

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

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

**OWL SWD OPERATING, LLC APPLICATION FOR  
AUTHORIZATION TO INJECT**

**Case No. 15723**

**POST HEARING BRIEF**

This post-hearing brief is submitted by the State Land Office ("SLO") as directed by the Oil Conservation Division ("OCD") following the hearing on August 1, 2 and 4, 2017 "(the hearing)" and a Motion for Extension of time filed by the State Land Office and ordered by the hearing officer.

**I. SUMMARY OF THE FACTS AND PROCEEDINGS**

OWL SWD Operating, LLC ("OWL") requests that the OCD grant its application for an order approving the use of the Bobcat SWD No. 1 for the injection of produced water into the Yates Seven Rivers formation in Lea County, New Mexico at the intervals and the pressures, volumes and rates detailed in its Application and at a hearing held on August 1, 2 and 4, 2017. OWL currently injects into the Maralo Sholes B Well No. 2, located on the same site as the proposed well, under the authority of Administrative Order SWD-1127.

OCD has filed an application for a compliance order based on its position that the construction of the Maralo Sholes B Well No. 2 is inadequate to prevent the potential communication of water to other strata, (*See* Application Case No. 15753). OWL does not agree with the OCD and is challenging the OCD's Application.

Applicant proposes to drill this new well to a total depth of approximately 3,060 feet, for injection of water into the Yates Seven River's formation by open hole from 2,915 to 3060 feet. The well is located southwest of Jal, New Mexico, the City of Jal has joined in the proceedings also opposing OWL's application for the Bobcat SWD No. 1.

## **II. THE STATE LAND OFFICE OPPOSES THE DRILLING OF THE BOBCAT SWD NO. 1 AT THE DEPTH REQUESTED BY OWL**

The SLO is opposed to this replacement well being drilled as a SWD into the same zone as the Maralo Sholes Well No. 2, since the Tansill, Yates, Seven Rivers zones, as well as the Capitan Reef, contain protectable groundwater of the State of New Mexico which is a resource of the trust managed by the Commissioner of Public Lands. The SLO will not oppose the disposal well if it is drilled to the depth of the Devonian where it will not degrade protectable waters.

At a hearing on August 4, 2017, the State Land Office's expert Anchor Holm presented evidence demonstrating that injection of produced waters into these formations in this area has, and will degrade the ground water quality in these formations, which are directly connected physically and hydraulically to the Capitan Reef. Degradation of these waters has occurred at the Martha Forrest SWD #1 (30-025-09792) in Section 22, some 1.5 miles NW of the proposed Bobcat SW No. 1.

## **III. THE LAW**

The State Engineer has defined protectable underground water as all waters in the State of New Mexico containing 10,000 milligrams/liter or less of total dissolved solids ("TDS"). This does not include any water for which there is no present or reasonably foreseeable beneficial use that would be impaired by contamination. "Although not formally defined, the term "reasonably foreseeable" has been taken to mean a time period of not less than 200 years in the future, and in other instances to mean much longer times (thousands of years)." (See OCD Website).

The importance of ground water protection in New Mexico is emphasized in the Environmental Improvement Act the purpose of which is to: “to ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants . . . *as well as those yet unborn* from health threats posed by the environment.” Section 74-1-2. (See NMSA §§ 74-1-1 – 75-12-10) (Emphasis added).

OCD’s rule regarding injection permits state as follows:

Water disposal wells.

- (1) The director may grant an application for a water disposal well administratively, without hearing, only when the waters to be disposed of are mineralized to such a degree as to be unfit for domestic, stock, irrigation or other general use and when the waters are to be disposed of into a formation older than Triassic (Lea county only) and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.
- (2) The division shall not permit disposal into zones containing waters having total dissolved solids concentrations of 10,000 mg/l or less except after public notice and hearing, provided that the division may, by order issued after public notice and hearing, establish exempted aquifers for such zones where the division may administratively approve the injection.
- (3) Notwithstanding the provisions of Paragraph (2) of Subsection E of 19.15.26.8 NMAC, the director may authorize disposal into such zones administratively if the waters to be disposed of are of higher quality than the native water in the disposal zone.

(See 19.15.26.8 NMAC).

The 10,000 mg/l total dissolved solids threshold comes from the EPA’s definition of “underground sources of drinking water” (also known as “protectable waters”) under the Safe Drinking Water Act. (See 40 C.F.R. 144.3).

In issuing SWD permits, the OCD acts as a constituent agency under the New Mexico Water Quality Act, under which a constituent agency shall not issue a permit for the discharge of any water contaminant if it would “contribute to water contaminant levels in excess of any state or

federal standard,” as measured at “any place of withdrawal of water for present or reasonably foreseeable future use.” (See NMSA 1978 § 74-6-5).

#### **IV. PROTECTABLE WATERS**

The law requires much more than the evidence presented by OWL in support of its application considered the impact on water over the next twenty years. (According to OWL’s experts the modeling could be used to predict as far as forty years into the future.) The City of Jal did not present evidence at the hearing but the attorney for the City of Jal made clear through his questions at the hearing, and in his post-hearing brief, that it is the position of the City of Jal that it may need the water impacted by disposal into the proposed injection site well within the “foreseeable future.”

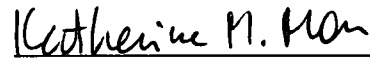
Although there may be greater expense to OWL in drilling deeper and into the Devonian the profits from disposing of produced water in the amounts presented at the hearing will be highly profitable even with this additional expense.

#### **V. THE DISPOSAL PROPOSED BY OWL WILL INTERFERE WITH CORRELATIVE RIGHTS ARGUMENT RAISED BY OCD**

The OCD presented evidence at the hearing that the disposal proposed by OWL may interfere with correlative rights. The State Land Office joins in that concern and with this Post-Hearing Brief opposes the Bobcat SWD #1 on this basis, in addition to its already established opposition on the basis that the injection proposed by OWL will pollute protectable waters. The SLO has mineral rights including oil and gas reserves in this area which it has a fiduciary duty to protect for its beneficiaries. N.M. Const., art. XII, § 12, XIII, § 2, art. XXI, § 9; and NMSA 1978, §§ 19-1-1 et seq. The SLO has identified nine oil or gas wells that have been drilled on state trust land within the one mile buffer from the proposed Bobcat SWD No. 1 in the Yates Seven Rivers formation.

The State Land Office respectfully requests that the Oil Conservation Division deny OWL  
SWD Operating LLC's Application for Authorization to Inject.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following  
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