16 try to draw the process out.

17 Q. The longer you continue to produce this well, the  
18 more it's going to drain the reservoir; isn't that fair to  
19 say?

20 A. Correct.

21 Q. The well is at an unorthodox location; is that  
22 not true?

23 A. Yes, it is.

24 Q. It's encroaching on a Chevron tract to the north;  
25 isn't that right?

1 A. Which they have approval to drill a well in that.

2 Q. And until there is a well offsetting it, you're  
3 continuing to be able to drain out from that well onto the  
4 Chevron property?

5 A. I don't know that I'm draining out onto the  
6 Chevron property.

7 Q. Is it your testimony that you don't think this  
8 well, having produced the volumes we see, has drilled [sic]  
9 more than 330 feet from the wellbore?

10 A. It's very possible. Chevron's own documentation  
11 presented at the last hearing, they filed data that said  
12 their well was too tight to produce over there, so we don't  
13 know where the productive reservoir extends into theirs.  
14 And until they drill a well, we won't know. And they have  
15 the right to drill a well, they received approval. And I  
16 don't know. Have they drilled a well out there?

17 Q. When you state they received approval to drill a  
18 well, that was just recently received from the Division; is  
19 that correct?

20 A. Two or three weeks ago.

21 Q. They sought approval late in the year 2000, did  
22 they not?

23 A. That is correct.

24 Q. And they propose to re-enter a well 330 feet off  
25 the common lease line between your tract, on which the

1 Barber well is located, and their tract?

2 A. That is correct.

3 Q. And you objected to that, did you not?

4 A. We objected to it and then withdrew our  
5 objection.

6 Q. And because of that objection there were  
7 additional delays; isn't that right?

8 A. That is correct.

9 Q. And you were objecting to a well offsetting you  
10 as close to the common lease line as you were?

11 A. That is correct. And then we withdrew our  
12 objection and, due to their own failure to notice, were  
13 denied the ability to drill the well for a period of time,  
14 correct?

15 Q. And you withdrew your objection the day before  
16 the hearing, correct?

17 A. Correct.

18 Q. And are you testifying that you have some  
19 expertise in the rules of the Division when you're --

20 A. No, I am not.

21 Q. -- talking about notice?

22 If this matter goes on for an extended period of  
23 time, you stated you couldn't warrant that this well would  
24 still be producing?

25 A. No, but I warrant that we will be financially

1 strong enough to take on any cash balancing obligation that  
2 could result.

3 Q. Can you warrant that two, three years from now  
4 you'll be in that position?

5 A. Yes.

6 Q. And couldn't you then take that data and obtain a  
7 bond to secure --

8 A. We could, but it's not necessary. It's an  
9 expense -- I look at -- I mean, the fact that we can does  
10 not mean that we should. I look at -- When we make  
11 expenditures, I look at it like spending our own money, and  
12 I think it's an extraordinary request, I think it's  
13 unnecessary, and I don't think we should be required to  
14 obtain a bond.

15 Q. Have you obtained one before?

16 A. We have obtained letters of credit before, which  
17 can act like a bond.

18 Q. Do you think it's appropriate to ask Conoco or  
19 Chevron or the OCD to evaluate and monitor your activity to  
20 assure that someday you can perform on an obligation you  
21 may have?

22 A. I don't think it's necessary, and I don't think  
23 it's required.

24 Q. Do you know of anyone who's been asked to post a  
25 bond that thought it was necessary?

1 A. Yes.

2 Q. Who?

3 A. People who hedge oil and gas, they understand the  
4 necessity behind a bond or letter of credit.

5 Q. Do you know what the spacing unit for the Bertha  
6 Barber well is today?

7 A. 160 acres.

8 Q. And do you know that that have been the spacing  
9 unit since August of 1999?

10 A. Yes.

11 Q. And you do know that because of that there are  
12 other interest owners who, as long as that is the spacing  
13 unit, are entitled to share in the production from that  
14 well?

15 A. If that is ultimately -- well -- Yes.

16 Q. You keep saying that you're confident you're  
17 going to prevail. Could you explain to me the basis for  
18 that statement?

19 MR. KELLAHIN: Objection, Mr. Examiner, there's  
20 no reason, justification for Mr. Carr to engage in what we  
21 intend to prove at the Commission level. He's trying to  
22 apply a district court standard for staying a district  
23 court decision on appeal. Frankly, the standard here is,  
24 we're entitled to a *de novo* hearing, which means hearing  
25 anew, and we shouldn't go into a lengthy discussion about

1 what Mr. Travis thinks or doesn't think about his chances  
2 of prevailing.

3 It's not a requirement here of the Division  
4 concerning a stay, and Mr. Carr is asking you then, to  
5 establish standards, and we're opposed to the standards  
6 he's choosing to establish.

7 MR. CARR: Mr. Ross, I was present in the room  
8 earlier today when I thought I heard a learned legal  
9 scholar state that even though we don't have precise rules  
10 that we look to the Rules of Civil Procedure unless there's  
11 something contrary, and the rules of the Oil Conservation  
12 Division, the Rules of Civil Procedure have definite  
13 standards, and the cases interpreting those set the  
14 standards, and one of them is likelihood that they'll  
15 prevail on appeal.

16 They need to show they're going -- they think  
17 they've got a chance. To do that, I think they ought to  
18 show what they have that would suggest that they have  
19 anything other than been producing with an unapproved  
20 nonstandard spacing unit.

