

BEFORE THE OIL CONSERVATION COMMISSION

RECEIVED OCCD
2010 SEP 29 A 11: 22
CASE NO. 14547

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE COMPLIANCE AND ENFORCEMENT MANAGER, FOR AN ORDER AUTHORIZING THE DIVISION TO RECOGNIZE AN OPERATOR OF RECORD FOR WELLS CURRENTLY OPERATED BY YESO ENERGY, INC.; LEA, EDDY AND CHAVES COUNTIES, NEW MEXICO.

RESPONSE OF THE OIL CONSERVATION DIVISION TO
JUDAH OIL'S MOTION TO DISMISS
AND
MOTION OF THE OIL CONSERVATION DIVISION FOR PRE-HEARING CONFERENCE

The Oil Conservation Division (OCD) opposes the motion of Judah Oil, LLC (Judah) for the following reasons, and requests a pre-hearing conference in Case No. 14547.

1. The Oil Conservation Commission (OCC) should refuse to consider Judah's motion because it was not properly served.

19.15.4.13:A NMAC requires the party filing a pleading in a case before the OCC to serve a copy at the same time upon each party who has entered an appearance in the case. Judah did not serve its motion to dismiss on the OCD – the entity that filed the application for hearing, whose case would be dismissed if the OCC granted the motion. The OCD was notified of Judah's motion by Commission Clerk Florene Davidson, who provided the OCD with a copy of the motion.

2. The OCC should deny Judah's motion on the merits: the BLM's recognition of Judah as the operator of three of the wells does not resolve the questions in this case.

Judah takes the position that because the Bureau of Land Management (BLM) has now recognized Judah as operator of three of the four wells at issue,¹ the OCD should automatically

¹ For purposes of this response, the OCD assumes that the BLM has, in fact, recognized Judah as the operator of the three wells. The OCD has not accepted the BLM filings, however, because of the filings fail to accurately identify the wells (the well names and/or API numbers are incorrect). The OCD has not yet received corrected filings. To complicate matters further, the BLM previously recognized a different applicant, Chica Energy LLC, as the operator of the wells. See BLM filings, attached.

recognize Judah as “operator of record” for those wells and dismiss those wells from Case 14547. The OCD disagrees.

Contrary to Judah’s assertion, the BLM’s recognition of an operator for federal purposes does not mean that the OCD must recognize that operator as the operator of record for OCD purposes. The “operator of record” for OCD purposes is the entity that has gone through the change of operator process set out in 19.15.9.9 NMAC and assumed the responsibility for state regulatory filings and compliance with state statutes, rules and orders. For purposes of 19.15.5.9 NMAC (Part 5.9), it is the “operator of record” whose compliance is examined to determine if the OCD may or should grant well transfers, allowables, APDs, or injection permits. The “operator of record” for OCD purposes is often the entity that holds the lease, or the entity recognized by the BLM or the State Land Office, but it does not have to be that entity. For example, it may instead be an entity under contract to operate the well. So if the BLM recognizes Judah as the operator or leaseholder for federal purposes, that does not automatically mean that Judah must be the “operator of record” for OCD purposes. Judah still needs to complete the process set out in 19.15.9.9 NMAC to become operator of record.

19.15.9.9 NMAC sets out the normal process for transferring “operator of record.” The current OCD “operator of record” and the new operator apply for the change on line. (If the current operator of record is not available, the new operator must apply with the OCD and provide documentary evidence of its right to assume operations.) The director or the director’s designee may deny a change of operator if the new operator is not in compliance with 19.15.5.9 NMAC (Part 5.9) or if the new operator is acquiring wells subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC (the inactive well rule) and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.

Judah and Yeso have applied on line to transfer the three wells that are the subject of Judah’s motion to dismiss. Judah is currently in compliance with Part 5.9. The wells, however, are subject to a

plugging order and Judah has not sought an agreed compliance order setting a schedule for compliance with the existing orders.

