

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

APPLICATION OF DELAWARE ENERGY LLC TO REVOKE
THE INJECTION AUTHORITY GRANTED UNDER SWD-1680
FOR THE ALPHA SWD NO. 1 WELL OPERATED BY
ALPHA SWD OPERATING LLC, EDDY COUNTY, NEW MEXICO

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Case No. 15855 (de novo)
Order No. R-14484-A

DELAWARE ENERGY'S APPLICATION FOR REHEARING

Delaware Energy LLC ("Delaware"), pursuant to NMAC 19.15.4.25, files this application for a rehearing and/or reconsideration of Commission Order R-14484-B. This Commission Order confirms that Administrative Order SWD-1680 was improperly issued (Findings 7 and 8), but nonetheless vacates the Division Order voiding SWD-1680 on the grounds that (a) "Delaware improperly appealed SWD-1680 to the Division" and "failed to timely appeal SWD-1680 to the Commission pursuant to NMSA 1978, §70-2-13," and (b) Division Examiners "lacked jurisdiction to issue Order No. R-14484-A reversing Administrative Order SWD-1680." These legal conclusions are unprecedented; were not raised by the Division Director, Division Examiners or any of the parties in this case; and are wrong.

UNDISPUTED FACTUAL AND PROCEDURAL BACKGROUND

There is no debate that Administrative Order SWD-1680 authorizing Alpha SWD to inject produced water into the Devonian formation was issued prior to the expiration of the 15-day waiting period required by NMAC 19.15.26.8(C). *See* Order R-14484-A at p. 3, ¶¶ (11)-(17); Commission Order R-14484-B at p. 2, ¶¶ 7-8. There is no debate Delaware had a prior-filed application pending before the Division for a disposal well in the same area and in the same disposal zone that was "suspended" following the filing of a protest by a nearby operators. *See* Attachment 1 (Exhibit 3 from Division hearing). There is further no debate that the day before

Administrative Order SWD-1680 was prematurely issued, the Division was informed by the protesting operators that they “hereby drop their objection” to Delaware’s application because Delaware agreed to revise the “casing program to our satisfaction.” *Id.* While Alpha’s subsequently filed application was still subject to the 15-day waiting period required by NMAC 19.15.26.8(C), Delaware had discussions with the Division about the necessary amendments to its prior-filed application to accommodate the well casing changes requested by the former protesting parties. *See* Attachment 2 (Partial Transcript of 11/7/17 Division Hearing) at pp. 28-29. At no point did the Division suggest Delaware’s prior-filed application had been removed from a “suspended” status or that it was no longer viable for approval. *Id.* at p. 28 (lines 6-19); p. 33 (lines 16-25). Nonetheless, Delaware was never informed of Alpha’s subsequently filed, competing disposal application and only learned of the premature issuance of Administrative Order SWD-1680 when Alpha offered to sell its injection authority to Delaware. *Id.* at p. 35-36.¹

It is this undisputed factual background that prompted Delaware to file an Application with the Division under NMAC 19.15.4.8 seeking to revoke the injection authority granted to Alpha under Administrative Order SWD-1680. The Division Director accepted the Application pursuant to NMAC 19.15.4.8, referred the matter to the Division Examiners for hearing, and published notice of the Examiner Hearing pursuant to NMAC 19.14.4.9.A(2). *See also* NMAC 19.15.4.20 (authorizing the Director to bring a matter directly before the Commission). During the Division Examiner proceedings, Delaware established that the record for Administrative Order SWD-1680 indisputably shows Alpha’s application was approved without any prior notice to Delaware,

¹ The New Mexico Supreme Court has instructed that any party “materially affected” by administrative action is entitled to “actual notice.” *Uhdén v. New Mexico Oil Conservation Commission*, 1991-NMSC-089. Here, not only was the Division aware of Delaware’s prior filed application, but Alpha was also informed prior to filing its competing application that Delaware had recorded Salt Water Disposal Agreements for the subject area, that Delaware had a disposal application filed with the Division for the subject area, and that if Alpha SWD submitted a competing disposal well application that it should so inform Delaware. *See* Attachment 2 at pp. 41-49. *See also* Attachments 3, 4, and 5 (referenced Division Examiner Hearing Exhibits 10, 11 and 12).

without consideration of Delaware's prior-filed application and in violation of the 15-day waiting period required by NMAC 19.15.26.8(C). Division Order R-14484-A ultimately rescinded the injection authority precisely because it was issued prior to the mandatory 15-day waiting period required by NMAC 19.15.26.8.C(2). At no time during or after Delaware filed its application did the Division Director, the Division's counsel, the Division's Examiners or the parties to the Examiner proceedings suggest that the Division Examiners lacked "jurisdiction" to correct the obvious errors surrounding the issuance of Administrative Order SWD-1680.

It was not until the May 22, 2018, Commission hearing on Alpha's de novo appeal of Division Order R-14484-A that the Commission sua sponte suggested Division Examiners "lacked jurisdiction" to determine if Administrative Order SWD-1680 was properly issued. This suggestion culminated in Commission Order R-14484-B which recognizes that Administrative Order SWD-1680 was improperly issued (Findings 7 and 8), but nonetheless vacates the Division Order voiding the administrative injection permit. The Commission's Order incorrectly concludes that (a) "Delaware improperly appealed SWD-1680 to the Division" and "failed to timely appeal SWD-1680 to the Commission pursuant to NMSA 1978, §70-2-13," and (b) Division Examiners "lacked jurisdiction to issue Order No. R-14484-A reversing Administrative Order SWD-1680." These legal conclusions are unprecedented and wrong.

I. Delaware Properly Filed Its Application For An Adjudicatory Hearing With The Division, As The Commission's "De Novo" Authority Under Section 70-2-13 Only Arises Following A Division Examiner Hearing.

The Commission suggests that Delaware "improperly appealed SWD-1680 to the Division" and "failed to timely appeal SWD-1680 to the Commission pursuant to NMSA 1978, §70-2-13." Order R-14484-B at p. 6, Conclusion 1. Both conclusions are incorrect.

First, Delaware did not file "an appeal" of SWD-1680 or seek a "rehearing" with the Division as the Commission order suggests. *Id.* at p. 4, ¶¶ 23 and 24. Appeals and rehearing

requests are brought by parties after a formal hearing has taken place. No hearing took place prior to the premature issuance of Administrative Order SWD-1680, and Delaware was never apprised of the administrative proceeding resulting in the Alpha injection permit. Once Delaware learned of the improperly issued injection permit, it filed an Application for an adjudicatory hearing with the Division Director under Section 70-2-14 of the Oil & Gas Act seeking revocation of the injection permit on various grounds. The Oil and Gas Act broadly authorizes applications for adjudicatory hearings before Division Examiners on any matter properly falling under the jurisdiction afforded to the Division by the Oil and Gas Act.

Second, the Commission's review authority under the section cited by the Commission, §70-2-13, only arises after a matter "is referred" to a Division Examiner for hearing and "a decision is rendered thereon." Since Alpha's administrative application for injection authority was never referred to an Examiner for hearing, the issuance of Administrative Order SWD-1680 did not trigger the right of an adversely affected party to proceed "de novo" to the Commission.

A. The Oil and Gas Act Broadly Authorizes Examiner Hearings On Any Matter Properly Before the Division.

The Oil and Gas Act affords the Division "jurisdiction, authority and control over all persons, matters and thing necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas...." NMSA 1978, § 70-2-6 (emphasis added). The Division's authority to "enforce effectively" includes the "appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division" and "to take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits...." NMSA 1978, § 70-2-13. Following a hearing, Division Examiners issue a report and recommendations to the Division Director who then renders a decision "upon

the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if the hearing had been conducted before the director of the division.” *Id.* As important, the Division’s authority under the Oil and Gas Act to hold adjudicatory hearings is not limited to specified matters but include “whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.” NMSA 1978, § 70-2-10 (emphasis added). For the Commission to now suggest that Division Examiners lacked “jurisdiction” to address an Application for an adjudicatory hearing challenging the propriety of the issuance of an injection permit is completely inconsistent with the broad statutory hearing authority granted to the Division.