21 MR. ROSS: Yeah, I understand. I think you've  
22 made the point, though. I've got it loud and clear, so why  
23 don't we move on a little?

24 Q. (By Mr. Carr) And maybe this question should be  
25 directed to Counsel, but I'm curious as to what it is

1 you're seeking to stay. Are you seeking to stay just the  
2 shut-in requirement or the entire Order?

3 MR. KELLAHIN: Mr. Examiner, the Division  
4 Examiner, Mr. Stogner, approved the well location, and he  
5 did so for lots of reasons. We're not seeking to have the  
6 location now disapproved; that's absurd. We're seeking not  
7 to shut the well in. And we're opposed to Conoco and  
8 Chevron's request that should you allow the well to be  
9 produced that we have to post a bond. And that's where we  
10 are.

11 MR. ROSS: So I was -- I was going to ask the  
12 same question.

13 MR. CARR: Are you seeking to stay the findings  
14 concerning the illegal production of the well to date?

15 MR. KELLAHIN: Mr. Examiner, that's nonsense.  
16 We're entitled to a Commission hearing on all issues.  
17 We're not asking for us to take an appellate process to the  
18 district court at this point. We are staying the  
19 requirements on a temporary basis to let the status quo  
20 maintain ourselves till we get to a Commission decision.

21 MR. ROSS: So the request for stay is just to  
22 those parts of the Order that imposed a shut-in of the well  
23 immediately?

24 MR. KELLAHIN: Yeah, they're ordering portions --

25 MR. ROSS: Right.

1 MR. KELLAHIN: -- you know. Mr. Carr and I can  
2 fight about the findings till the cows come home.

3 MR. ROSS: Right.

4 MR. KELLAHIN: What we're looking at is, we can't  
5 engage in gas balancing at this point. Mr. Stogner has  
6 asked us to shut the well in and reallocate. So it's  
7 that -- what we're seeking to stay.

8 MR. ROSS: Okay.

9 MR. CARR: I understand that what they want to  
10 stay is only portions of the Order adverse to them.

11 MR. ROSS: All right, anymore cross, Mr. Carr?

12 MR. CARR: Just a minute, please.

13 That's it.

14 MR. ROSS: I do have some questions of Mr.  
15 Travis --

16 THE WITNESS: All right.

17 MR. ROSS: -- if you can indulge me for a minute.

18 EXAMINATION

19 BY MR. ROSS:

20 Q. I noticed Exhibit 2, towards the end, the graphic  
21 summary you have of the various production levels, has some  
22 of the information on the water production, at least  
23 through the months of September and into October. Can you  
24 tell me what the water production was previous to that  
25 point?

1           A.    It was one to two barrels of water a day.  And  
2   that's -- You know, the water that we're getting back now  
3   is undoubtedly a combination of produced water and fluids  
4   that were pumped down there, into the -- in the course of  
5   the treatment.

6           Q.    Did I get it right that you dumped about 40,000  
7   gallons in total of fluid down during this --

8           A.    No, the two treatments were 2000 gallons each --

9           Q.    Oh, 2000, I'm sorry.

10          A.    -- but then there was also fluid pumped, you  
11   know, during the cleanout process, and then you have your  
12   flush volumes, and so the -- If you go to the first day on  
13   the table, there was about 96 barrels of load water to  
14   recover, so they're saying that's how much total fluid we  
15   pump down the well during the course of our working on the  
16   well.

17          Q.    Have you recovered all the fluids that you've put  
18   down the well?

19          A.    Well, and if you look at that table, there's a  
20   column BLWTR --

21          A.    Uh-huh.

22          Q.    -- and that's barrels of load water to recover.  
23   Now, that's strictly an accounting, you know, you can say  
24   first barrel in, first barrel out you subtract out from it.  
25   But the reality is, as I said, some of this -- strictly in

1 accounting, we're only six barrels shy. But you can tell  
2 by the fact -- When the well quits improving is when the  
3 cleanup has ceased, in my opinion --

4 Q. Okay.

5 A. -- and that we are -- this fluid that we're  
6 getting out is a partial reservoir water that would have  
7 been produced, you know, on a natural basis, and some of it  
8 is the fluid that we pumped down.

9 So when you get to that point, it's not, Oh,  
10 okay, we're done, you know, it's -- And again, that's why I  
11 mention the color of the water. Prior to us doing the  
12 work, the produced water was clear. Now we've got this  
13 blackish-gray water with minerals suspended in it.

14 Q. Okay, what is the -- You mentioned that the water  
15 was gray, grayish, and had suspended solids in it. Do you  
16 know what the solids are and what makes the water gray?

17 A. There -- I don't know with a certainty, but  
18 normally when you have scale, the scale is not a hundred  
19 percent soluble. You can get, you know, a large percentage  
20 of that dissolved, but there's impurities in there that  
21 don't react with the acid. And so it's those impurities  
22 left behind, again, minerals that are not soluble in the  
23 acid.

24 Q. So will the well be cleaned up when the produced  
25 water is clear?

1 A. I believe so.

2 Q. And in addition you've testified that when  
3 returns to --

4 A. Right, when it clears up and the improvements  
5 stop. I would love for the well to just keep improving,  
6 but it's not an infinite reservoir.

