

*See Also Order
No. R-11652
R-11652-B*

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:

APPLICATION OF SAPIENT ENERGY CORPORATION FOR
AN UNORTHODOX GAS WELL LOCATION AND: (i) TWO
NON-STANDARD 160-ACRE GAS SPACING UNITS; OR IN
THE ALTERNATIVE (ii) ONE NON-STANDARD 160-ACRE
GAS SPACING UNIT 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-A

ORDER OF THE DIVISION
DENYING MOTION FOR STAY OF DIVISION ORDER R-11652

BY THE DIVISION DIRECTOR:

THIS MATTER, having come before the Division Director of the New Mexico Oil Conservation Division (hereinafter referred to as "the Director") pursuant to Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), on motion of Sapient Energy Corporation (hereinafter referred to as "Sapient") for partial stay of Division Order No. R-11652, which motion was opposed by Conoco Inc. (hereinafter referred to as "Conoco") and Chevron U.S.A. Production Company (hereinafter referred to as "Chevron"), all parties having submitted written memoranda and presented testimony during the evidentiary hearing of October 4, 2001, and the Director, having personally listened to the testimony at the hearing and being otherwise fully advised in the premises,

FINDS:

1. On September 13, 2001 the Oil Conservation Division (hereinafter referred to as "the Division") entered Order No. R-11652, which, in pertinent part, ordered Sapient to shut-in its Bertha J. Barber Well No. 12 (hereinafter referred to as "the well") until production from the well was reallocated by voluntary agreement or pooling order.

2. On September 19, 2001 Sapien timely filed an application to have the matter heard *de novo* by the New Mexico Oil Conservation Commission (hereinafter referred to as "the Commission").

3. On September 19, 2001, Sapien filed a motion to stay those provisions of Order No. R-11652 that required the well to be shut-in. As grounds for the motion, Sapien argued the well would be damaged if shut-in. As further grounds, Sapien argued the rights of Conoco and Chevron would be better protected by continued production, that Sapien was likely to prevail on the merits before the Commission, and that Sapien has relied on approval of the Division of various forms in connection with the drilling of the well and therefore was excused from applying for an unorthodox location and for a non-standard gas spacing unit.

4. Conoco and Chevron filed a response opposing the motion. Conoco and Chevron argued that the damage alleged by Sapien was unlikely because fluids would be unlikely to cause damage if recovered. Conoco and Chevron also argued that a stay would permit Sapien to produce natural gas despite the Division's finding that further production would be illegal. Chevron and Conoco argued in the alternative that a bond, escrow of payments from production, or refunding be imposed if the well is not shut-in.

5. During the evidentiary hearing of October 4, Sapien presented testimony that in May of 2001 its well produced natural gas at the rate of approximately 1100 mcf/day.

6. Sapien presented testimony that in late May and early June, 2001 its gas purchaser required Sapien to reduce or "choke" natural gas production from the well to between 500 mcf/day and 750 mcf/day. The well produced natural gas at this reduced rate for some time.

7. Sapien presented testimony that during June and July, 2001 the gas purchaser permitted removal of the choke, but, once removed, the well produced at a rate of 850 mcf/day rather than the previous rate of 1100 mcf/day.

8. Sapien presented testimony that the reduced production was indicative of damage from scaling. Sapien's witness testified such damage typically results when calcium carbonate or calcium sulfate is deposited, typically where a pressure gradient exists such as the formation face, in downhole equipment or pump, or sometimes at the surface.

9. Sapien testified that scaling is reduced if not eliminated when a well is not produced.

10. Sapiient presented testimony that remedial work was performed to rid the well of scale; however, after this, the well ceased producing altogether. Subsequent treatment with "KCl water," hydrochloric acid and other chemicals restored production.

11. Sapiient presented testimony that once restored to production, the well began to produce at a rate of 600 mcf/day and that production rates have improved since. Sapiient presented testimony that it expected the well to return to producing at the rate of 1100 mcf/day in about two months.