The OCD requires such orders so that it can retain the leverage it has obtained through the compliance hearing process. On state and fee wells, the OCD generally requires the new operator to post financial assurance in the form of a cash bond or letter of credit and agree that the OCD may plug the well and forfeit the financial assurance without further notice and hearing if the operator does not return the well to compliance by an agreed deadline. OCD rules do not require financial assurances on federal wells, and there is no mechanism in place for obtaining reimbursement of plugging costs from the BLM (which does hold financial assurances for plugging), so the OCD's current policy is that it does not plug federal wells unless special circumstances are present (such as an environmental issue). Still, the OCD will require a new operator acquiring a federal well that is subject to a plugging order to enter into an agreed compliance order setting a schedule for compliance and allowing the OCD to plug the well if the operator does not do so. That gives the OCD the authority to plug the well if special circumstances arise, and also gives the OCD leverage to obtain compliance from the new operator. If the operator does not comply the OCD may seek an order holding the operator under the provisions of Part 5.9 until it complies. See 19.15.5.9 NMAC. That would allow the OCD to deny further well transfers to that operator, and new APDs for that operator, and would require the OCD to deny injection permits and allowable to that operator. Even if Judah strong-arms its way past this requirement, and obtains an order requiring the OCD to give up its hard-fought leverage and transfer the wells without an agreed compliance order, Judah will face problems. The Yeso wells are out of compliance with the inactive well rule, and adding those wells to Judah's well list will place it out of compliance with 19.15.5.9 NMAC, making it ineligible for the injection permit it seeks for the Dow "B" 28 Federal Well No. 1. It is in Judah's interest to negotiate an agreed compliance order that would allow it to apply for its injection permit while it works to bring the wells into compliance.

Even if the issue under 19.15.9.9 NMAC is resolved by Judah entering into an agreed compliance order or the OCD giving up the requirement that Judah enter into an agreed compliance order, there are issues that need to be resolved through hearing.

The first complication is Order R-13294, issued in Case No. 14472. That order applies to one of the three wells for which Judah seeks dismissal. The order "terminates the authority of Yeso Energy to act as operator of the Dow B 28 Federal Well No. 1," and instructs COG Operating, LLC (COG) to "file an application with the Division to use the subject well for disposal operations without the necessity of a change of operator that would ordinarily be required." (COG has since filed its disposal application.) The meaning of Order R-13294 is less than clear. If Yeso no longer has authority to operate the well, does it still have the authority to approve a transfer to another operator – such as Judah --- under the process set out in 19.15.9.9 NMAC? If COG is supposed to file an application to use the well for disposal "without the necessity of a change of operator," does that mean that Yeso is to remain operator of record? Or may the OCD transfer the well to another operator? What happens if the OCD transfers the well to an operator other than COG – such as Judah -- and COG applies for and receives approval to use the well for disposal operations? Obviously, Order R-13294 created a number of questions and made the transfer of the Dow "B" 28 Federal Well No. 1 problematic. The OCC will have the opportunity to issue a new order to replace Order R-13294, because Case No. 14472 is before the OCC for de novo review. The OCD filed its application in the instant case, and sought to have it heard with Case No. 14472, so the OCC could see the practical problems that need to be considered in deciding COG's application, and to give all applicants – including Judah – the opportunity to have their claims regarding their right to operate the Yeso wells heard and resolved.

The second complication is closely related to the first. The OCD has multiple operators seeking to become operator of record of the Yeso wells. Whatever decision the OCD makes regarding which operator(s) to recognize, the rejected operators may object. Rather than have the claims decided

piecemeal, the OCD brought this action to give all applicants a forum to have their claims heard and resolved. Dismissing wells from the case would not be in the best interest of any of the parties, particularly Judah. Judah, who apparently has BLM approval and the only application for operator change pending before the OCD, should welcome the opportunity to have its right to be recognized as OCD "operator-of-record" for the wells adjudicated once and for all. It is in Judah's interest to have the OCD's questions about Order R-13294 resolved, and the competing claims of the other operators resolved, so that future challenges to the operator change can be avoided.