7 Q. And, you know, I couldn't help but notice the  
8 difference between Exhibit 3 and Exhibit 1.

9 A. Uh-huh.

10 Q. And forgive me, I'm a lawyer --

11 A. Yeah, that's --

12 Q. -- so I don't understand how the two exhibits  
13 could possibly correlate --

14 A. Okay, let's talk about the -- Exhibit 3 is a  
15 daily rate --

16 Q. Uh-huh.

17 A. -- and so let's talk in terms of round numbers.  
18 If this were to go up to 1000 MCF per day, and then 30 days  
19 in a month would equate to 30,000 on this other graph,  
20 but -- since this other graph is monthly production.

21 Q. I see.

22 A. Or 800 on here would correlate to 24,000 on the  
23 other graph.

24 Q. Good, okay, thank you.

25 Does this scaling phenomenon that you sought to

1 rid the well of accumulate at a greater rate when the well  
2 is shut in? Is that what you're concerned about?

3 A. It can -- Not necessarily, not necessarily, but  
4 what we have seen in some wells -- and this well appears to  
5 be the case -- is that it, for whatever reason -- and it's  
6 during these periods of shut-in that -- the scale is  
7 already there, but something happens during that dormancy  
8 that scaled in -- affects the well more when you bring it  
9 back on. And I mean, you know, the scale forms as --  
10 typically, as the water -- It's affected by temperature and  
11 it's affected by pressure drops.

12 And so logic says it would be forming during  
13 production, and the actual formation of it would cease  
14 while you shut the well in. But there's something that's  
15 happening during the shut-in, or we have seen it happen,  
16 that causes the well to be poor when you bring it back.

17 Q. Now, that period in May and June when production  
18 was -- when you were asked to curtail production by, I  
19 assume, the pipeline company --

20 A. Correct.

21 Q. -- had this ever happened previously?

22 A. No, it had not, not on this specific well.

23 Q. I guess it's not an uncommon occurrence?

24 A. That's -- Yeah, it's not without precedent.

25 Q. It just so happens that this particular well --

1 you hadn't been asked to shut it down?

2 A. Uh-huh.

3 Q. You mentioned, I think in response to one of Mr.  
4 Carr's questions, that this dispute has already reached the  
5 courts. Are you in litigation with the other parties?

6 A. I don't believe I mentioned that, but it was  
7 mentioned, yes, they filed in district court.

8 Q. In the State of New Mexico?

9 A. Yes.

10 Q. I see.

11 A. Prior to the Examiner's ruling.

12 Q. I see.

13 Now, I gather -- and you may not have said this,  
14 and if you have forgive me for belaboring the issue, but it  
15 appears that your view is that should you lose at the  
16 Commission level, that in an ultimate -- you know, a final  
17 decision of the Commission, given any appeals, what have  
18 you, that should you eventually be found to -- that the  
19 spacing unit should have been --

20 A. Standard.

21 Q. -- the quarter-section, standard, instead of the  
22 unit you're requesting, I gather that it's your position  
23 that you'd be willing to enter into good faith negotiations  
24 towards settling this up after the fact?

25 A. Absolutely.

1 Q. In part from future production and, if necessary,  
2 with payments of cash?

3 A. Correct.

4 Q. And that's your position here today?

5 A. Yeah, we would prefer balancing as Conoco  
6 proposed.

7 MR. ROSS: Uh-huh. Okay, thank you. Does that  
8 bring up anything --

9 MR. KELLAHIN: No, sir.

10 MR. ROSS: -- we need to deal with?

11 All right, thanks.

12 THE WITNESS: Thank you.

13 MR. ROSS: Can this witness be excused?

14 MR. CARR: Yes.

15 MR. KELLAHIN: Mr. Ross, that concludes Sapient's  
16 presentation on this issue this morning.

17 MR. ROSS: Okay, thank you.

18 Mr. Carr?

19 MR. CARR: Yes, at this time Chevron and Conoco  
20 call Mr. Tim Denny.

21 MR. ROSS: Good morning, or afternoon.

22 MR. DENNY: Hi.

23 MR. ROSS: Is it D-e-n-n-y?

24 MR. DENNY: That's correct.

25 MR. ROSS: Okay, good.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TIM R. DENNY,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q. Would you state your name for the record, please?

A. My name is Tim Denny.

Q. Mr. Denny, where do you reside?

A. Midland, Texas.

Q. By whom are you employed?

A. Chevron.

Q. And have you previously testified before the Oil Conservation Division?

A. Yes, sir.

Q. Have you ever testified in a matter before the Oil Conservation Commission?

A. Just the OCD.

Q. Just the OCD.

A. Right.

Q. Could you just briefly review your educational background for Mr. Ross?

A. I'm a geologist, I have a bachelor's and master's degree in geology.

Q. And for whom have you been employed?

A. Chevron.

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 Q. For how long?

2 A. Twenty-two years.

3 Q. Are you familiar with Sapien's motion for stay  
4 of Division Order Number R-11,652 --

5 A. Yes, sir.

6 Q. -- in this case?

7 A. Yes.

8 Q. Are you familiar with the request of Chevron that  
9 the Commission -- if the Commission stays this order, that  
10 Sapien be required to post a bond?

11 A. Yes.

12 Q. Does Chevron also request that they be required  
13 to escrow future production proceeds from the well?

14 A. Yes.

15 Q. And what have you been asked to do in preparation  
16 for this presentation today?

17 A. I've just been asked to help prepare calculation  
18 of proceeds for Chevron's share of the Bertha Barber Number  
19 12 well.