Division regulations further confirm the broad grant of authority to the Division to conduct adjudicatory hearings on any matter properly before it. NMAC 19.15.4.8 states “the division, attorney general, an operator or producer or other person with standing may file an application with the division for an adjudicatory hearing.” Under NMAC 19.15.4.8.A, the Division Director makes an initial determination as to whether a party has “standing” to file the application. If standing exists, the Division Director determines whether the matter will proceed before the commission or a division examiner and publishes notice of the adjudicatory hearing. *See* NMAC 19.14.4.9.A. *See also* NMAC 19.15.4.20 (authorizing the Director to bring a matter directly before the Commission).

Finally, the actions by the Division, the Division Examiners and the parties in this matter confirm the authority of Division Examiners to review the propriety of the issuance of Alpha’s injection permit. Following the filing of Delaware’s Application on September of 2017, the Division Director reviewed the Application, determined Delaware had standing to file it, and referred the matter to Division Examiners for a hearing. *See* NMAC 19.15.4.8 and 19.15.4.9.

Following briefing by the parties, the Division Director cited the notice and other defects in the Application to issue an Emergency Stay of the injection authority granted by Administrative Order SWD-1680. *See* R-14484. In October of 2017, the Division Director issued a subpoena for documents potentially relevant to the issues raised in the Application. Thereafter Division Examiners entertained briefing and argument on the documents sought by the Division's subpoena. On November 17, 2017, Division Examiners held an evidentiary hearing on Delaware's Application for revocation of the injection authority. On February 13, 2018, the Division issued Order R-14484-B revoking the injection authority granted by SWD-1680. During these lengthy proceedings, neither the Division Director, the Division's Counsel, the Division's Examiners nor any of the parties to the proceedings doubted the "jurisdiction" of Division Examiners to examine the propriety of the issuance of Administrative Order SWD-1680, or to take any action necessary to address procedural errors preceding the issuance of the injection authority.

The Oil and Gas Act, Division regulations, and the actions by the Division and the parties confirm (a) Delaware acted properly in filing its Application with the Division, and (b) Division Examiners have authority to issue Order R-14484-A revoking the injection authority granted under Administrative Order SWD-1680.

B. Commission Appeals Are Only Authorized After A Division Examiner Hearing.

In conjunction with the Oil and Gas Act's broad grant of authority to the Division to conduct adjudicatory hearings, Section 70-2-13 clearly restricts an aggrieved party's right to a hearing before the Commission to a circumstance where an evidentiary hearing has been held before a Division Examiner and an order issued thereon:

When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered. (emphasis added)

Division regulations confirm that the statutory right to a “de novo” review by the Commission is limited to circumstances where an order has been rendered following an Examiner hearing:

19.15.4.23 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

A. De novo applications. When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. If a party files an application for a de novo hearing, the commission chairman shall set the matter or proceeding for hearing before the commission. (emphasis added)

Alpha’s Administrative Application for injection authority was not referred to an Examiner for hearing. Rather it was approved administratively without an examiner hearing under the provisions of NMAC 19.15.26.8. Accordingly, the issuance of “Administrative Order SWD-1680” did not trigger a right to “de novo” review by the Commission. Rather, the relief broadly afforded to aggrieved parties by the Oil and Gas Act is to first file an application for an adjudicatory hearing with the Division, the agency that retained jurisdiction under the last paragraph of Administrative Order SWD-1680.²

The Commission’s Order suggests Section 7-2-13 is unclear and can be construed as providing for Commission review “either after a hearing *or after a public notice and opportunity for hearing...*” Order R-14484-B at ¶25 (emphasis added). Neither the statute nor the Division’s accompanying regulation contain language supporting this contrived ambiguity, nor does the language suggest a mere “opportunity for hearing” is sufficient to invoke the “de novo” jurisdiction

² The last paragraph of Administrative Order SWD-1680 states:

Jurisdiction is retained by the Division for the entry of such further orders as may be necessary for the prevention of waste and/or protection of correlative rights or upon failure of the operator to conduct operations (1) to protect fresh or protectable waters or (2) consistent with the requirements in this order, whereupon the Division may, after notice and hearing, terminate the disposal authority granted herein.

of the Commission. Rather the statute clearly and unambiguously requires that a matter must first be “referred to an examiner and a decision is rendered thereon” before a right to “de novo” review by the Commission exists. *See* NMSA 1978, § 70-2-13. The Division’s regulation echoes this requirement, stating: “When the division enters an order pursuant to a hearing that a division examiner held...”. NMAC 19.15.4.23. Neither the statute nor the regulation leave room for the “opportunity for hearing” theory set forth in the Commission’s Order.

II. Since An Administrative Remedy Is Available Under the Oil and Gas Act, A Rule 1-075 Appeal To the District Court Was Not Available to Delaware.

The Commission’s Order suggests that perhaps Delaware could have appealed Administrative Order SWD-1680 to the District Court under Rule 1-075 NMRA as a “final decision or order of an agency.” Order R-14484-B at p. 6, ¶ 28. However, New Mexico courts require litigants to exhaust all possible administrative remedies before proceeding to district court under Rule 1-075. “Under the exhaustion of administrative remedies doctrine, where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to courts; and until that recourse is exhausted, suit is premature and must be dismissed.” *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 26. This exhaustion doctrine applies whether or not specifically required by statute. *In re Estate of MacElveny*, 2017-NMSC-024, ¶ 25, 399 P.3d 919 (citing *McKart v. United States*, 395 U.S. 185, 193 (1969)) (requiring administrative exhaustion for “prudential reasons,” even though statute did not directly require it.) The reasons for the exhaustion doctrine are many and include agency expertise, judicial and administrative efficiency and affording the agency an opportunity to correct any errors. *MacElveny*, 2017-NMSC-024, ¶ 25.

As noted herein, the Oil and Gas Act’s broad grant of authority to the Division to conduct evidentiary hearings before qualified Division Examiners with a subsequent “de novo” review

right before the Commission provides a “plain, adequate and complete” administrative process to address deficiencies in the issuance of administrative injection permits. *Chavez v. City of Albuquerque*, 1998-NMCA-004, ¶ 14. Accordingly, Delaware’s initiation of the available administrative process to afford the Division an opportunity to correct the undisputed errors in the issuance of Administrative Order SWD-1680 was proper and required before proceeding to district court.

CONCLUSION AND REQUEST FOR RELIEF

Undersigned counsel is not aware of any prior Division/Commission ruling suggesting a party adversely affected by an administrative order must file a “de novo” application for review with the Commission. A review of the Oil and Gas Act and the Division regulations confirm Delaware properly invoked the broad Examiner Hearing process available to address all matters properly before the Division, including procedural defects in the issuance of administrative orders. The administrative record associated with Administrative Order SWD-1680 clearly reflects that it was issued prematurely and without proper notice to affected parties. Accordingly, Administrative Order SWD-1680 must be rescinded and an appropriate remedy fashioned by the Commission or the Division that accounts for the particular and unique facts of this case.

Respectfully Submitted,

HOLLAND & HART LLP



Michael H. Feldewert
Adam G. Rankin
Post Office Box 2208
Santa Fe, NM 87504
505-998-4421
505-983-6043 Facsimile
mfeldewert@hollandhart.com
arankin@hollandhart.com

ATTORNEYS FOR DELAWARE ENERGY LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Gary W. Larson
PO Box 2068
Santa Fe NM 87504-2068
Phone: 505-982-4554
Fax: 505-982-8623
glarson@hinklelawfirm.com

Attorney for Alpha SWD Operating LLC



Michael H. Feldewert

Subject: FW: Protest of Application to Inject- Ruiz SWD Well No. 1

From: Randy Cate <guardianopcorp@yahoo.com>

Date: **June 27, 2017** at 1:19:09 PM CDT

To: "McMillan, Michael, EMNRD" <Michael.McMillan@state.nm.us>, Preston Stein <preston@delawareenergyllc.com>

Cc: "Goetze, Phillip, EMNRD" <Phillip.Goetze@state.nm.us>, "Lowe, Leonard, EMNRD" <Leonard.Lowe@state.nm.us>,
"Jones, William V, EMNRD" <WilliamV.Jones@state.nm.us>, Chris Carleton <ccarleton@matadorresources.com>

Subject: Re: Protest of Application to Inject- Ruiz SWD Well No. 1

Gentlemen,

RSC Resources, LP and Guardian Operating Corp. hereby drop their objection to the Ruiz SWD application as Delaware Energy has revised its casing program to our satisfaction.