3. The OCD moves for a pre-hearing conference.

The OCD requests that a pre-hearing conference be conducted in this case. A pre-hearing conference would allow the OCC counsel to understand what issues are relevant to the case, and give the various claimants the opportunity to evaluate and refine their positions. The more that can be resolved before hearing, the shorter the hearing.

Respectfully Submitted,

This 29th day of September 2010 by



Gail MacQuesten

Assistant General Counsel

Energy, Minerals and Natural Resources Dept.

Oil Conservation Division

1220 S. St. Francis Drive

Santa Fe, NM 87505

(505) 476-3451

Certificate of Service

I hereby certify that on September 21 2010 I mailed a copy of this pleading by first class mail to the following, and e-mailed a copy of this pleading as indicated:

Chica Energy LLC
3003 McPherson Road
Roswell, NM 88201

Chica Energy LLC
3301 McPherson Road
Roswell, NM 88201
Seasons_jewels@yahoo.com

Yeso Energy, Inc.
P.O. Box 2248
Roswell, NM 88202-00248

Michael Feldewert
Ocean Munds-Dry
Holland & Hart LLP
P.O. Box 2208
Santa Fe, NM 87504-2208
Attorneys for Judah Oil, LLC
mfeldewert@hollandhart.com
omundsdry@hollandhart.com


Gail MacQuesten

Scott Hall
Montgomery & Andrews, P.A
P.O. Box 2307
Santa Fe, NM 87504
Attorney for COG
shall@montand.com

BLM Carlsbad Field Office
Attn: Jim Stovall, Field Manager
620 E. Greene St.
Carlsbad, NM 88220

Roswell Field Office
Bureau of Land Management
2909 W. Second Street
Roswell, NM 88201-2019

Phil Brewer
P.O. Box 298
Roswell, NM 88202-0298
phil@pegasusplace.com

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB No. 1004-0137
Expires: March 31, 2007

SUNDRY NOTICES AND REPORTS ON WELLS

Do not use this form for proposals to drill or to re-enter an abandoned well. Use Form 3160-3 (APD) for such proposals.

SUBMIT IN TRIPLICATE- Other instructions on reverse side.

1. Type of Well
 Oil Well Gas Well Other

2. Name of Operator
CHICA ENERGY LLC

3a. Address
3003 McPherson Road Roswell, NM 88201

3b. Phone No. (include area code)
575-623-6762

4. Location of Well (Footage, Sec., T, R, M., or Survey Description)
1650' FNL & 990' FEL
Sec 29-T19S-R29E

- 5. Lease Serial No
NMNM-14840
- 6. If Indian, Allottee or Tribe Name
- 7. If Unit or CA Agreement, Name and/or No.
- 8. Well Name and No
Dalton Federal #1
- 9. API Well No.
30-015-25259
- 10. Field and Pool, or Exploratory Area
Grayburg Jackson SR-Q-G-SA
- 11. County or Parish, State
Eddy County, New Mexico

12. CHECK APPROPRIATE BOX(ES) TO INDICATE NATURE OF NOTICE, REPORT, OR OTHER DATA

TYPE OF SUBMISSION	TYPE OF ACTION			
<input type="checkbox"/> Notice of Intent	<input type="checkbox"/> Acidize	<input type="checkbox"/> Deepen	<input type="checkbox"/> Production (Start/Resume)	<input type="checkbox"/> Water Shut-Off
<input checked="" type="checkbox"/> Subsequent Report	<input type="checkbox"/> Alter Casing	<input type="checkbox"/> Fracture Treat	<input type="checkbox"/> Reclamation	<input type="checkbox"/> Well Integrity
<input type="checkbox"/> Final Abandonment Notice	<input type="checkbox"/> Casing Repair	<input type="checkbox"/> New Construction	<input type="checkbox"/> Recomplete	<input checked="" type="checkbox"/> Other Change Operator
	<input type="checkbox"/> Change Plans	<input type="checkbox"/> Plug and Abandon	<input type="checkbox"/> Temporarily Abandon	
	<input type="checkbox"/> Convert to Injection	<input type="checkbox"/> Plug Back	<input type="checkbox"/> Water Disposal	