20 Q. And have you attempted to calculate that amount?

21 A. Yes. I haven't personally, but I'm here to say  
22 that I think these numbers are accurate.

23 Q. Have you reviewed the numbers?

24 A. Yes.

25 Q. And have you reviewed them with the people at

1 Chevron who work with the gas contracts?

2 A. I've worked with the engineer that put these  
3 numbers together.

4 Q. And then the value numbers have been obtained  
5 from the Chevron numbers on gas contracts?

6 A. That's correct.

7 Q. And are the calculations for Chevron set forth on  
8 what has been marked as Exhibit Number A?

9 A. That's correct.

10 Q. All right. As to the production figures on this  
11 exhibit, what is the source of that?

12 MR. KELLAHIN: Excuse me, Mr. Examiner, is Mr.  
13 Denny being tendered as an expert?

14 MR. CARR: He's not being tendered as a  
15 geological expert, he is only here to testify as to the  
16 facts that are set forth on the exhibit, which are simply  
17 production and contract numbers from the files of Chevron.

18 MR. KELLAHIN: And none of which he is  
19 responsible for; is that right, Mr. Carr?

20 MR. CARR: These are figures that he has, in his  
21 role, been -- put together and reviewed with other people  
22 from Chevron to put together this calculation.

23 MR. KELLAHIN: We would object, Mr. Examiner.  
24 This witness is not the proper witness to present in this  
25 proceeding. It's not within his expertise. He's a

1 geologist. Can't possibly set a proper foundation for the  
2 introduction of what appears to be hearsay.

3 MR. ROSS: Well --

4 MR. CARR: Mr. Denny is a representative of  
5 Chevron, he works on the project with the engineers and  
6 with the people who work on the gas contracts. As he  
7 indicated, he's talked to these people that put the numbers  
8 together. It is simply a calculation close to what has  
9 been presented by Sapien. I submit he's qualified to  
10 present it, not as an expert geologist but as a fact  
11 witness for Chevron, presenting data from their records.

12 MR. ROSS: I'll admit the exhibit as a business  
13 record.

14 Q. (By Mr. Carr) Mr. Denny, what is the source of  
15 the production figures on this exhibit?

16 A. Okay, it's kind of a busy spreadsheet here, but  
17 if you start over on the left-hand side, the gross oil  
18 production numbers are what was recorded by what Sapien's  
19 turned in. We got these numbers from the OCD, so the oil  
20 volumes come from the OCD.

21 Gas volumes, if you move over, about five rows  
22 over, six rows, the gross gas in MCF, those gas numbers are  
23 direct meter readings from the Dynegy energy company, and  
24 those numbers were obtained by our Chevron gas  
25 representative, and he called Dynegy and asked them for the

1 meter readings, and so that is where the gas numbers came  
2 from. So those are actual meter readings, sales meter  
3 readings.

4 Q. And what is the source of the value or the price  
5 information set forth on this exhibit?

6 A. Okay, for the oil the engineer just looked at gas  
7 prices that we've received for the Chevron net trend gas  
8 price that we received in the area, for the similar  
9 composition of oil. And so he just took a number that was  
10 kind of an average of that area of what we've received for  
11 the oil.

12 And similarly on the gas, this was looking at  
13 similar gas composition in the area, what it sold for. And  
14 the gas person that worked up these numbers said he took  
15 the lowest contract prices of all the areas -- all the  
16 sales in this area that had similar compositions.

17 Q. And so in fact you used the lowest price or a  
18 conservative number for the pricing information --

19 A. That's correct.

20 Q. -- on the exhibit?

21 Would you just review what this exhibit shows,  
22 for Mr. Ross?

23 A. Well, if you start on the left, the gross oil, as  
24 I mentioned what that is.

25 And then the net oil, all that is is just taking

1 the Chevron's interest, which is -- in this 160-acre  
2 standard proration unit, half of the lease would be owned  
3 by somebody other than Sapient, so that's the gross number,  
4 times .5, times the Chevron working interest, which is .187  
5 and some other numbers.

6 Then the oil price and then the gross oil. And  
7 the gross oil is basically just the gross oil in the first  
8 column, times the price.

9 And then we backed out the royalty interest. So  
10 that number reflects the gross oil, times the gas price,  
11 times 80 percent. So we backed out 20-percent royalty out  
12 of the numbers on the oil.

13 And then the same goes for the gas. On the gross  
14 gas we backed out 20-percent royalty.

15 Q. And by using this calculation were you able to  
16 determine the value of the Sapient production or estimate  
17 the value of the Sapient production from the Bertha J.  
18 Barber Well Number 12 through June of this year?

19 A. Yeah, I might point out that, as you can see  
20 here, we have no oil volumes for July and August, and of  
21 course we don't have any for September. And then on the  
22 gas side we had numbers through August. So we don't have  
23 any for September. But with those in mind, if you'll look  
24 down in this box on the lower left, at the gross oil, gross  
25 gas and then just a gross number of about \$1.85 million.

1 Q. You saw the Exhibit Number 4 presented here today  
2 by Sapiient, their calculations and values for production  
3 from the well. Are the numbers within the same ballpark,  
4 relatively comparable?

5 A. Yes, I believe they are.

6 Q. If a bond was required of Sapiient in an amount  
7 sufficient to indemnify all persons who may suffer damage  
8 by reason of continuing to produce this well pending final  
9 resolution of the dispute, how much of a bond would you  
10 estimate needs to be posted?