Regards,

Randy Cate
Guardian Operating Corp.
RSC Resources, L.P.
432-553-1849

On Monday, **October 31, 2016**, 11:47:59 AM CDT, McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us> wrote:

RE: Ruiz SWD Well No. 1 (API 30-015-pending; Appl. No. pMAM1630053276) – Sec 10, T. 24 S., R. 28 E., NMPM, Eddy County.

Mr. Stein

OCD was notified that Guardian Operating, Corporation and RSC Resources, L.P. (Guardian) are protesting this application for approval of a salt water disposal well. Guardian has stated that the proposed injection well's proposed casing programs is inadequate. Therefore, you are being notified that if Delaware Energy, LLC wishes for this application to be considered, it must either go to hearing or may be reviewed administratively if the protest is withdrawn as a result of a negotiated resolution with this party. The application will be retained by OCD, but suspended from further administrative review. Please contact OCD once you have made a decision regarding the application within the next 30 days. If the protest remains after 30 days, OCD will initiate the process for the application to be reviewed at hearing. Please contact me with any questions regarding this matter. PRG

Counsel for Guardian Operating

Randy Cate
6824 Island Circle
Midland, TX. 79707
Phone: 432.553.1849
E-mail: guardianopcorp@yahoo.com

MICHAEL A. MCMILLAN
Engineering Bureau, Oil Conservation Division
1220 south St. Francis Dr., Santa Fe NM 87505
O: 505.476.3448

Michael.McMillan@state.nm.us

ATTACHMENT

- 1 -

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. 3
Submitted by: DELAWARE ENERGY LLC
Hearing Date: November 7, 2017

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 DELAWARE ENERGY,
LLC TO REVOKE THE INJECTION
AUTHORITY GRANTED UNDER SWD-1680
FOR THE ALPHA SWD NO. 1 WELL
OPERATED BY ALPHA SWD OPERATING,
LLC, EDDY COUNTY, NEW MEXICO.

CASE NO. 15855

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

November 7, 2017

Santa Fe, New Mexico

BEFORE: PHILLIP GOETZE, CHIEF EXAMINER
WILLIAM V. JONES, TECHNICAL EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Phillip Goetze, Chief Examiner, William V. Jones Technical Examiner, and David K. Brooks, Legal Examiner, on Tuesday, November 7, 2017, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

ATTACHMENT

- 2 -

PAUL BACA PROFESSIONAL COURT REPORTERS
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102

1 May I approach?
 2 EXAMINER GOETZE: You may.
 3 MR. RANKIN: So the letter speaks for
 4 itself, but Matador would like to make this a matter of
 5 record.
 6 The position is that we would like to see
 7 the well be located outside the area of the proration
 8 unit and that it would also meet certain completion and
 9 designing requirements that they would like to see in
 10 all injection wells within their proration units.
 11 With that, Mr. Examiner, I just want to
 12 make that a matter of record for the parties and for the
 13 Division to consider.
 14 EXAMINER GOETZE: So you wish to enter this
 15 as an exhibit?
 16 MR. RANKIN: We would.
 17 EXAMINER GOETZE: Mr. Larson?
 18 MR. LARSON: Mr. Examiner, Matador was
 19 notified of Alpha's application and did not protest. I
 20 just want to make that a matter of record.
 21 I don't object to this document being
 22 admitted.
 23 EXAMINER GOETZE: Very good. We'll enter
 24 this as Matador Exhibit 1 into the record for
 25 consideration.

1 MR. RANKIN: Thank you, Mr. Examiner.
 2 That's it.
 3 (Matador Production Company Exhibit Number
 4 1 is offered and admitted into evidence.)
 5 EXAMINER GOETZE: Very good. Let's
 6 proceed, gentlemen.
 7 MR. FELDEWERT: We'll call our first
 8 witness.
 9 MICHAEL McCURDY,
 10 after having been previously sworn under oath, was
 11 questioned and testified as follows:
 12 DIRECT EXAMINATION
 13 BY MR. FELDEWERT:
 14 Q. Would you please state your name, identify by
 15 whom you're employed and in what capacity?
 16 A. My name is Michael McCurdy, and I'm employed by
 17 Delaware Energy as vice president of operations.
 18 Q. And, Mr. McCurdy, are you a -- have you engaged
 19 in the industry as a petroleum engineer?
 20 A. I have.
 21 Q. And have you previously testified before this
 22 Division?
 23 A. No, I have not.
 24 Q. What is your educational background?
 25 A. I've got a BS in petroleum engineering.

1 Q. From which school?
 2 A. From Texas Tech University.
 3 Q. When did you receive that?
 4 A. In 2012.
 5 Q. What's been your work history since graduating?
 6 A. I've worked for Occidental Petroleum in
 7 tertiary recovery and well intervention. I've worked
 8 for Nadel and Gussman as completions, operations and
 9 facilities engineer, and also served at BC as reservoir
 10 engineer working on non-op properties.
 11 Q. When you say BC, BC --
 12 A. Black and Crump, BC Operating.
 13 Q. Now, have your responsibilities over this
 14 period of time included the Delaware Basin in New
 15 Mexico?
 16 A. They have, in Permian.
 17 Q. And do you have experience in operating
 18 disposal wells?
 19 A. I do.
 20 Q. In the Delaware Basin?
 21 A. Yes, sir.
 22 Q. Okay. And, in particular, Eddy and Lea
 23 Counties?
 24 A. Yes, sir.
 25 MR. FELDEWERT: Mr. Examiner, I tender

1 Mr. McCurdy as an expert witness in petroleum
 2 engineering.
 3 EXAMINER GOETZE: Mr. Larson?
 4 MR. LARSON: No objection.
 5 EXAMINER GOETZE: He is so qualified.
 6 Q. (BY MR. FELDEWERT) Are you familiar with the
 7 application that was filed by Delaware for a disposal
 8 well in October of 2016?
 9 A. I am.
 10 Q. And did that involve the Ruiz SWD No. 1?
 11 A. It did.
 12 Q. And just real quick, if I turn to what's been
 13 marked as Delaware Exhibit Number 16 --
 14 A. Okay.
 15 Q. -- does this properly reflect the location of
 16 the proposed disposal well that was the subject of your
 17 October 2016 application?
 18 A. It does.
 19 Q. Have you had responsibilities since the filing
 20 of that application with respect to the communications
 21 with the Division regarding the application?
 22 A. I have.
 23 Q. And have you reviewed the company files
 24 pertaining to this October 2016 application?
 25 A. I have.

1 Q. And as a result, are you familiar with what has
 2 occurred since the filing of that October 2016
 3 application?
 4 A. I have.
 5 Q. If I turn to what's been marked as Delaware
 6 Exhibit Number 1, this is a timeline of events that we
 7 referred to earlier in this case. Have you reviewed
 8 this timeline?
 9 A. Yes, I have.
 10 Q. And does it accurately reflect the timing of
 11 the events depicted?
 12 A. It does.
 13 Q. Okay. It reflects that your Ruiz SWD
 14 application was filed on October 24th, 2016; is that
 15 right?
 16 A. That's correct.
 17 Q. To be located in Unit K of Section 10?
 18 A. Yes, sir.
 19 Q. If I turn to what's been marked as Exhibit
 20 Number 2, is this a partial exhibit depicting the
 21 application that was filed?
 22 A. It is.
 23 MR. FELDEWERT: And I did not,
 24 Mr. Examiner, include the entire application since it's
 25 already in the Division records.