13. Describe Proposed or Completed Operation (clearly state all pertinent details, including estimated starting date of any proposed work and approximate duration thereof. If the proposal is to deepen directionally or recomplete horizontally, give subsurface locations and measured and true vertical depths of all pertinent markers and zones. Attach the Bond under which the work will be performed or provide the Bond No. on file with BLM/BIA. Required subsequent reports shall be filed within 30 days following completion of the involved operations. If the operation results in a multiple completion or recompletion in a new interval, a Form 3160-4 shall be filed once testing has been completed. Final Abandonment Notices shall be filed only after all requirements, including reclamation, have been completed, and the operator has determined that the site is ready for final inspection.)

As required per Onshore Orders, Chica Energy LLC has taken over as operator from Yeso Energy Inc on the above described effective 3-15-2010. Chica Energy LLC as new operator accepts all terms, conditions, restrictions and stipulations concerned for any and all operations conducted on this lease or portion of this lease as described above.

Operator Contact Info:
Chica Energy LLC
3003 McPherson Road
Roswell, NM 88201

Responsible Party:
J.A. Hodges
575-623-6762
866-623-9305 Fax

SUBJECT TO LIKE
APPROVAL BY STATE

SEE ATTACHED FOR
CONDITIONS OF APPROVAL

Bonding Coverage: ~~Statewide-New Mexico~~, Bond Amount: ~~\$25,000~~, Bond Number: *NMB 000652*

FOR NALC 029420B, NM 14840 + NM 67988 ONLY

14. I hereby certify that the foregoing is true and correct
Name (Printed/Typed)

J. A. Hodges

Title Manager

Signature

Date

03/15/2010

THIS SPACE FOR FEDERAL OR STATE OFFICE USE

Approved by *J.P. Wood*
Conditions of approval, if any, are attached. Approval of this notice does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.

Title *L PET*

Date *3/20/10*

Office *CFO*

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212: make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction

BUREAU OF LAND MANAGEMENT

**Carlsbad Field Office
620 East Greene Street
Carlsbad, New Mexico 88220
575-234-5972**

Conditions of Approval

Chica Energy LLC

Dalton Federal #1, Dow "28" Federal #1 and Gulf McKay Federal #1

1. Submit plan for approval of well operations within 30 days of this approval to change operator.

The Bureau of Land Management (BLM) and Minerals Management Service (MMS) definition of a Shut-in (SI) or Temporarily Abandoned (TA) are as follows. Shut-in well is a completion that is physically and mechanically capable of production in paying quantities or capable of service use. The definition of a temporarily abandoned well is a completion that is not capable of production in paying quantities but which may have value as a service completion.

43 CFR 3162.3-4 (C) requires that wells incapable of production in paying quantities be promptly plugged and abandoned and requires approval for any well temporarily abandoned for more than 30 days.

Therefore an Operator must submit a Sundry Notices as a Notice of Intent prior to beginning any operation it will be approved with condition of approval attached to properly TA the well. You need to submit a plan for the well within in 30 days stating you intent for the well.

Do one of the following.

- 1. Return the well to production or beneficial use.**
- 2. Submit notice of intent to plug and abandon.**

If you decide to **plug and abandon** the well, submit a Sundry Notice (form 3160-5, original and 3 copies) describe the proposed plugging program.

If you decide to **return the well to production**, submit a Sundry Notice (form 3160-5, original and 3 copies) of intent. Include the date you anticipated the well being placed back in service. 43 CFR 3162.4-1(c) also requires you to notify the Authorized officer, not later than the fifth business day after production is resumed for any well which has been off production for more than 90 days, the date on which such production was resumed. Notification may be by letter or Sundry Notice, or orally followed by letter or Sundry Notice.