11 A. Well, half of the production is owned by someone  
12 other than Sapiient, so we just took half of that 1.8 and  
13 came up with a number of nine -- about point -- \$900,000.

14 Q. And then that sum would have increased since  
15 June, since that's the last number. Do you have any  
16 estimate of how much per month additional money to the  
17 other interest owners in this spacing unit?

18 A. Well, it looks like June -- the last June -- May  
19 and June number were 650 to 450 on the oil, so they used  
20 roughly 500 and took that -- half of that, maybe 250 a  
21 month, for June, July and August.

22 And then on the oil side --

23 Q. Now, 250 a month, that's two hundred and fifty  
24 dollars a month? Is that the oil or gas?

25 A. Yes, that's the oil.

1 Q. Okay, what about the gas?

2 A. And the gas is -- you know, I don't know, just --  
3 It's hard to say for sure, but if you just said around  
4 \$50,000, which is about what July was, and had that, you'd  
5 have about \$25,000 per month -- or I mean \$250,000 per  
6 month.

7 Q. \$25,000 per month?

8 A. I'm sorry, yes, \$25,000 per month.

9 Q. How much is owed to Chevron through June?

10 A. We calculated, as you can see here in this lower  
11 right-hand box, about \$174,000.

12 Q. And twice that amount would be owed to Conoco?

13 A. That's correct.

14 Q. They have twice the interest in the west half of  
15 the northeast that Chevron does?

16 A. That's correct.

17 Q. Now, Sapient is continuing to produce the well;  
18 is that correct?

19 A. That's what I understand.

20 Q. To protect for past production, how much of a  
21 bond do you think ought to be posted to assure that when  
22 this is resolved you can get your share for that?

23 MR. KELLAHIN: I'm going to object, Mr. Examiner.  
24 This is beyond the expertise of the witness.

25 MR. ROSS: I'll allow it.

1 THE WITNESS: Pardon me?

2 MR. ROSS: You can answer.

3 THE WITNESS: Okay. Well, we just think that  
4 half the proceeds ought to go into escrow because Chevron  
5 and other operators have half the 160-acre proration unit.

6 Q. (By Mr. Carr) Mr. Denny, do you mean escrow, or  
7 a bond be posted in an amount?

8 A. What was your question, sir?

9 Q. My question was, how much of a bond do you  
10 recommend be posted?

11 A. Oh, for the -- around -- Well, if you add up  
12 what's not been accounted for in the previous months and so  
13 forth, you know, it looks like it would be around a million  
14 dollars at least.

15 Q. Now, that covers past production?

16 A. Yes, sir.

17 Q. Does Chevron also recommend that production  
18 proceeds point forward be escrowed until this matter is  
19 resolved?

20 A. Yes.

21 Q. Would just the financial data presented here  
22 today from Sapient, in your opinion, be sufficient for  
23 Chevron to believe that at the appropriate time they would  
24 have something to pursue to recover their share of --

25 MR. KELLAHIN: Objection, Mr. Examiner, beyond

1 the expertise of the witness.

2 MR. ROSS: Overruled.

3 THE WITNESS: We feel like there's no guarantee  
4 this well will continue to produce. We have no guarantee  
5 that this well won't be sold to some other operator, in  
6 which case it's already -- Cross Timbers and Falcon Creek  
7 and now Sapiant.

8 So we just feel like there's uncertainties with  
9 the well and with the company, and so that's our position.

10 Q. (By Mr. Carr) Is Chevron Exhibit A a record  
11 prepared from the business records of Chevron?

12 A. Yes, and it's an estimation based on some  
13 assumptions on gas prices and oil prices, and on -- I don't  
14 know, royalty interests and so forth.

15 MR. CARR: Mr. Ross, we move the admission into  
16 evidence of Exhibit A.

17 MR. KELLAHIN: I have objected.

18 MR. ROSS: Same objection, overruled. I'll admit  
19 Exhibit A.

20 MR. CARR: And that concludes my questions of Mr.  
21 Denny.

22 MR. ROSS: Mr. Kellahin?

23 CROSS-EXAMINATION

24 BY MR. KELLAHIN:

25 Q. Mr. Denny, let me refer you to Chevron Exhibit A.

1 When I look at the bottom, on the left side, the last  
2 entry, it's \$1.858 million?

3 A. Yes, sir.

4 Q. Chevron's interest is approximately 9 percent  
5 when you round it off? It's 9.35 percent?

6 A. That's probably close, yeah.

7 Q. If we take approximately 9 percent of the \$1.8  
8 million, I get \$167,272. Why is that number not the same  
9 as the one you show on the bottom right, which says  
10 \$173,000 and change? Why can't I do the math that way?

11 A. What I was told our working interest was was  
12 eighteen seven zero nine three one, I believe it is, so I  
13 think that's shown up here in the upper right.

14 Q. All right, so it's a function dividing 18-plus in  
15 half that accounts for the mathematical difference? I have  
16 used the wrong divider percentage?

17 A. I don't know how you did your calculations, I'm  
18 just telling you what's on this sheet.

19 Q. Okay, I just used 9 percent and tried to divide 9  
20 percent into \$1.8 million, and I came up short.

21 A. Well, it is over 9 percent. It would be nine-  
22 point whatever it is, 9.35- --

23 Q. Now, in response to Mr. Carr's question you said  
24 the data stopped in June. You've got gas sales for July  
25 and August, don't you?