1 Q. (BY MR. FELDEWERT) But I wanted to include
 2 these pages for a couple of reasons, Mr. McCurdy.
 3 First, it was filed by Preston Stein. Do you see that?
 4 A. Yes, sir.
 5 Q. Who is Mr. Stein?
 6 A. Preston Stein served as vice president for
 7 Delaware Energy.
 8 Q. Back in 2016?
 9 A. Yes, sir.
 10 Q. What's the status -- what's his status with the
 11 company today?
 12 A. He's no longer with the company.
 13 Q. What happened? Did he --
 14 A. He sold his equity in the company.
 15 Q. He sold his interest in the company?
 16 A. Yes, sir.
 17 Q. Okay. It talks about -- reflects the fact that
 18 you were going to have a disposal -- started to have a
 19 disposal well in Unit K of Section 10; is that right?
 20 A. That's correct.
 21 Q. And if I look at the third page, it provides
 22 some information about the proposed well?
 23 A. Yes.
 24 Q. What's the injection?
 25 A. It would be the Devonian Formation.

1 Q. The same formation that was the subject of
 2 Alpha's subsequently filed application?
 3 A. That's correct.
 4 Q. If I look at the C-102 that was filed at the
 5 time, does that -- that does not reflect an actual
 6 staking of the well; is that correct?
 7 A. It does not.
 8 Q. That was an approximate location that the
 9 company provided to the Division at the time?
 10 A. That's correct.
 11 Q. All right. Now, if I look, then, at Exhibit
 12 Number 3 and I start with the bottom portion of this
 13 exhibit, does this reflect that a few days later, on
 14 October 31st, 2016, that the company was informed that
 15 some protests had been filed with respect to the
 16 application?
 17 A. It does.
 18 Q. Okay. And it was directed to Mr. Stein; was it
 19 not?
 20 A. That's correct.
 21 Q. And if I look halfway through that notice from
 22 the Division, it says -- about halfway down, there is a
 23 sentence that starts with "The application." Do you see
 24 that?
 25 A. Yes, sir.

1 Q. And it says, "The application will be retained
 2 by the OCD but suspended from further administrative
 3 review." Do you see that?
 4 A. I do.
 5 Q. Okay. And it goes on to say that you are to
 6 inform the Division if you are able to reach an
 7 agreement with the protesting parties?
 8 A. That's correct.
 9 Q. All right. Did the company, after receiving
 10 this email, engage in discussions with the protesting
 11 parties?
 12 A. We did.
 13 Q. Were those discussions successful?
 14 A. They were.
 15 Q. If I look at the top half of this exhibit,
 16 which is a response to that email, it was filed on June
 17 27th, 2017. Do you see that?
 18 A. I do.
 19 Q. By Mr. Cate?
 20 A. (No response.)
 21 Q. Is Mr. Cate the party that protested your
 22 application?
 23 A. He is.
 24 Q. And it reflects, does it not, that they have
 25 withdrawn their objection as the company, you, Delaware,

1 had agreed to revise its casing program to their
 2 satisfaction; is that correct?
 3 A. That's correct.
 4 Q. Okay. Were you involved in the efforts to
 5 reach an agreement and address the concerns of the
 6 objecting parties?
 7 A. I was.
 8 Q. And what was the nature of those discussions?
 9 How did it come about and, you know, why did it take so
 10 long?
 11 A. Well, initially, when we found out that
 12 Mr. Cate had protested, pressing the contract with
 13 Mr. Cate, and Mr. Cate had said that Matador had the
 14 lease and that he was not going to be willing to release
 15 his protest until Matador had no issues with our -- with
 16 our permit. So Preston arranged a meeting with Matador,
 17 which we got on the phone with the drilling engineers
 18 with Matador, had a long discussion. Then -- then from
 19 there, once we reached an agreement, they then asked for
 20 us to email the agreement. We emailed the agreement.
 21 Then they had -- we waited, tried to contact them. Then
 22 it went back to -- we eventually, after not having any
 23 further forward movement with the permit, we finally
 24 contacted Mr. Cate. He got involved, and we finally
 25 reached an agreement.

1 Q. And all that took a period of time?
 2 A. It did.
 3 Q. Okay. Because you were dealing with a number
 4 of different companies?
 5 A. That's correct.
 6 Q. But, eventually, as reflected in Exhibit Number
 7 3, you were able to resolve concerns raised by the
 8 protesting party?
 9 A. We were.
 10 Q. And that was -- notice, then, was provided on
 11 June 27th, 2017 to the Division of that resolution,
 12 correct?
 13 A. That's correct.
 14 Q. Was there also discussion during this time not
 15 only about the casing design but changing the location
 16 of the well within Unit K?
 17 A. Yes, there was.
 18 Q. And what was the discussions around that? What
 19 were they wanting you to do?
 20 A. They wanted us to stay closer to the midsection
 21 line to stay out of their proration unit and to drill
 22 directionally and stay within, plus or minus, 100 feet
 23 of that midsection line to make sure we didn't interfere
 24 with any of their operations.
 25 Q. Was the company able to accommodate that

1 request?
 2 A. We were.
 3 Q. And remain within Unit K but move their well
 4 location closer to the midline?
 5 A. Yes, sir.
 6 Q. While the company was engaged in these
 7 extensive efforts to reach an agreement and address the
 8 concerns of the objecting parties, did, at any point in
 9 time, Delaware ask that the application be canceled or
 10 withdrawn?
 11 A. We never did.
 12 Q. Did the Division suggest at any time to the
 13 company that the October 2016 application had been
 14 canceled or withdrawn?
 15 A. They never did.
 16 Q. And did the Division inform Delaware of any
 17 change in the suspended status of the October 2016
 18 application?
 19 A. They never did.
 20 Q. When you -- what happened after the Division
 21 was informed on June 27th, 2017 that the protests had
 22 been withdrawn?
 23 A. I contacted the Division and discussed what
 24 needed to be done to complete the permit now that we
 25 were over the protest.

1 Q. Okay. Did they indicate that your application
 2 was still on file?
 3 A. They did.
 4 Q. And did they ask you to submit certain
 5 amendments to that application?
 6 A. They did.
 7 Q. Did they ask you to submit a whole new
 8 application?
 9 A. No, they did not.
 10 Q. Okay. If I look at what has been marked as
 11 Delaware Exhibit Number 4, does this reflect the
 12 information that was provided to the Division on July
 13 2nd as a result of your previous conversations with the
 14 Division?
 15 A. It does.
 16 Q. And does it reflect what was provided to update
 17 the application?
 18 A. Yes, sir.
 19 Q. And if you flip through this exhibit, does it
 20 provide, as part of the amendment to the application,
 21 the revised casing program?
 22 MR. LARSON: Excuse me. Which exhibit are
 23 you on?
 24 MR. FELDEWERT: Exhibit Number 4.
 25 THE WITNESS: It does.

1 Q. (BY MR. FELDEWERT) Okay. And if I go through
 2 this exhibit and I get to the second -- to the last --
 3 to the last page, does it provide a revised wellbore
 4 diagram?
 5 A. Yes, it does.
 6 Q. With the casing weights specified?
 7 A. Yes, sir.
 8 Q. Okay. That was the result of your discussions
 9 with the protesting parties?
 10 A. One of them, yes, sir.
 11 Q. Okay. And the second-to-the-last page, does
 12 this actually provide the Division with a
 13 surveyed certified C-102 plat?
 14 A. It does.
 15 Q. Showing the location of the well?
 16 A. It does.
 17 Q. And based on discussions and a resolution with
 18 Matador?
 19 A. That is correct.
 20 Q. Okay. It did not provide, for example,
 21 Mr. McCurdy, water samples, right?
 22 A. Could you repeat the question?
 23 Q. This Exhibit Number 4 did not provide any water
 24 samples to the Division?
 25 A. It did not.