12. Sapiient's witness testified that the well produced water at the rate of 2 barrels per day. Subsequent to the treatment applied by Sapiient, the rate of fluid production increased. The treatments themselves involved the introduction of various liquids into the well. In the opinion of the Sapiient witness, the fluids used to treat the well have now been mostly recovered.

13. Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), permits the Director to enter a stay of a Division order "... if a 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).

14. Sapiient failed to establish gross negative consequences would result from the Division's order.

15. In particular, Sapiient failed to establish to a reasonable degree of certainty that the well would be damaged if shut-in. Sapiient testified that its concerns about the well were based on the reduced production in June and July, 2001 that followed the period of choked production of May-June of 2001. However, this testimony failed to establish with any certainty that a complete cessation of production would damage the well, particularly in view of Sapiient's testimony that scaling is reduced if not eliminated when a well is not produced at all. Generalized concerns or suspicions are insufficient to establish entitlement to a stay under Rule 1220(B).

16. Nor is damage likely to result from fluid build up in the well. Sapiient's witness testified to the very modest water production from the well (2 bbl/day), and that the fluids used in restoring the well to productive status had been largely recovered.

17. The success Sapiient has achieved in addressing the scaling incident argues that any damage resulting from a production cessation can be addressed by prudent and judicious use of treatment.

18. The parties urged the Director to consider the likelihood of success on the merits of the *de novo* application when considering the motion for stay. *See, e.g.,* Motion to Stay at 3; Transcript of Proceedings, pages 68-70 (the Director is urged to consider Rule 62 of the New Mexico Rules of Civil Procedure). Nothing in Rule 1220(B) leads to the conclusion that likelihood of success is relevant, and the application of the Rules of Civil Procedure where a specific rule like Rule 1220(B) exists is doubtful.

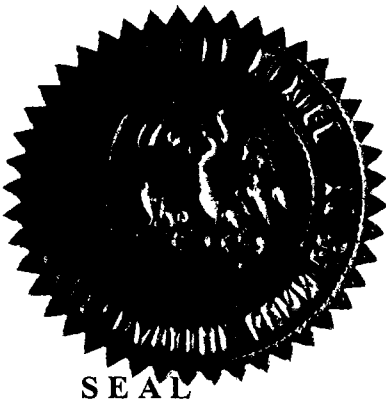
19. It is however unnecessary to reach this issue, as Sapient has failed to establish a likelihood of success on the merits. Although Sapient claims its application to alternative spacing will be granted by the Commission, the present rules require that wells be located on spacing units consisting of 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 Surveys. 19 NMAC 15.C.104 (2-1-96). Sapient refers to general principles of correlative rights, but fails to specify any of the usual factors upon which the Commission would base a modification of the statewide rule. See 19 NMAC 15.C.104(D)(2)(b), (D)(2)(c), (D)(2)(d). Sapient also relies upon the Division's approval of various filings made in connection with the drilling of the well, but these approvals do not relieve Sapient of the responsibility to comply with the Rules and Regulations. Finally, Sapient argues that the retroactive order of the Division exceeds the Division's authority, thereby claiming a likelihood of success on this point before the Commission; but this argument doesn't address the likelihood of success because it goes solely to the remedy in an *adverse* order.

20. As a result of the foregoing, the Motion to Stay of Sapient should be denied.

21. As a result of the foregoing, it is unnecessary to reach the arguments of Chevron and Conoco concerning bonding, escrowing payments from production, or refunding.

IT IS THEREFORE ORDERED that the Motion to Stay Division Order No. R-11652 filed herein by Sapient Energy Corporation is denied. Order No. R-11652 shall remain in force until the Commission has had occasion to issue an Order in this matter.

DONE at Santa Fe, New Mexico, on the fifteenth day of October 2001.



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**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**


LORI WROTENBERY
Director