1           A.    Yeah, the oil volumes -- As you see there, it  
2 says "records not available" from the OCD.

3           Q.    All right.

4           A.    And the gas volumes were Dynegy meter readings,  
5 and we had those through August.

6           Q.    All right, so you do have the gas volumes?

7           A.    Yes, sir.

8           Q.    Now, let's take the \$173,000 for Chevron's  
9 purported share of past production --

10          A.    Okay.

11          Q.    -- that does not include Chevron's sharing for  
12 any of the costs of deepening the well, right?

13          A.    That's correct.

14          Q.    It doesn't include any cost for operating the  
15 well, right?

16          A.    That's correct.

17          Q.    In fact, there are no costs associated with this  
18 number?

19          A.    We backed out royalty, 20 percent.

20          Q.    All right, but the working interest portion, your  
21 share has not been allocated to show Chevron as reimbursing  
22 anyone for costs?

23          A.    That's right, we have no knowledge of what those  
24 costs would be.

25          Q.    Are you aware that Cross Timbers spent over

1 \$400,000 in order to recomplete this well as a Tubb gas  
2 well?

3 A. I have no knowledge what it cost.

4 Q. How do you propose that Chevron is going to  
5 reimburse the parties for their share of the cost?

6 A. I'm sure that can be taken care of in  
7 negotiations somewhere.

8 Q. Are you familiar with gas balancing, sir?

9 A. No, sir.

10 Q. Has Chevron started their well, which has been  
11 approved by the Division in -- the offsetting, competing  
12 well just to the north? Have you started that well yet?

13 A. Yes, we moved a pulling unit in on it last week  
14 and were having a lot of difficulties, and so we've moved  
15 off that -- it was a 24-hour pulling unit, and we moved it  
16 off and moved on another rig to -- We've got a lot of  
17 problems with the well.

18 Q. Okay, what kind of problems do you have, Mr.  
19 Denny?

20 A. Just mechanical problems.

21 Q. All right. You haven't gotten to the reservoir  
22 at this point to see --

23 A. Oh, no.

24 Q. -- what you've got in the Tubb?

25 A. No, we're still way up in the hole.

1 MR. KELLAHIN: No further questions. Thank you,  
2 Mr. Examiner.

3 EXAMINATION

4 BY MR. ROSS:

5 Q. Just one question, Mr. Denny. Did you just say  
6 that you're not familiar with gas balancing? Not  
7 personally?

8 A. I'm a geologist that's just -- I mean, I've heard  
9 of them, and I know there's some kind of agreement, but I  
10 don't ever get involved in those negotiations.

11 MR. ROSS: Okay, good. Okay, thanks, nothing  
12 further from me.

13 Mr. Carr, Mr. Kellahin?

14 MR. CARR: That concludes our --

15 MR. KELLAHIN: I'm done, Mr. Examiner.

16 MR. CARR: -- presentation.

17 MR. ROSS: Okay, if you'd like -- Any more  
18 witnesses to present?

19 MR. KELLAHIN: No, sir.

20 MR. CARR: No.

21 MR. ROSS: Can Mr. Denny be excused?

22 MR. KELLAHIN: Certainly.

23 MR. ROSS: If you'd like, you can do a brief  
24 summation of what you think we should focus on here today,  
25 if you'd like.

1 MR. KELLAHIN: I've already told you in my  
2 opening comments what I thought you ought to focus on, Mr.  
3 Ross.

4 MR. ROSS: Okay.

5 MR. KELLAHIN: I can repeat myself, but I think  
6 you were being attentive, and I will rely upon what I've  
7 already said.

8 MR. ROSS: Okay, I don't want to foreclose anyone  
9 of any opportunities.

10 Mr. Carr?

11 MR. CARR: Yes, I'd like to argue against the  
12 stay and in support of a bond.

13 Sapient stands before you today, Mr. ross,  
14 seeking a stay of an order of the Oil Conservation Division  
15 which ordered this well be shut in until there was a proper  
16 accounting for the production to the owners of that  
17 production.

18 The Division has determined that since 1999,  
19 August of 1999, that well has been illegally produced.  
20 They are draining others, they're keeping the production,  
21 they're continuing to produce, they're continuing to drain.  
22 They want to continue to keep all the proceeds, and they  
23 are keeping proceeds from a time when gas prices were high.  
24 They want to keep every cent, production that we submit  
25 belongs to us.

1           They seek a stay because they acidized the well,  
2 they acidized this well at a time when they knew Conoco and  
3 Chevron were asking you to shut it in. But they say in  
4 their motion and here today that, in fact, if that happens  
5 the well may be damaged?

6           What do we know? Well, we know they've produced  
7 the well. But we know that the spacing unit for the well,  
8 not maybe 160 acres or 80 acres, we know that since August  
9 of 1999 through today, it is 160 acres, it's the northeast  
10 quarter of Section 7, because that's what it is under the  
11 rules, the statewide rules for gas at this depth.

12           No nonstandard unit has ever been approved.  
13 Chevron, Conoco for over a year have been seeking the  
14 assistance of the OCD because Sapient has been producing  
15 the well, keeping all the proceeds, and they own 28 percent  
16 of the well and almost -- or perhaps over \$2 million worth  
17 of gas have been produced.