Form 3160-5
(April 2004)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB No 1004-0137
Expires March 31, 2007

SUNDRY NOTICES AND REPORTS ON WELLS

Do not use this form for proposals to drill or to re-enter an abandoned well. Use Form 3160-3 (APD) for such proposals.

5. Lease Serial No.
NMLC-029420-B

6. If Indian, Allottee or Tribe Name

7. If Unit or CA/Agreement, Name and/or No

8. Well Name and No
Dow "28" Federal #1

9. API Well No
30-015-28676

10. Field and Pool, or Exploratory Area
Cedar Lake East, Morrow

11. County or Parish, State
Eddy County, New Mexico

SUBMIT IN TRIPLICATE- Other instructions on reverse side.

1. Type of Well
 Oil Well Gas Well Other

2. Name of Operator
CHICA ENERGY LLC

3a. Address
3003 McPherson Road Roswell, NM 88201

3b. Phone No (include area code)
575-623-6762

4. Location of Well (Footage, Sec, T, R, M, or Survey Description)
**1028' FSL & 1227' FWL
Sec 28-T17S-R31E**

12. CHECK APPROPRIATE BOX(ES) TO INDICATE NATURE OF NOTICE, REPORT, OR OTHER DATA

TYPE OF SUBMISSION	TYPE OF ACTION			
<input type="checkbox"/> Notice of Intent	<input type="checkbox"/> Acidize	<input type="checkbox"/> Deepen	<input type="checkbox"/> Production (Start/Resume)	<input type="checkbox"/> Water Shut-Off
<input checked="" type="checkbox"/> Subsequent Report	<input type="checkbox"/> Alter Casing	<input type="checkbox"/> Fracture Treat	<input type="checkbox"/> Reclamation	<input type="checkbox"/> Well Integrity
<input type="checkbox"/> Final Abandonment Notice	<input type="checkbox"/> Casing Repair	<input type="checkbox"/> New Construction	<input type="checkbox"/> Recomplete	<input checked="" type="checkbox"/> Other Change Operator
	<input type="checkbox"/> Change Plans	<input type="checkbox"/> Plug and Abandon	<input type="checkbox"/> Temporarily Abandon	
	<input type="checkbox"/> Convert to Injection	<input type="checkbox"/> Plug Back	<input type="checkbox"/> Water Disposal	

13. Describe Proposed or Completed Operation (clearly state all pertinent details, including estimated starting date of any proposed work and approximate duration thereof. If the proposal is to deepen directionally or recomplate horizontally, give subsurface locations and measured and true vertical depths of all pertinent markers and zones. Attach the Bond under which the work will be performed or provide the Bond No. on file with BLM/BIA. Required subsequent reports shall be filed within 30 days following completion of the involved operations. If the operation results in a multiple completion or recompletion in a new interval, a Form 3160-4 shall be filed once testing has been completed. Final Abandonment Notices shall be filed only after all requirements, including reclamation, have been completed, and the operator has determined that the site is ready for final inspection.)

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Operator Contact Info:
Chica Energy LLC
3003 McPherson Road
Roswell, NM 88201

Responsible Party:
J.A. Hodges
575-623-6762
866-623-9305 Fax

**SUBJECT TO LIKE
APPROVAL BY STATE**

**SEE ATTACHED FOR
CONDITIONS OF APPROVAL**

Bonding Coverage: ~~Statewide New Mexico~~ **Bond Amount:** \$25,000 **Bond Number:** *NMB000652*

For NMLC029420 B, NM 14840, & NM 67988 only

14. I hereby certify that the foregoing is true and correct
Name (Printed/Typed)

J. A. Hodges

Title **Manager**

Signature

J.A. Hodges

Date

03/15/2010

THIS SPACE FOR FEDERAL OR STATE OFFICE USE

Approved by:

D. D. Whitlock

Title **LPET**

Date **3/20/10**

Conditions of approval, if any, are attached. Approval of this notice does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.

