

**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 RICHARDSON OPERATING COMPANY TO ESTABLISH
A SPECIAL INFILL WELL AREA WITHIN THE BASIN-FRUITLAND COAL
(GAS) POOL AS AN EXCEPTION FROM RULE 4 OF THE SPECIAL RULES
FOR THIS POOL, SAN JUAN COUNTY, NEW MEXICO.**

**CASE NO. 12734
ORDER NO. R-11775-A**

ORDER ON APPLICATION FOR STAY

BY THE DIVISION DIRECTOR:

This matter has come before the Division Director of the Oil Conservation Division on the application of San Juan Coal Company (hereinafter referred to as "San Juan") for a stay of Order No. R-1 1775 (entered June 6, 2002), and the Division Director, on this 26th day of July, 2002, having reviewed the application of San Juan, the response of Richardson Operating Company (hereinafter referred to as "Richardson") and the reply of San Juan,

FINDS:

1. The application for stay is well taken and should be granted.
2. This matter is before the Oil Conservation Commission (hereinafter referred to as "the Commission") pursuant to the application of San Juan Coal Company for hearing *de novo* pursuant to NMSA 1978, § 70-2-13 and Rule 1220(A), 19 NMAC 15.N.1220.A.
3. After filing for review *de novo*, San Juan Coal Company applied to the Division pursuant to Rule 1220, 19 NMAC 15.N. 1220.B., for an order staying Order No. R-1 1775 of the Oil Conservation Division pending review by the Commission and, if necessary, the Secretary of the Energy, Minerals and Natural Resources Department.
3. The applicant, Richardson Operating Company, opposes the application for stay.
4. Rule 1220.B provides that a stay pending review by the Oil Conservation Commission may be granted if unopposed or "under other circumstances [as necessary] to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party."

5. San Juan argues that a stay is necessary to protect public health because the operations proposed by Richardson would tend to increase the risk of spontaneous combustion and explosion within its coal mine. San Juan also argues that a stay is necessary to prevent gross negative consequences to San Juan because the act of bypassing a single natural gas well during its coal mining operations would leave 330,000 tons of coal in place and, if multiple wells are present, an entire panel of coal (almost 2 miles in length).¹

6. Richardson does not directly address these allegations in its response. Instead, Richardson argues that it will be so long before the coal through which Richardson's well bores will pass will be mined by San Juan that there is no immediate need for a stay, that numerous wells already exist in the coal and that few additional wells are proposed, that regulations of the Mine Safety and Health Administration prescribe that pillars of coal left around well bores or alternative plugging procedures assure mine safety, that any wells drilled or recompleted during the pendency of the *de novo* proceedings can be plugged or abandoned before mining occurs, that San Juan's plan to vent natural gas is tantamount to waste under the Oil and Gas Act, that the Commission cannot consider the alleged waste of the coal resource, and apparently that failure to grant a stay would imperil the value of Richardson's natural gas. Finally, Richardson requests that a bond of \$50 million be deposited by San Juan if the stay is granted.

7. The parties arguments go to the merits of the case instead of the relatively narrow factual predicates for granting a stay under Rule 1220.B, except for the arguments of San Juan described in paragraph 5. The allegation that the risk of spontaneous combustion would increase and would be irreversible if Richardson undertook drilling or recompletion implicates concerns for mine safety and arguably makes a showing under Rule 1220.B that public health² could be at risk from the explosion hazard. Also, San Juan's allegation that large amounts of coal must be left around each well bore to its detriment seems to make a showing that additional drilling and completion activities could have gross negative consequences to San Juan and thus arguably makes a case for a stay pursuant to Rule 1220.B.

9. As San Juan (through the foregoing) has demonstrated a colorable argument pursuant to Rule 1220.B, a stay should be granted to preserve the status quo while these proceedings, which will take at most a few months, are concluded.

¹ San Juan makes several other arguments, but those arguments do not appear relevant to the decision whether to impose a stay or not pursuant to Rule 1220.B and instead appear to be arguments directed at the merits of this matter.

² Although it appears that San Juan's allegations relate more to worker safety than public safety, it is assumed for purposes of this Order that the public safety could be impacted whenever an explosion hazard is present.

10. Richardson's request that San Juan post a bond in the amount of \$50 million lacks a basis in the Oil and Gas Act or regulations of the Oil Conservation Division and should be denied.

11. To the extent that San Juan requests that the stay imposed by this Order remain in force during review by the Secretary of the Energy, Minerals and Natural Resources Department, it should be denied. Secretarial review would occur only after issuance of a Commission order, and the Commission's order would in most cases supersede the Division order. It would thus be premature to address such a request at this time.

IT IS THEREFORE ORDERED THAT :

1. Order No. R-1 1775 of the Division shall be and hereby is stayed pending final decision in this matter by the Oil Conservation Commission.

2. The request of Richardson that San Juan post a bond in the amount of \$50 million shall be and hereby is denied.

3. The request of San Juan for a stay of the Commission order pending review by the Secretary of the Energy, Minerals and Natural Resources Department shall be and hereby is denied.

4. Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**LORI WROTENBERY
Director**

SEAL