18           We also know this location is unorthodox, it is  
19 draining Chevron. And with the stay they simply get to  
20 continue to produce and continue to drain and continue to  
21 keep and continue to push and advantage they have on offset  
22 properties, a result of their playing games with the rules.

23           Now the Division has acted, it says Sapient has  
24 to comply with the rules. It says the rules mean  
25 something. It says they mean what they say, they're

1 illegally producing the well and they should account to the  
2 other interest owners in the well.

3 But they want to seek a stay pending *de novo*  
4 review. They want to continue to produce during that time  
5 and keep the proceeds and continue to drain and continue to  
6 play games.

7 And yet now we find ourselves in a position where  
8 we're all the way back to November before we can get to the  
9 Commission. There are questions about whether or not  
10 there's a quorum in November, and it goes on and on and on,  
11 and they keep and keep and keep. And we see a history  
12 where the property is passed around like a hot potato,  
13 where a well has been damaged, and we're saying, Well,  
14 trust us, at the end we're sound. People who are so sound  
15 that for some reason they can't or won't post a bond.

16 And there are standards for obtaining a stay, and  
17 they are announced by courts interpreting district court  
18 rules, and they do say among other things that they have to  
19 show that they're going to suffer irreparable harm. Now,  
20 maybe the well -- That's a decision we leave with the  
21 Division, whether or not it needs to be permitted to  
22 produce to avoid damage.

23 But it's interesting, in their motion for stay  
24 they say, in terms of irreparable harm, and I quote, to now  
25 require Sapient to obtain further approval will cause

1 Sapiient to be damaged and suffer irreparable harm. To  
2 require further approvals -- The only thing we're asking is  
3 they pay the people who own the production. They're  
4 sitting here saying, Oh, don't do anything that will cause  
5 us to pay those who own the gas, who own the oil, and  
6 they're asking you to overlook the rights of others.

7 They're supposed to have been in here today  
8 showing you, I submit, that they have a chance of  
9 prevailing. And they address those things in their motion.  
10 They talk about all the OCD approvals they've received,  
11 C-102s, C-103s, C-104s. They've never talked about an  
12 application for a nonstandard unit or an unorthodox well  
13 location. You see, it's everybody's fault, it's Conoco's,  
14 it's Chevron's, it's not Sapiient's.

15 But I'd ask you to ask yourself if anything  
16 Conoco or Chevron or the OCD has done or has failed to do  
17 in any way changes the underlying fact, and that is, there  
18 is a 160-acre spacing unit, and we're not being paid our  
19 proportionate share of the reserves from that spacing unit,  
20 and they won't shut the well in, and they won't escrow the  
21 funds, and they want to keep producing, and they want to  
22 keep it all.

23 And if they're going to be allowed to do that and  
24 you're going to make any sense out of your rules  
25 whatsoever, you have to require they post a bond and they

1 escrow the funds. If you don't do that, there's no reason  
2 for them to ever do anything but continue to play games,  
3 draw out the hearing and keep this going and going forever  
4 and ever.

5           They tell us, We can balance later. Well, maybe,  
6 maybe not. The well has been damaged recently. They tell  
7 us, We can pay later. If they're here, if we can still  
8 find them. And I'm not saying they're going to do  
9 anything, I'm saying look at the property already; it's  
10 passed three times.

11           You know, it's interesting to me that Mr.  
12 Kellahin can cite you the rules, you know, kind of make  
13 them up as we go: Well, they're different here than in  
14 district court. But you know, when I started working with  
15 this I go look for rules. And when I go to the rules I  
16 look at the Rules of Civil Procedure.

17           And the Rules of Civil Procedure state, when we  
18 talk about staying a proceeding to enforce a judgment --  
19 it's Rule 62.D, it's on the second page of the handout --  
20 it says, "When an appeal is taken, the appellant by giving  
21 a supersedeas bond may obtain a stay..." It goes on and  
22 says, "The stay is effective when the supersedeas bond is  
23 approved..."

24           This isn't an unusual request, this is what  
25 people who practice law in this state, I think, normally

1 expect.

2 But as Mr. Brooks stated earlier, perhaps the  
3 Rules of Procedure may be overridden by rules here. Well,  
4 there is a reference in the Oil and Gas Act; it's the last  
5 page of this handout. It talks about temporary restraining  
6 orders or injunctions.

7 And part B says, "No temporary injunction of any  
8 kind..." and I submit to you a stay is a temporary  
9 injunction of some kind "...including a temporary  
10 restraining order against the commission or the members  
11 thereof, or the division or its agents, employees or  
12 representatives, or the attorney general, shall become  
13 effective until the plaintiff shall execute a bond to the  
14 state with sufficient surety in an amount to be fixed by  
15 the court reasonably sufficient to indemnify all persons  
16 who may suffer damage by reason of the violation pendente  
17 lite by the complaining party of the statute or the  
18 provisions of this act or of any rule, regulation or order  
19 complained of."

20 Now, yes, this is an appeal to the district  
21 court. But you're not in a void. You have guidance both  
22 in the Rules of Civil Procedure and the Oil and Gas Act  
23 that when you stay something and someone may be damaged,  
24 you may enter the stay, but it should be conditioned on the  
25 posting of a bond. And that's what we're here, and that's

1 what we're asking for.

2 They say they're before you and they think  
3 they'll win. Well, you know, remember we have a spacing  
4 unit today, and we've been cut out.