Office **CFO**

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(Instructions on page 2)

BUREAU OF LAND MANAGEMENT
Carlsbad Field Office
620 East Greene Street
Carlsbad, New Mexico 88220
575-234-5972

Conditions of Approval

Chica Energy LLC

Dalton Federal #1, Dow "28" Federal #1 and Gulf McKay Federal #1

1. Submit plan for approval of well operations within 30 days of this approval to change operator.

The Bureau of Land Management (BLM) and Minerals Management Service (MMS) definition of a Shut-in (SI) or Temporarily Abandoned (TA) are as follows. Shut-in well is a completion that is physically and mechanically capable of production in paying quantities or capable of service use. The definition of a temporarily abandoned well is a completion that is not capable of production in paying quantities but which may have value as a service completion.

43 CFR 3162.3-4 (C) requires that wells incapable of production in paying quantities be promptly plugged and abandoned and requires approval for any well temporarily abandoned for more than 30 days.

Therefore an Operator must submit a Sundry Notices as a Notice of Intent prior to beginning any operation it will be approved with condition of approval attached to properly TA the well. You need to submit a plan for the well within in 30 days stating you intent for the well.

Do one of the following.

- 1. Return the well to production or beneficial use.**
- 2. Submit notice of intent to plug and abandon.**

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OPERATOR'S COPY

Form 3160-5
(April 2004)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB No. 1004-0137
Expires: March 31, 2007

SUNDRY NOTICES AND REPORTS ON WELLS

Do not use this form for proposals to drill or to re-enter an abandoned well. Use Form 3160-3 (APD) for such proposals.

SUBMIT IN TRIPLICATE- Other instructions on reverse side.

1. Type of Well <input checked="" type="checkbox"/> Oil Well <input type="checkbox"/> Gas Well <input type="checkbox"/> Other		5. Lease Serial No. NMNM-67988
2. Name of Operator CHICA ENERGY LLC		6. If Indian, Allottee or Tribe Name
3a. Address 3003 McPherson Road Roswell, NM 88201	3b. Phone No (include area code) 575-623-6762	7. If Unit or CA/Agreement, Name and/or No
4. Location of Well (Footage, Sec., T., R., M., or Survey Description) 660' FSL & 1980' FWL Sec 34-T18S-R32E		8. Well Name and No. Gulf McKay Federal #1
		9. API Well No. 30-025-25471
		10. Field and Pool, or Exploratory Area Querecho Plains Delaware
		11. County or Parish, State Lea County, New Mexico

12. CHECK APPROPRIATE BOX(ES) TO INDICATE NATURE OF NOTICE, REPORT, OR OTHER DATA

TYPE OF SUBMISSION	TYPE OF ACTION			
<input type="checkbox"/> Notice of Intent	<input type="checkbox"/> Acidize	<input type="checkbox"/> Deepen	<input type="checkbox"/> Production (Start/Resume)	<input type="checkbox"/> Water Shut-Off
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Roswell, NM 88201

Responsible Party:
J.A. Hodges
575-623-6762
866-623-9305 Fax

**SUBJECT TO LIKE
APPROVAL BY STATE**

**SEE ATTACHED FOR
CONDITIONS OF APPROVAL**

Bonding Coverage: ~~Statewide New Mexico~~; Bond Amount: \$75,000; Bond Number: NMB 000 652

For NALCO 29420B, NA 14840 + NA 67988 ONLY

14. I hereby certify that the foregoing is true and correct

Name (Printed/Typed) J. A. Hodges	Title Manager
Signature <i>J. A. Hodges</i>	Date 03/15/2010

THIS SPACE FOR FEDERAL OR STATE OFFICE USE

Approved by <i>J. D. W. [Signature]</i>	Title LPEI	Date 5/20/10
Conditions of approval, if any, are attached. Approval of this notice does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.	Office CFO	

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction

(Instructions on page 2)

BUREAU OF LAND MANAGEMENT
Carlsbad Field Office
620 East Greene Street
Carlsbad, New Mexico 88220
575-234-5972

Conditions of Approval

Chica Energy LLC

Dalton Federal #1, Dow "28" Federal #1 and Gulf McKay Federal #1

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