1 Q. Is that because they told you that the previous
 2 water samples were sufficient?
 3 A. That's correct.
 4 Q. Did they also tell you that the previous
 5 geologic write-up submitted in October was still on file
 6 and sufficient?
 7 A. That's correct.
 8 Q. And did they indicate that you needed to
 9 provide any additional freshwater data?
 10 A. No, sir.
 11 Q. Did they indicate that your area of review that
 12 was provided in October of 2016 was sufficient?
 13 A. They did, with the exception of Roland.
 14 Q. You're talking about Mr. Ruiz?
 15 A. Mr. Ruiz.
 16 Q. Okay. So let's talk about that. What did the
 17 Division say with respect to the notice to the surface
 18 owner, Mr. Ruiz?
 19 A. He said that I needed to make sure, since
 20 Mr. Ruiz was -- Roland's -- Roland's the heir to Reyes
 21 Ruiz, who had passed away during this timeline. He said
 22 to just go ahead and provide notice to Roland who is the
 23 new leasehold.
 24 Q. Okay. All right. So we saw -- for example, if
 25 I go to a recorded Memorandum of Salt Water Disposal

1 Agreement, on Exhibit Number 11, that was with Reyes
 2 Ruiz --
 3 A. Reyes Ruiz.
 4 Q. -- correct?
 5 A. Yes, sir.
 6 Q. And at the time you filed your October 2016
 7 application, he was the surface owner?
 8 A. That's correct.
 9 Q. And then while you were in discussions with the
 10 objecting parties, he passed away?
 11 A. That's correct.
 12 Q. And it went to his son, I guess?
 13 A. That's correct.
 14 Q. And that's Roland?
 15 A. Yes.
 16 Q. And did they indicate -- did the Division
 17 indicate that that was the only additional notice that
 18 needed to be provided?
 19 A. That's it.
 20 Q. And did they indicate that the notice that had
 21 been provided with the October 2016 application was
 22 sufficient to move forward?
 23 A. They did.
 24 Q. If I turn to what's been marked as Exhibit
 25 Number 5, is this the additional notice to Mr. Roland

1 Ruiz that the Division requested to update and amend
 2 your application?
 3 A. It is.
 4 Q. And if I turn to what's been marked as Exhibit
 5 Number 6, is this the submission by you to the Division
 6 of another copy of the Affidavit of Publication that was
 7 provided with the October 2016 application?
 8 A. It is.
 9 Q. And, in fact, if I look at the second page, it
 10 indicates that the Affidavit of Publication is dated
 11 October 27th, 2016?
 12 A. That's correct.
 13 Q. And that's what the Division asked you to
 14 submit just so they had another copy in their files?
 15 A. That's right.
 16 Q. Did you understand, Mr. McCurdy, from your
 17 conversations with the Division that the October --
 18 October 2016 application was still viable and active?
 19 A. I did.
 20 Q. And that you just needed to provide some
 21 amendments to the application, and it would move
 22 forward?
 23 A. That's correct.
 24 Q. At no point did they indicate that it had been
 25 canceled or withdrawn?

- 1 A. Never to us.
- 2 Q. Okay. Let's go back to the timeline, Exhibit
- 3 Number 1. When did the company become aware that Alpha
- 4 had filed a competing disposal permit right next door in
- 5 Unit J?
- 6 A. The day I was out surveying -- or I had met
- 7 surveyors out in New Mexico to do an official survey on
- 8 the Ruiz SWD.
- 9 Q. Okay. So that was on -- if I look at the
- 10 timeline, that was June 29th?
- 11 A. Yes, sir.
- 12 Q. That's when Alpha informs you of their
- 13 SWD-1680?
- 14 A. That's correct.
- 15 Q. So you didn't get any notice of their
- 16 application until the Division had already issued an
- 17 order?
- 18 A. That's right.
- 19 Q. Okay. Now, you mentioned that you were out
- 20 staking the location of the Ruiz SWD. Was that pursuant
- 21 to your agreement with Matador?
- 22 A. That's correct.
- 23 Q. Go out and survey the location?
- 24 A. That's right.
- 25 Q. Now, did Alpha call you?

- 1 A. They did that day.
- 2 Q. Okay. And who called you?
- 3 A. Kurt Knewitz and Jason Pickard.
- 4 Q. Mr. Knewitz?
- 5 A. Knewitz. Sorry.
- 6 Q. And when they called you on June 29th, what was
- 7 the nature of that discussion?
- 8 A. They were a little -- little upset because we
- 9 were staking a well over in that location.
- 10 Q. Did they tell you why they were upset that you
- 11 were proceeding with your October 2016 application?
- 12 A. Yes.
- 13 Q. Why were they upset?
- 14 A. They were upset because it was directly
- 15 offsetting their approved SWD order by a couple hundred
- 16 feet.
- 17 Q. Were you surprised when they told you about
- 18 their existing SWD order?
- 19 A. I was.
- 20 Q. And why were you surprised?
- 21 A. Because from previous discussions, we had been
- 22 in discussion with them on potentially working together
- 23 on a project, and I was just not aware that they had
- 24 filed this permit.
- 25 Q. Much less got an order?

- 1 A. That's right.
- 2 Q. Okay. Was there another aspect of that
- 3 conversation where they inquired about your willingness
- 4 to purchase their permit?
- 5 A. Yes, during that discussion.
- 6 Q. What did they say?
- 7 A. They said that, you know, it would probably be
- 8 easier if we went ahead -- since we can't come to an
- 9 agreement on a, you know, potential partnership at the
- 10 time, they said it would probably be better if, you
- 11 know, we go ahead and step back and you-all go ahead and
- 12 buy our permit. And they offered -- they said for
- 13 \$500,000.
- 14 Q. They would sell their permit to you for
- 15 \$500,000?
- 16 A. On that conversation, yes.
- 17 Q. What did they say would happen if you didn't
- 18 accept their offer?
- 19 A. They said they had plenty of other buyers lined
- 20 up and were talking with other people, and, you know,
- 21 they were planning on moving forward.
- 22 Q. Moving forward to sell it?
- 23 A. Yes.
- 24 Q. Okay. Now, you mention that this whole
- 25 application --

- 1 A. Move forward to sell or operate. There were
- 2 two options there. It wasn't guaranteed one or the
- 3 other.
- 4 Q. Okay. And you mentioned that there were prior
- 5 conversations that had occurred between the company and
- 6 Mr. Knewitz before this disclosure that they had an SWD
- 7 permit right next door?
- 8 A. That's correct.
- 9 Q. Okay. Did you review the company records
- 10 associated with those discussions?
- 11 A. I have.
- 12 Q. And who did they take place -- who was involved
- 13 in those discussions?
- 14 A. Preston Stein and Kurt Knewitz.
- 15 Q. Mr. Stein was the one who had filed the 2016
- 16 application?
- 17 A. That's correct.
- 18 Q. If I turn to what's been marked as Delaware
- 19 Exhibit Number 7, does this company -- is this one of
- 20 the earlier emails reflecting when those discussions
- 21 took place?
- 22 A. It is.
- 23 Q. And this is dated February 21st, 2017?
- 24 A. Yes.
- 25 Q. This after -- well after you filed your

1 application and long before they filed theirs?
 2 A. That's correct.
 3 Q. And does it -- if I look on here, it indicates
 4 that Mr. Knewitz had an investor willing to put up funds
 5 to complete a disposal and was inquiring whether your
 6 company had any permits that would be interested in
 7 having an investor?
 8 A. That's correct.
 9 Q. Okay. And then it reflects that Mr. Knewitz is
 10 with some entity called BuySWD.com. Do you see that?
 11 A. Yes.
 12 Q. How did Mr. Knewitz tout himself? What is
 13 BuySWD.com?
 14 A. As a broker who connects saltwater disposals
 15 with either investors or with potentially other buyers,
 16 maybe operators looking for saltwater disposals in those
 17 areas.
 18 Q. So he's a broker?
 19 A. Right.
 20 Q. Okay. And if I look at Exhibit Number 8, is
 21 this a printout of Mr. Knewitz' company at the time, a
 22 printout from their Web site, BuySWD.com?
 23 A. It is.
 24 Q. And if I look in the middle there, it says his
 25 job is "We Connect Buyers, Sellers & Investors of

1 SWD'S"?
 2 A. That's right.
 3 Q. That's what you understood his business to be?
 4 A. That's right.
 5 Q. And then if I flip through this, it describes
 6 the nature of his brokering business. And if you go
 7 through the Web site, does it list him as the --
 8 Mr. Knewitz as the contact person for this brokering
 9 business?
 10 A. (No response.)
 11 Q. Or have you viewed the Web site?
 12 A. I have viewed the Web site, yes.
 13 Q. And is he the contact person for this brokering
 14 business?
 15 A. He is.
 16 Q. At the time these discussions were occurring
 17 between Delaware and Mr. Knewitz, as a broker of SWDs,
 18 are there emails indicating that Mr. Knewitz didn't have
 19 knowledge of how you apply for a permit and the nature
 20 of the permit and what those permits allow you to do?
 21 A. He did.
 22 Q. If I turn to what's been marked as Exhibit
 23 Number 9, is this another e-mail in March of 2017
 24 between Mr. Stein and Mr. Knewitz?
 25 A. It is.