5 And the remedy is that you go back after the fact  
6 and say, Well, we've been cut out all along, that a spacing  
7 unit that stands today under your rules really didn't  
8 stand, that the 160-acre unit dedicated to their well  
9 pursuant to state rule, a spacing unit on which Chevron  
10 could not drill a well -- you wouldn't tolerate two  
11 operators on the spacing unit -- now somehow, years down  
12 the road, after 750 million cubic feet have been produced,  
13 it's just, well, we're going to say change the spacing and  
14 go drill your well now.

15 Correlative rights get lost in this process.  
16 There is no way for them to win. If you grant the stay, we  
17 submit a bond must be entered or you're outside the rules,  
18 regulations, statutes that even govern you.

19 And we also submit that since we don't know what  
20 the well is going to produce in the future, future runs  
21 should be escrowed until this matter is resolved.

22 MR. KELLAHIN: May I respond?

23 MR. ROSS: Sure.

24 MR. KELLAHIN: I know Mr. Carr has not felt well  
25 lately, but some of his comments, I think, are unworthy of

1 the talents that he's expressed before this agency, and I  
2 feel compelled to respond, Mr. Ross.

3 Sapiient's not playing games, and I resent the  
4 characterization that this company is doing that. Sapiient  
5 is an Oklahoma company that's only recently in New Mexico  
6 on a good faith basis. They acquired this well from Falcon  
7 Creek, who acquired it from Cross Timbers. And on a review  
8 of that record you can see approvals by this agency. The  
9 Division transcript clearly reflects that there were  
10 approvals. And right or wrong, Sapiient relied upon those  
11 approvals.

12 It did not come to Chevron's attention that the  
13 spacing unit was wrong, yet they have a substantial  
14 interest immediately offsetting it. They were asleep at  
15 the switch.

16 Conoco is asleep at the switch, they're not  
17 paying attention, and this continues. The well was  
18 recompleted by Cross Timbers on August 21st of 1999 as a  
19 Tubb gas well. It then takes Chevron until October 11th of  
20 the next year to decide to file for a competing  
21 application, and they do so. And as a result of that  
22 action, I filed an objection for Sapiient. And in doing so,  
23 I realized that the spacing unit they thought had been  
24 fully approved had not. And I took action, and Sapiient  
25 took action to bring this to the Division's attention. We

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 did so timely, as soon as we knew that there was the  
2 possibility that it was not fully approved.

3 In addition, once we got into the details and the  
4 facts of the case, we withdrew our opposition to the  
5 Chevron location. That opposition was withdrawn in January  
6 on the 24th. We find out today Chevron still has not acted  
7 to get the well drilled. It is not our fault that from  
8 January till August Chevron didn't take the necessary  
9 action to notify the appropriate parties, irrespective of  
10 Sapient, in order to get their approvals. The record is  
11 clear on that, and I resent the implication that we are  
12 playing games.

13 It is not our fault that it took the Division six  
14 months to decide this case, it is not our fault that we  
15 heard this case on a timely basis on March 1st, it is not  
16 our fault that it took the Division until the 13th of  
17 September.

18 Unlike Mr. Carr, I don't have a secretary, I  
19 don't have a paralegal. I do have a phone answering  
20 machine, he plays it to me regularly, I know my phone  
21 message. But the fact is, I got this order on Saturday,  
22 September 14th. I put everything aside, and by the next  
23 Thursday I have filed asking for a stay. If that's a  
24 problem, it's my fault and I take responsibility for it.

25 I tried to get this case as quickly as I could

1 before the Commission. It is not my fault that  
2 Commissioner Lee may not be available on the November date.  
3 I've done everything I can possibly think of to get this  
4 before you.

5 And it's not Sapient's fault that Mr. Carr and  
6 Conoco and Chevron want to seek an extraordinary remedy, an  
7 unprecedented remedy of asking us to avoid a shut-in by  
8 posting a bond. I can't find an example of it.

9 Conoco and Chevron think so much about their  
10 position. Who do they send to the hearing today? Do we  
11 have a drilling engineer, a production engineer, a  
12 reservoir engineer from either one of these huge companies  
13 that thought enough about their position to come forward in  
14 here and argue about the shut-in? We do not. The only  
15 engineer you saw is the president of our company, and he  
16 answered all your questions as best he could. They send us  
17 a geologist who knows nothing about gas balancing. He got  
18 this data sheet from somebody else who didn't care enough  
19 to come.

20 We're here asking for relief, and we hope that  
21 you'll give it to us. Thank you.

22 MR. ROSS: All right. Well, thank you all. You  
23 know from my letter of September 27th that the Director  
24 will decide this motion. She's been present through the  
25 entire proceedings here today. We do intend to get a

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 transcript together, and we fully intend to decide the  
2 motion as quickly as we possibly can. We understand the  
3 urgency that's been expressed.

4 Thanks for your presentations, and safe traveling  
5 to those of you who've traveled. Thanks.

6 (Thereupon, these proceedings were concluded at  
7 12:53 p.m.)

8 \* \* \*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STEVEN T. BRENNER, CCR  
(505) 989-9317

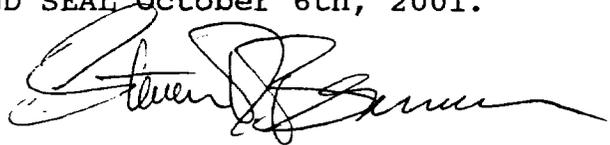
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
 COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL October 6th, 2001.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002