1 Q. And does it indicate that Mr. Knewitz was
 2 acquiring about the length of the Division's disposal
 3 permits?
 4 A. He is.
 5 Q. And inquiring about what happens if they are
 6 not developed?
 7 A. Yes.
 8 Q. And inquiring, in particular, about how
 9 difficult it is to get an extension of those permits?
 10 A. That's correct.
 11 Q. And he was asking all these questions of
 12 Mr. Stein?
 13 A. Yes.
 14 Q. Did it appear to you that Mr. Knewitz had never
 15 applied for an SWD permit or operated a disposal well in
 16 New Mexico?
 17 A. Say again.
 18 Q. Did it appear to you from the correspondence
 19 that Mr. Knewitz had never applied for an SWD permit in
 20 New Mexico or operated a disposal well in New Mexico?
 21 A. That's correct.
 22 Q. Okay. And at some point in time during these
 23 conversations and dealing with Mr. Knewitz as a broker
 24 of BuySWD.com, did he request and did the company
 25 provide to him an identification of the company's

1 existing saltwater disposal agreements in the county?
 2 A. That's correct.
 3 Q. And if I turn to what's been marked as Delaware
 4 Exhibit Number 10, is this the March 4th, 2017 email
 5 from Mr. Stein to Mr. Knewitz in which he provided to
 6 Mr. Knewitz a schedule of the company's acreage that was
 7 subject to saltwater disposal agreements?
 8 A. That's correct.
 9 Q. And if I look at the second page of this
 10 exhibit, first off, for the record, the company redacted
 11 the information reflecting other properties other than
 12 Section 10, correct?
 13 A. That's right.
 14 Q. But does this accurately reflect the
 15 information that was provided to Mr. Knewitz back in
 16 March of 2017 about the location of your disposal
 17 agreements in Section 10?
 18 A. It does.
 19 Q. And, in particular, your agreements with
 20 Mr. Reyes Ruiz?
 21 A. It does.
 22 Q. If I turn to what's been marked as Delaware
 23 Exhibit Number 11, is this an accurate copy of the
 24 Memorandum of Salt Water Disposal Agreement that was
 25 filed by the company in the county records reflecting

1 the company as a lessee under an agreement with
 2 Mr. Reyes Ruiz?
 3 A. That's correct.
 4 Q. And it reflects that this agreement covers
 5 Section -- in Section 10?
 6 A. That's correct.
 7 Q. And it reflects, does it not, this was recorded
 8 February 6th, 2017?
 9 A. It does.
 10 Q. Okay. Long before Alpha filed its competing
 11 disposal application?
 12 A. That's correct.
 13 Q. So if I look at the timeline here, during these
 14 discussions, the company provided Mr. Knewitz a
 15 description of the acreage subject to these disposal
 16 agreements --
 17 A. Yes.
 18 Q. -- correct?
 19 And they also had recorded in the county
 20 records a copy -- or a memorandum of the disposal
 21 agreement on file with Mr. Ruiz covering Section 10?
 22 A. That's correct.
 23 Q. Yet there was no notice provided to Delaware of
 24 their filing of a competing disposal application?
 25 A. No.

1 Q. Is this surface-use agreement still active?
 2 A. It is.
 3 Q. If I turn to what's been marked as Delaware
 4 Exhibit Number 12, is this a Memorandum of Salt Water
 5 Disposal Agreement with Mr. Reyes' [sic] heir, Roland
 6 Ruiz, covering Section 10?
 7 A. Yes.
 8 Q. And both the prior agreement and then the
 9 current one authorizes you to access the acreage; is
 10 that correct?
 11 A. That's correct.
 12 Q. And why you were able to go out there and
 13 actually stake a well?
 14 A. That's correct.
 15 Q. And so the company has agreements in place
 16 necessary to access the acreage and actually go out and
 17 drill a well that you had proposed back in October,
 18 correct?
 19 A. That's correct.
 20 Q. All right. Now, at some point during these
 21 conversations with Mr. Knewitz and his brokerage
 22 company, did he eventually inform Delaware that he had
 23 plans for a -- potential plans for a saltwater disposal
 24 well in Section 10?
 25 A. He did.

1 Q. And when did that -- when was that revelation
 2 first made?
 3 A. In May.
 4 Q. And what was going on at that time?
 5 A. We were in conversations with Alpha in regards
 6 to potentially partnering on a well in the same
 7 township.
 8 Q. And that was a different disposal well?
 9 A. That's correct.
 10 Q. In what section?
 11 A. Section 9.
 12 Q. And what was that well called?
 13 A. The Gomez SWD is what it's called now.
 14 Q. So you were having discussions about
 15 potentially partnering with them on that Gomez disposal
 16 well?
 17 A. That's correct.
 18 Q. Okay. And if I turn to what's been marked as
 19 Delaware Exhibit Number 13, is this a site layout for
 20 that potential disposal well that Mr. Knewitz now
 21 provided to you in May of 2016?
 22 A. That's correct.
 23 Q. And this would have been for his proposed Alpha
 24 well?
 25 A. Yes.

1 Q. Okay. What did he say about the status of his
 2 plans at this point in time?
 3 A. He said that this was a property he was looking
 4 at to potentially put a saltwater disposal permit on --
 5 and it was -- it was off of 285.
 6 Q. Okay. And did he -- did you have discussions
 7 with him prior to the Dallas meeting about this -- his
 8 plans?
 9 A. I did. I had told him -- I said, "If we're
 10 looking -- if you-all are wanting to partner and maybe
 11 closer to 285," I said, "we have a permit that's pending
 12 directly offsetting that, directly adjacent to 285, and
 13 we can definitely talk about that as well."
 14 Q. What did you say to him about if you move
 15 forward with his own plans?
 16 A. I said, "Please let us know if you decide to
 17 move forward with that permit."
 18 Q. And so as early as May, you asked him to
 19 provide notice to you if they move forward with their
 20 own permit in Section 10?
 21 A. That's correct.
 22 Q. Did you then have a subsequent meeting with
 23 Mr. Knewitz in Dallas?
 24 A. We did.
 25 Q. Okay. And did that also occur in May?

1 A. It did.
 2 Q. And what was the -- what was the initial
 3 purpose of that Dallas meeting?
 4 A. To discuss -- Kurt -- one was to partner on a
 5 disposal well, potentially the Gomez.
 6 Q. Was that the Gomez? Okay.
 7 A. Yeah.
 8 But it was also -- Kurt had contacts
 9 with --
 10 Q. Let me stop you right there. When you say
 11 Kurt, you mean Mr. Knewitz?
 12 A. Yeah, Mr. Knewitz.
 13 -- had contacts with another man whose
 14 office we met in in Dallas, and he was a man who had a
 15 lot of facilities experience building a facility for
 16 Matador. It was a good facility. So we wanted to talk
 17 with him about that facility in partnering as a partner.
 18 Q. During the Dallas meeting, when you were
 19 talking about the Gomez well and facility issues for
 20 that well, did his potential plans for a disposal well
 21 in Section 10 come up again?
 22 A. They did. We discussed a little bit further on
 23 that potential well.
 24 Q. And what was said, and what did you tell him?
 25 A. He, I think, was talking about a potential --

1 he was showing the layout, again, showing he was in
 2 potential -- he was doing a traffic study on the area,
 3 and I had just said again, "We have a well offsetting
 4 you there. If you would like to -- you know, if you-all
 5 plan on going forward with this, I'd definitely like to
 6 know."
 7 Q. Okay. And did you ask him anything else if
 8 he -- did you say anything else if he decided to move
 9 forward with his own application?
 10 A. Just to notify us, let us know if that's where
 11 you-all are going to go.
 12 Q. Now, that's the second time you asked him --
 13 A. That's correct.
 14 Q. -- to notify you if they move forward with an
 15 application?
 16 A. Yes.
 17 Q. And both of those requests took place in May?
 18 A. Yes.
 19 Q. One by telephone?
 20 A. Yup.
 21 Q. And one in person at that Dallas meeting?
 22 A. That's correct.
 23 Q. Okay. And that was before they filed their
 24 application in June?
 25 A. Yes.

1 Q. All right. Was there, Mr. McCurdy, a third
 2 occasion where you asked Alpha to provide notice to
 3 Delaware if it pursued a disposal well in Section 10?
 4 A. Yes.
 5 Q. And when did that take place?
 6 A. When I was leaving the County Clerk's Office
 7 after filing Roland Ruiz' permit.
 8 Q. Okay. Stop right there.
 9 If I go to what's been marked as Delaware
 10 Exhibit Number 12, is that the permit you are talking
 11 about you were filing in the County Clerk's Office?
 12 A. Yes, sir.
 13 Q. He called you that very day?
 14 A. As I was headed to my car.
 15 Q. And what occurred during that conversation?
 16 A. It was kind of just a vague conversation. It
 17 was kind of him just asking questions -- Mr. Knewitz
 18 asking questions kind of regarding like where we were at
 19 with our well, sort of -- I felt like more of a fishing
 20 call. And then, you know, I had said, "Where are we at?
 21 Are you-all still moving forward over there, or have
 22 you-all filed a permit?" And I said -- and I don't know
 23 if I asked him if he filed a permit, but I remember
 24 asking him again, because it was a concern of ours,
 25 "Have you" -- you know, "Please notify us if you do file

1 a permit because we've worked real hard to get to where
 2 we're at over there."
 3 Q. How did that conversation end?
 4 A. He said that he had to go and he'd be calling
 5 me next week. I said, "You got it."
 6 Q. Did you ever hear from him again?
 7 A. Not until the staking on the Ruiz.
 8 Q. This was after they got their order?
 9 A. That's right.
 10 Q. Okay. So despite your requests, Alpha chose
 11 not to notify Delaware when it filed its competing
 12 application for a disposal well right next door?
 13 A. That's correct.
 14 Q. Okay. What's your opinion about what has
 15 occurred here, Mr. McCurdy?
 16 A. I feel like in good faith we shared with Alpha
 17 a lot of our data, on what our plans were in the hopes
 18 that we were going to have a partner, and, in turn, they
 19 went behind our back and used our data to their benefit.
 20 Q. Used your data to find a location?
 21 A. Yeah, to find a location.
 22 Q. Right next door to your location?
 23 A. That's correct.
 24 Q. And then file a competing disposal application?
 25 A. Right.

1 Q. In the same zone?
 2 A. Yes.
 3 Q. And never even tell you?
 4 A. Right.
 5 Q. Okay. Let's go back to Exhibit Number 1.
 6 Let's start at the top. Okay? We have here an
 7 application that was filed in October. You've seen that
 8 exhibit, correct?
 9 A. Right.
 10 Q. Okay. We have the fact that you were notified
 11 that your application had been protested, and the
 12 Division told you that it would be held but suspended?
 13 A. That's right.
 14 Q. We have that exhibit, right?
 15 A. (Indicating.)
 16 Q. Okay. You then have -- the next entry is you
 17 record notice of the saltwater disposal agreement in
 18 Section 10, and that is that first recording, which is
 19 Exhibit Number --
 20 MR. FELDEWERT: Mr. Examiner, you may want
 21 to write it down.
 22 Q. (BY MR. FELDEWERT) Exhibit Number 11, right?
 23 A. That's right.
 24 Q. And then you have not only this recording, but
 25 then you have -- on March 4th, Delaware informs

1 Mr. Knewitz of the existing saltwater disposal agreement
 2 in Section 10. That would be your -- the email to him
 3 providing the location of your disposal sites, correct?
 4 A. That's correct.
 5 Q. And that was your Exhibit Number 10?
 6 A. Yes.
 7 Q. Okay. Then we have an entry there in May of
 8 2017. This reflects your discussion just now, right, of
 9 your telephone conversation with Mr. Knewitz, your
 10 meeting with him in Dallas and your request that they
 11 provide notice if they move forward?
 12 A. Right.
 13 Q. Then we have the filing of their application of
 14 June 12th?
 15 A. Yes.
 16 Q. Again, with no notice to you?
 17 A. That's correct.
 18 Q. And we have the fact that the Division informed
 19 Alpha that it was incomplete and would not be placed in
 20 the administrative review process?
 21 A. That's correct.
 22 Q. Okay. If I look at Exhibit Number 14 -- just
 23 keep your finger on this -- and I go to page 25 -- page
 24 25 on Exhibit 14.
 25 A. I don't have a page 25.

1 Q. On Exhibit 14?
 2 A. Hold on. Yeah, I do. Okay.
 3 Q. -- that's the email from the Division
 4 indicating to Alpha that their application will not be
 5 placed in the administrative review process because they
 6 were missing information?
 7 A. That's correct.
 8 Q. Okay. Then we have the next entry on June
 9 19th, Alpha submitting the additional information to the
 10 Division. And that, again, is reflected on Exhibit 14
 11 towards the end, correct, Mr. McCurdy?
 12 A. That's correct.
 13 Q. All right. The next entry, then, is June 27th,
 14 2017. The Division is notified that the protest to your
 15 October 2016 application had been withdrawn. That's
 16 what we saw in Exhibit Number 3?
 17 A. That's correct.
 18 Q. And then the Division records will reflect that
 19 there was an order issued on June 28th, 2017 approving
 20 of Alpha's application, right, notice to you?
 21 A. That's correct. Right.
 22 Q. Now, we have an entry here, June 29th, 2017.
 23 Alpha informs Delaware of the SWD-1680 and inquires
 24 whether Delaware desires to purchase the permit. Does
 25 that reflect your testimony where you discuss the fact

1 that they called you when you were staking the Ruiz
 2 No. 1?
 3 A. That's correct.
 4 Q. And that that's when they told you that they
 5 had received the permit from the Division?
 6 A. That's correct.
 7 Q. And that's when they said, Do you guys want to
 8 buy it; we'll sell it to you for half a million?
 9 A. Yup.
 10 Q. Then on June -- July 2nd, we have an entry here
 11 that the company submitted revisions to the October 2016
 12 application to incorporate the casing design and
 13 location. Do you see that?
 14 A. I do.
 15 Q. That's reflected in Exhibit Number 4; is that
 16 right?
 17 A. That's correct.
 18 Q. And this was after you had had discussions with
 19 the Division about your pending October 2016
 20 application?
 21 A. That's right.
 22 Q. All right. Then we have the entry here
 23 identifying the date of the expiration of the 15-day
 24 review period, if it's counted from the date that the --
 25 when Alpha's application was deemed complete. Okay?

1 A. Right.

2 Q. And we have a last entry here of July 13th,

3 2017. It says, "Alpha protested Delaware's

4 application." Do you see that?

5 A. I do.

6 Q. So after going through this process with the

7 Division and submitting the additional information on

8 July 2nd, I guess Alpha sent in a protest of your

9 application?

10 A. They did.

11 Q. And as a result, your application is pending

12 before the Division or awaiting a resolution of the

13 protest?

14 A. That's correct.

15 Q. Let me ask you something, Mr. McCurdy. I want

16 you to look at Exhibit Number 16. It shows a depiction

17 of Alpha's well and your well. Okay? In your opinion,

18 as a petroleum geologist --

19 A. Petroleum engineer.

20 Q. Engineer. I'm sorry.

21 -- as a petroleum engineer, is it prudent

22 to have two Devonian disposal wells in adjacent 40-acre

23 tracts in Section 10?

24 A. It is not.

25 Q. Because of the absence of notice to Delaware of

1 Alpha's competing disposal well, do you feel that the

2 company was prejudiced of that absence of notice?

3 A. Could you repeat the question?

4 Q. Was the company prejudiced by the absence of

5 notice of the filing of Alpha's competing disposal well?

6 A. Prejudiced meaning?

7 Q. You didn't have an opportunity to come before

8 the Division and explain why it would be improper to

9 have a competing disposal well right next door.

10 A. That's correct.

11 Q. And as a result of the absence of notice and

12 these procedural irregularities associated with the

13 issuance of that Alpha permit, does the company request

14 that the Division rescind SWD-1680?

15 A. We do.

16 Q. Would this relief then allow the Division to

17 properly consider the competing disposal applications

18 for a disposal well in the Devonian in this area?

19 A. That's correct.

20 Q. Were Delaware Exhibits 1 through 16 compiled by

21 you or prepared under your direction and supervision?

22 A. Yes.

23 MR. FELDEWERT: Mr. Examiner, I would move

24 admission into evidence of Delaware Exhibits 1 through

25 16.

1 EXAMINER GOETZE: Mr. Larson?

2 MR. LARSON: I'm briefly reviewing them,

3 Mr. Examiner.

4 EXAMINER GOETZE: Very good.

5 MR. LARSON: No objection.

6 EXAMINER GOETZE: Mr. Rankin?

7 MR. RANKIN: No objections.

8 EXAMINER GOETZE: Very good. Thank you.

9 Exhibits 1 through 16 are so entered.

10 (Delaware Energy, LLC Exhibit Numbers 1

11 through 16 are offered and admitted into

12 evidence.)

13 MR. FELDEWERT: Mr. Examiner, that

14 concludes my examination of this witness.

15 EXAMINER GOETZE: Mr. Larson, do you expect

16 to have an extended cross?

17 MR. LARSON: I do.

18 EXAMINER GOETZE: Let's take a break for a

19 few minutes then. So quarter after?

20 (Recess, 9:59 a.m. to 10:17 a.m.)

21 EXAMINER GOETZE: Okay. All present and

22 accounted for. Let's go back on the record.

23 Just one more item before you proceed with

24 your cross. We have two subpoenas issued or -- by

25 Director Catanach. Was everybody happy and copacetic as

1 to what we got?

2 MR. FELDEWERT: You know, there's -- we've

3 been working with Mr. Larson, Mr. Examiner. In fact, we

4 got an additional agreement just yesterday, an offer

5 that we consider responsive to the subpoena, and I

6 haven't had a chance to visit with Mr. Larson yet.

7 But one of the attachments -- what we got

8 yesterday afternoon was a purchase and sale agreement --

9 well, hold on. I don't want to misrepresent what we

10 got. Yeah, a purchase and sale agreement between Alpha

11 and Gateway Permian, which is our Exhibit Number 20. I

12 glanced through this last night, and there are certain

13 attachments and exhibits to that agreement that were not

14 produced with the agreement, one of which was an

15 apparent lease between an Alpha entity and Gateway

16 Permian, which is ostensibly going to purchase the

17 permit from Alpha. The lease was not attached to the --

18 to the agreement that was sent to us. I'm not sure why

19 because I think it's responsive, because it's an

20 agreement that involves the purchase and sale agreement

21 of property. So I'm not sure why that was withheld.

22 EXAMINER GOETZE: And so this lease is a

23 lease of what? Of mineral interest? Ownership?

24 Property rights?

25 MR. LARSON: Mr. Knewitz will discuss that

Begin forwarded message:

From: Preston Stein <Preston@delawareenergyllc.com>

Date: March 4, 2017 at 2:56:03 PM CST

To: Kurt <kurt@buyswd.com>

Subject: Fwd: Follow up

Kurt,

Meant to cc you on this. I've put together a ROUGH acreage schedule of our locked-up Acreage in NM. Wanted to pass this onto you as well. See attached.

Best Regards,

Preston M. Stein
Vice President
Delaware Energy, LLC
3001 W. Loop 250 N
Suite C-105-318
Midland, TX 79705
(214) 558-1371

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ATTACHMENT

- 3 -

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. 10
Submitted by: **DELAWARE ENERGY LLC**
Hearing Date: November 7, 2017

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF SALT WATER DISPOSAL AGREEMENT

THE STATE OF NEW MEXICO

COUNTY OF EDDY

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Salt Water Disposal Agreement is made and entered into as of the 6 day of ~~September~~ 2016, between **Reyes Ruiz**, whose address is 302 West Clayton Ave., Loving, NM 88260 ("Lessor"), and **DELAWARE ENERGY, LLC**, whose address is 3001 W. Loop 250 North, Suite C-105-318, Midland, Texas 79705 ("Lessee"):

WITNESSETH:

Lessor and Lessee have this day entered into a Salt Water Disposal Agreement, dated effective as of the date first-written above, covering the following described lands in **Eddy County, New Mexico**, to-wit:

Section 10, Township 24 South, Range 28 East

Said Salt Water Disposal Agreement, subject to certain termination provisions, contains a primary term of five (5) years and shall remain in force as long thereafter, subject to the further conditions and limitations stated in the terms and provisions of said Salt Water Disposal Agreement.

Lessor and Lessee are executing this Memorandum of Salt Water Disposal Agreement for the purpose of placing the same of record in Eddy County, New Mexico, and in order to constitute constructive notice of said Salt Water Disposal Agreement in lieu of recording of said Salt Water Disposal Agreement in its entirety. A full and complete copy of said Salt Water Disposal Agreement will be maintained in the office of both Lessor and Lessee at the address shown above.

IN WITNESS WHEREOF, this Memorandum of Salt Water Disposal Agreement is executed as of the day, month and year first hereinabove written.

Reception: 1701305 Book: 1001 Page: 0693 Pages: 3
Recorded: 02/08/2017 08:57 AM Fee: \$28.00
Eddy County, New Mexico - Robin Van Natta, County Clerk



1

ATTACHMENT

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. 11
Submitted by: DELAWARE ENERGY LLC
Hearing Date: November 7, 2017

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF SALT WATER DISPOSAL AGREEMENT

THE STATE OF NEW MEXICO

§

COUNTY OF EDDY

§

§

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Salt Water Disposal Agreement is made and entered into this 21st day of JUNE, 2017, between Roland Ruiz, whose address is P.O. Box 1355, Loving, NM 88256 ("Lessor"), and **DELAWARE ENERGY, LLC**, whose address is 3001 W. Loop 250 North, Suite C-105-318, Midland, Texas 79705 ("Lessee"):

WITNESSETH:

Lessor and Lessee have this day entered into a Salt Water Disposal Agreement, dated effective as of the date first-written above, covering the following described lands in Eddy County, New Mexico, to-wit:

Section 10, Township 24 South, Range 28 East

Said Salt Water Disposal Agreement, subject to certain termination provisions, contains a primary term of five (5) years and shall remain in force as long thereafter, subject to the further conditions and limitations stated in the terms and provisions of said Salt Water Disposal Agreement.

Lessor and Lessee are executing this Memorandum of Salt Water Disposal Agreement for the purpose of placing the same of record in Eddy County, New Mexico, and in order to constitute constructive notice of said Salt Water Disposal Agreement in lieu of recording of said Salt Water Disposal Agreement in its entirety. A full and complete copy of said Salt Water Disposal Agreement will be maintained in the office of both Lessor and Lessee at the address shown above.

IN WITNESS WHEREOF, this Memorandum of Salt Water Disposal Agreement is executed as of the day, month and year first hereinabove written.

LESSOR: Roland Ruiz

Roland Ruiz

Reception: 1707276 Book: 1098 Page: 0239 Pages: 2
Recorded: 08/21/2017 09:50 AM Fee: \$25.00
Eddy County, New Mexico - Robin Van Natta, County Clerk



DELAWARE ENERGY LLC
3001 W LOOP 250 N
STE C-105-318 / M MCCURDY
MIDLAND TX 79705

ATTACHMENT

- 5 -

BEFORE THE OIL CONSERVATION DIVISION
Santa Fe, New Mexico
Exhibit No. 12
Submitted by: DELAWARE ENERGY LLC
Hearing Date: November 7, 2017